

11-2017

Appendix: Conjunction-Problem v. Non-Conjunction-Problem Jurisdictions

David S. Schwartz

Elliott Sober

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Repository Citation

Schwartz, David S. and Sober, Elliott (2017) "Appendix: Conjunction-Problem v. Non-Conjunction-Problem Jurisdictions," *William & Mary Law Review Online*: Vol. 59 , Article 2.

Available at: <https://scholarship.law.wm.edu/wmlronline/vol59/iss1/2>

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APPENDIX: CONJUNCTION-PROBLEM V.
NON-CONJUNCTION-PROBLEM JURISDICTIONS

DAVID S. SCHWARTZ* & ELLIOTT SOBER**

This appendix presents the relevant data from our survey of jury instructions in support of the above-entitled article in the print edition of the *William & Mary Law Review*. The survey examined state-by-state and federal circuit-by-circuit pattern jury instructions from fifty-five jurisdictions that were readily available from online sources (forty-seven states, including the District of Columbia, and eight federal circuits). All the jurisdictions separate civil and criminal jury instructions, and some jurisdictions make available only civil or only criminal instructions. This approach yielded data from forty-one states and six federal circuits in civil cases, and thirty-seven states and eight federal circuits for criminal cases. The methodology is described more fully in the main article.¹

For each jurisdiction, we looked in two places to determine that jurisdiction's explanation of the linguistic and logical relationship between the burden of proof and the elements of claims. First, we examined the general instructions on the burden of proof, which typically address elements and claims generically. Second, we sampled substance-specific instructions, which list the elements of specific civil claims and criminal charges, to see whether these also gave directions about applying the burden of proof to elements and whole claims.

We identified six patterns of jury instructions, explained in the main article. Two of these replicate the conjunction problem and are labeled: "Conjunction Problem" and "Elements Only, Mandatory."

* Foley & Lardner-Bascom Professor of Law, University of Wisconsin Law School.

** Hans Reichenbach Professor and William F. Vilas Research Professor of Philosophy, University of Wisconsin—Madison.

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1. See David S. Schwartz & Elliott Sober, *The Conjunction Problem and the Logic of Jury Findings*, 59 WM. & MARY L. REV. 619, 673-87 (2017).

The other four do not replicate the conjunction problem, and are labeled “Entailment Check,” “Aggregate Elements,” “Elements Only, Permissive” and “Holistic.” For each category, we separate out civil and criminal jury instructions. The number in parentheses following each named category and civil or criminal subcategory is the total number of jurisdictions for that category or subcategory. For most of the jurisdictions, we report two instructions: the first is the generic instruction on burden of proof, and the second is a representative example of a specific claim. In a small handful of jurisdictions, we report just one instruction because that set of jury instructions does not have both types.

Note that jury instruction text frequently includes placeholder language, which may be modified at the time of use depending on the applicable parties or claims. For ease of reading, we have removed most brackets and parentheses and substituted plain language equivalents for such placeholder terms where applicable.

CONJUNCTION-PROBLEM JURISDICTIONS

A. Conjunction Problem (10)

1. Civil (1)

DISTRICT OF COLUMBIA

General: STANDARDIZED CIVIL JURY INSTRUCTIONS FOR THE DISTRICT OF COLUMBIA § 2.04 (CIVIL JURY INSTRUCTIONS COMM. rev. ed. 2017) (“The party who makes a claim has ... the burden of proving it. This burden of proof means that the plaintiff must prove every element of [his/her] claim by a preponderance of the evidence.”).

Specific: Id. § 5.01 (“[Plaintiff] must prove each element by a preponderance of the evidence—that each element is more likely so than not so. If [Plaintiff] proves each element, your verdict must be for [Plaintiff].”).

*2. Criminal (9)***ARIZONA**

General: REVISED ARIZONA JURY INSTRUCTIONS (CRIMINAL), *Standard Criminal* § 5b(1) (STATE BAR OF ARIZ. CRIMINAL JURY INSTRUCTION COMM. 4th ed. 2016) (“The State has the burden of proving the defendant guilty beyond a reasonable doubt. This means the State must prove each element of each charge beyond a reasonable doubt.... If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty.”).

COLORADO

General: COLORADO JURY INSTRUCTIONS CRIMINAL § E:03 (MODEL CRIMINAL JURY INSTRUCTIONS COMM. OF THE COLO. SUPREME COURT 2016) (“The burden of proof is upon the prosecution to prove to the satisfaction of the jury beyond a reasonable doubt the existence of all of the elements necessary to constitute the crime charged.... If you find from the evidence that each and every element of a crime has been proven beyond a reasonable doubt, you should find the defendant guilty of that crime.”).

CONNECTICUT

General: CONNECTICUT JUDICIAL BRANCH CRIMINAL JURY INSTRUCTIONS § 2.2-2 (CRIMINAL JURY INSTRUCTION COMM. 2017) (“The state has the burden of proving that the defendant is guilty of the crime with which she is charged.”).

Specific: *Id.* § 9.2-1 (“If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of burglary in the first degree, then you shall find the defendant guilty.”).

IDAHO

General: IDAHO CRIMINAL JURY INSTRUCTIONS No. 103 (CRIMINAL JURY INSTRUCTIONS COMM. 2010) (“[T]he state must prove the alleged crime beyond a reasonable doubt.”).

Specific: Id. No. 704A (“If you find that elements one(1) - five(5) above have been proven beyond a reasonable doubt, ... you must find the defendant guilty of first degree murder.”).

ILLINOIS

General: ILLINOIS PATTERN INSTRUCTIONS—CRIMINAL § 2.03 (SPECIAL SUPREME COURT COMM. ON PATTERN JURY INSTRUCTIONS—CRIMINAL 2011) (“The defendant is presumed to be innocent of the charge[s] against him.... The State has the burden of proving the guilt of the defendant beyond a reasonable doubt.”).

Specific: Id. § 14.02 (“To sustain the charge of robbery, the State must prove the following propositions: If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.”).

NEW YORK

General: NEW YORK CRIMINAL JURY INSTRUCTIONS 2D, *Presumption of Innocence, Burden of Proof (in Cases Without an Affirmative Defense), Proof Beyond a Reasonable Doubt* (COMM. ON CRIMINAL JURY INSTRUCTIONS 2017) (“[T]he People have the burden of proving the defendant guilty beyond a reasonable doubt. That means, before you can find the defendant guilty of a crime, the People must prove beyond a reasonable doubt every element of the crime.”).

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PENNSYLVANIA

General: PENNSYLVANIA SUGGESTED STANDARD CRIMINAL JURY INSTRUCTIONS § 7.01 (CRIMINAL JURY INSTRUCTION COMM. 2016) (“[I]t is the Commonwealth that always has the burden of proving each and every element of the crime charged and that the defendant is guilty of that crime beyond a reasonable doubt.”).

THIRD CIRCUIT

General: MODEL CRIMINAL JURY INSTRUCTIONS § 3.06 (COMM. ON MODEL CRIMINAL JURY INSTRUCTIONS THIRD CIRCUIT 2017) (“The presumption of innocence stays with [the defendant] unless and until the government has presented evidence that overcomes that presumption by convincing you that [the defendant] is guilty of the offense(s) charged beyond a reasonable doubt.... If, having now heard all the evidence, you are convinced that the government proved each and every element of the offense charged beyond a reasonable doubt, you should return a verdict of guilty for that offense.”).

SEVENTH CIRCUIT

General: PATTERN CRIMINAL JURY INSTRUCTIONS OF THE SEVENTH CIRCUIT § 1.03 (COMM. ON FED. CRIMINAL JURY INSTRUCTIONS OF THE SEVENTH CIRCUIT 2012) (“The defendant is presumed innocent of ... the charge[s]. This presumption continues throughout the case, including during your deliberations. It is not overcome unless, from all the evidence in the case, you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the defendant’s guilt beyond a reasonable doubt.”).

Specific: Id. § 4.01 (“If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt ... then you should find the defendant guilty.”).

B. Elements Only, Mandatory (16)

1. Civil (10)

ARKANSAS

General: ARKANSAS MODEL JURY INSTRUCTIONS—CIVIL § 203 (ARK. SUPREME COURT COMM. ON JURY INSTRUCTIONS—CIVIL 2016) (“Plaintiff claims damages from defendant and has the burden of proving each of three essential propositions If you find from the evidence in this case that each of these propositions has been proved, then your verdict should be for plaintiff.”).

IDAHO

General: IDAHO CIVIL JURY INSTRUCTIONS § 1.40.1 (CIVIL JURY INSTRUCTIONS COMM. 2003) (“On the issue ... the (name of party) has the burden of proof on each of the following propositions: [list of elements]. If you find from your consideration of all the evidence in the case that each of the foregoing propositions has been proved, your verdict should be for the (party claiming the issue).”).

ILLINOIS

Specific: ILLINOIS PATTERN JURY INSTRUCTIONS—CIVIL § 21.02 (SUPREME COURT COMM. ON JURY INSTRUCTIONS IN CIVIL CASES 2017) (“The plaintiff has the burden of proving each of the following propositions If you find from your consideration of all the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff.”).

MINNESOTA

General: 4 MINNESOTA PRACTICE SERIES JURY INSTRUCTION GUIDES—CIVIL § 14.15 (COMM. ON CIVIL JURY INSTRUCTION GUIDES 6th ed. 2016) (“You will be asked to answer ‘yes’ or ‘no’ to some questions on the verdict form. The greater weight of the evidence must support a ‘yes’ answer.”).

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MISSISSIPPI

General: MISSISSIPPI MODEL JURY INSTRUCTIONS—CIVIL § 1201 (MISS. MODEL JURY INSTRUCTIONS COMM’N 2012) (“To establish this claim, plaintiff must prove all of the following are more likely true than not true: [list of elements].”). Mississippi incorporates a special verdict form into the instruction. *Id.*

MISSOURI

General: MISSOURI APPROVED JURY INSTRUCTIONS (CIVIL) § 3.01 (MO. SUPREME COURT COMM. ON CIVIL JURY INSTRUCTIONS 7th ed. 2017) (“The party who relies upon any disputed fact has the burden to cause you to believe that such fact is more likely true than not true.”).

Specific: *Id.* § 12.03 (“Your verdict must be for plaintiff if you believe: [list of elements].”).

TEXAS

General: TEXAS PATTERN JURY CHARGES—CIVIL § 200.3 (STATE BAR COMM. ON PATTERN JURY CHARGES 2016) (“After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict.... Answer ‘yes’ or ‘no’ to all questions unless you are told otherwise. A ‘yes’ answer must be based on a preponderance of the evidence.”).

WASHINGTON

General: WASHINGTON PATTERN JURY INSTRUCTIONS—CIVIL § 1.01 (WASH. STATE SUPREME COURT COMM. ON JURY INSTRUCTIONS 2013) (“Burden of proof refers to the measure or amount of proof required to prove a fact. The burden of proof in this case is proof by a preponderance of the evidence. Proof by a preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that a proposition is more probably true than not true.”).

Specific: Id. § 342.01 (“[P]laintiff has the burden of proving each of the following propositions: [list of elements]. If you find from your consideration of all the evidence that each of these propositions has been proved, then your verdict should be for plaintiff.”).

WISCONSIN

General: WISCONSIN JURY INSTRUCTIONS—CIVIL § 200 (2017) (“Certain questions in the verdict ask that you answer the questions ‘yes’ or ‘no’. The party who wants you to answer the questions ‘yes’ has the burden of proof as to those questions.”).

SEVENTH CIRCUIT

Specific: FEDERAL CIVIL JURY INSTRUCTIONS OF THE SEVENTH CIRCUIT § 4.02 (COMM. ON PATTERN CIVIL JURY INSTRUCTIONS OF THE SEVENTH CIRCUIT 2015) (“To succeed in this case, Plaintiff must prove four things by a preponderance of the evidence ... If you find that Plaintiff has proved each of these things by a preponderance of the evidence, you should turn to the issue of Plaintiff’s damages.”).

2. Criminal (6)

ALABAMA

General: ALABAMA PATTERN JURY INSTRUCTIONS—CRIMINAL PROCEEDINGS § I.7 (ALA. LAW INST. 2016) (“To convict, the State of Alabama must prove beyond a reasonable doubt each of the elements of [the offense] charged. If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of the offense ... as charged, then you shall find the defendant guilty.”).

Specific: Id. § 13A-7-41 (“If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of arson in the first degree, then you shall find the defendant guilty of arson in the first degree.”).

KANSAS

General: PATTERN INSTRUCTIONS FOR KANSAS—CRIMINAL 3D § 51.010 (KAN. JUDICIAL COUNCIL ADVISORY COMM. ON CRIMINAL JURY INSTRUCTIONS 4th ed. 2011) (“If you have no reasonable doubt as to the truth of each of the claims required to be proved by the State, you should find the defendant guilty.”).

Specific: Kansas uses “claims” to mean “elements.” *See, e.g., id.* § 59.070 (“To establish this charge, each of the following claims must be proved: [list of elements].”).

MARYLAND

General: MARYLAND CRIMINAL JURY INSTRUCTIONS AND COMMENTARY § 1.03 (DAVID E. AARONSON 2017) (“The State has the burden of proving beyond a reasonable doubt, based upon the evidence introduced at trial, every element of a charged offense necessary to convict the defendant.... [I]f you find from your consideration of all the evidence that the State has proved each of the elements of the offense beyond a reasonable doubt, then you should find the defendant guilty.”).

TEXAS

General: TEXAS CRIMINAL PATTERN JURY CHARGES § 2.1 (STATE BAR COMM. ON PATTERN JURY CHARGES—CRIMINAL 2013) (“If the state proves every element of the offense beyond a reasonable doubt, then you must find the defendant guilty.”).

Specific: *Id.* § 85.1 (“If you all agree the state has proved, beyond a reasonable doubt, both of the two elements listed above, you must find the defendant ‘guilty.’”).

VERMONT

General: VERMONT MODEL CRIMINAL JURY INSTRUCTIONS § 04-101 (CRIMINAL JURY INSTRUCTION COMM. 2017) (“[T]he State must prove

each of the essential elements of the crime charged beyond a reasonable doubt.”).

Specific: Id. § 04-021 (“If, in your judgment, the State has proven each of the essential elements beyond a reasonable doubt, then you must find [the defendant] guilty.”).

VIRGINIA

General: VIRGINIA MODEL JURY INSTRUCTIONS—CRIMINAL No. 2.100 (SUPREME COURT OF VA. MODEL JURY INSTRUCTION COMM. 2016) (“[P]resumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the crime beyond a reasonable doubt.”).

Specific: Id. No. G4.100 (“If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.”).

NON-CONJUNCTION-PROBLEM JURISDICTIONS

C. Entailment Check (39)

1. Civil (18)

ARIZONA

General: REVISED ARIZONA JURY INSTRUCTIONS—CIVIL, *Standard 2* (CIVIL JURY INSTRUCTIONS COMM. OF THE STATE BAR OF ARIZ. 5th ed. 2013) (“On any claim, the party who has the burden of proof must persuade you, by the evidence, that the claim is more probably true than not true.”).

Specific: Id. Negligence 8 (“On this claim, [name of plaintiff] has the burden of proving: [list of elements].”).

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CONNECTICUT

General: CONNECTICUT JUDICIAL BRANCH CIVIL JURY INSTRUCTIONS § 2.6-1 (CIVIL JURY INSTRUCTION COMM. 2008) (“The party making a claim has the burden of proof with respect to that claim. Thus, the plaintiff has the burden of proving each essential element of the cause of action upon which the plaintiff relies.”).

Specific: Id. § 3.8-5 (“In a legal malpractice action, the plaintiff must prove by a preponderance of the evidence three essential elements: [list of elements].”).

FLORIDA

General: FLORIDA STANDARD JURY INSTRUCTIONS IN CIVIL CASES § 401.21 (FLA. SUPREME COURT STANDARD JURY INSTRUCTIONS COMM. (CIVIL) 2017) (“[I]f the greater weight of the evidence supports one or more of claimant’s claims, then your verdict should be for claimant and against defendant on those claims.”).

Specific: Id. § 409.7 (“The issues for you to decide on claimant’s claim for fraudulent misrepresentation are: [list of elements].”).

HAWAII

General: HAWAII STANDARD CIVIL JURY INSTRUCTIONS No. 3.1 (CIVIL PATTERN JURY INSTRUCTIONS COMM. 1999) (“Plaintiff(s) has/have the burden of proving by a preponderance of the evidence every element of each claim that plaintiff(s) assert(s).”).

Specific: Id. No. 3.3 (“In deciding whether a claim, defense, or fact has been proven by a preponderance of the evidence, you must consider all of the evidence presented in court by both the plaintiff(s) and the defendant(s). Upon consideration of all the evidence, if you find that a particular claim, defense or fact is more likely true than not true, then such claim, defense, or fact has been proven by a preponderance of the evidence.”).

INDIANA

General: INDIANA MODEL CIVIL JURY INSTRUCTIONS § 109 (IND. JUDGES ASS'N 2016) (“Plaintiff must prove her claims by the greater weight of the evidence.”).

Specific: Id. § 1103 (“To recover on this claim, plaintiff must prove by the greater weight of the evidence that: [list of elements].”).

MARYLAND

General: MARYLAND CIVIL PATTERN JURY INSTRUCTIONS § 1:14 (MD. STATE BAR ASS'N STANDING COMM. ON PATTERN JURY INSTRUCTIONS 2017) (“The party who asserts a claim or affirmative defense has the burden of proving it by what we call the preponderance of the evidence. In order to prove something by a preponderance of the evidence a party must prove that it is more likely so than not so.”).

MASSACHUSETTS

General: MASSACHUSETTS SUPERIOR COURT CIVIL PRACTICE JURY INSTRUCTIONS § 1.2.3 (JESSE W. ABAIR ET AL. 2016) (“[A] plaintiff must prove her case by a preponderance of the evidence.... [A] matter has been proved by a preponderance of the evidence if you determine, after you have weighed all of the evidence that that matter is more probably true than not true.”).

Specific: Id. § 2.1 (“In order to recover in this lawsuit, the plaintiff has the burden of proving by a preponderance of the evidence the following four elements: [list of elements].”).

NEBRASKA

General: NEBRASKA JURY INSTRUCTIONS, CIVIL § 2.12A (NEB. SUPREME COURT COMMS. ON CIVIL & CRIMINAL PROCEDURE 2017) (“Any party who has the burden of proving a claim must do so by the greater weight of the evidence.”).

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Specific: Id. § 9.01 (“Before the plaintiff can recover against the defendant on her claim of fraudulent misrepresentation, the plaintiff must prove, by the greater weight of the evidence, each and all of the following: [list of elements].”).

NEVADA

General: NEVADA JURY INSTRUCTIONS—CIVIL § 2EV.1 (NEV. JURY INSTRUCTIONS—CIVIL SUBCOMM. 2011) (“Plaintiff is seeking damages based upon a claim Plaintiff has the burden of proving by a preponderance of the evidence all of the facts necessary to establish: [list of elements].”).

Specific: See, e.g., id. § 9MM.2.

NEW HAMPSHIRE

General: NEW HAMPSHIRE CIVIL JURY INSTRUCTIONS § 5.1 (SUPERIOR COURT CIVIL JURY INSTRUCTIONS COMM. 2016) (“The party having the burden of proof ... has to prove ... that his claim is more likely than otherwise.”).

Specific: Id. § 20.1 (“The defendant is subject to liability to the plaintiff for battery if you find that: [list of elements].”).

NEW JERSEY

General: NEW JERSEY MODEL CIVIL JURY CHARGES § 1.12G (MODEL CIVIL JURY CHARGE COMM. 2009) (“The burden of proof is on the plaintiff/each party to establish his/her/their claim by a preponderance of the evidence.... In this action, the plaintiff ... has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues.”).

Specific: Id. § 5.20A (“The plaintiff must prove each of these elements to establish a claim against the defendant.”).

OREGON

General: OREGON UNIFORM CIVIL JURY INSTRUCTIONS § 14.02 (OR. STATE BAR COMM. ON UNIF. CIVIL JURY INSTRUCTIONS 2017) (“When a party must prove a claim by a preponderance of the evidence, that party must persuade you by evidence that makes you believe the claim is more likely true than not true.”).

Specific: Id. § 45.01 (“To prevail on a claim for attorney negligence, the plaintiff must prove: [list of elements].”).

PENNSYLVANIA

General: PENNSYLVANIA SUGGESTED STANDARD CIVIL JURY INSTRUCTIONS § 5.00 (CIVIL JURY INSTRUCTIONS SUBCOMM. 2016) (“Under the law, the plaintiff has the burden of proving her claims.... In a civil case, the plaintiff must prove his or her claims by a legal standard called a ‘preponderance of the evidence.’ Preponderance of the evidence means that a fact is more likely true than not.”).

Specific: Id. § 17.20 (“In order for the defendant to be held responsible for committing a battery against the plaintiff, you must find: [list of elements].”).

SOUTH CAROLINA

General: SOUTH CAROLINA REQUESTS TO CHARGE—CIVIL § 1-3 (RALPH KING ANDERSON, JR. 2016) (“[T]he plaintiff has the burden of proving her case by what is known in the law as the greater weight or preponderance of the evidence.”).

Specific: Id. § 19-3 (“[T]o recover for a breach of contract, the plaintiff must establish three elements by the preponderance of the evidence: [list of elements].”).

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VERMONT

General: VERMONT CIVIL JURY INSTRUCTIONS § H (VT. PLAIN ENGLISH CIVIL JURY INSTRUCTION COMM. 2008) (“In this case, the party bringing the claim has the burden of proving to you each element of the claim by a preponderance of the evidence. In other words, do you believe that the claim is more likely true than not?”).

THIRD CIRCUIT

General: MODEL CIVIL JURY INSTRUCTIONS FOR THE DISTRICT COURTS OF THE THIRD CIRCUIT § 1.10 (COMM. ON MODEL CIVIL JURY INSTRUCTIONS WITHIN THE THIRD CIRCUIT 2010) (“Plaintiff has the burden of proving her case by what is called the preponderance of the evidence. That means plaintiff has to prove to you, in light of all the evidence, that what she claims is more likely so than not so.”).

Specific: Id. § 9.1.1 (“To prevail on this claim, plaintiff must prove all of the following by a preponderance of the evidence: [list of elements].”).

FIFTH CIRCUIT

General: PATTERN JURY INSTRUCTIONS (CIVIL CASES) § 3.2 (COMM. ON PATTERN JURY INSTRUCTIONS DIST. JUDGES ASS’N FIFTH CIRCUIT rev. ed. 2016) (similar to the Third Circuit general instruction above).

Specific: Elements merely listed.

ELEVENTH CIRCUIT

General: ELEVENTH CIRCUIT CIVIL PATTERN JURY INSTRUCTIONS § 1.1 (COMM. ON PATTERN JURY INSTRUCTIONS OF THE JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT 2013) (similar to Third Circuit general instruction above).

Specific: Elements merely listed.

2. *Criminal (21)*

ALASKA

General: ALASKA CRIMINAL PATTERN JURY INSTRUCTIONS § 1.06 (CRIMINAL PATTERN JURY INSTRUCTIONS COMM. 2015) (“The presumption of innocence alone is sufficient for you to find a defendant not guilty, unless you are satisfied beyond a reasonable doubt of the defendant’s guilt, after careful and impartial consideration of all the evidence in the case.... [T]he burden is upon the prosecution to prove every essential element of the crime charged beyond a reasonable doubt.”).

Specific: Id. § 11.41.100(a)(1)(A) (“To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt each of the following elements: [list of elements].”).

CALIFORNIA

General: JUDICIAL COUNCIL OF CALIFORNIA CRIMINAL JURY INSTRUCTIONS § 103 (JUDICIAL COUNCIL ADVISORY COMM. ON CRIMINAL JURY INSTRUCTIONS 2017) (“In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence.”).

Specific: Id. § 1600 (“To prove that the defendant is guilty of this crime, the People must prove that: [list of elements].”).

DELAWARE

General: DELAWARE PATTERN JURY INSTRUCTIONS—CRIMINAL § 2.6 (SUPERIOR COURT OF DEL. 2016) (“The burden of proof is upon the State to prove all of the facts necessary to establish each and every element of the crime charged beyond a reasonable doubt.... [B]ased upon your conscientious consideration of the evidence, if you are firmly convinced that the defendant is guilty of the crime charged, you should find the defendant guilty.”).

Specific: Id. § 11.826(a)(1) (“In order to find Defendant guilty of Burglary in the First Degree, you must find the State has proved the following six (6) elements beyond a reasonable doubt: [list of elements].”).

FLORIDA

General: FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES § 3.7 (SUPREME COURT COMM. ON STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 2014) (“To overcome the defendant’s presumption of innocence, the State has the burden of proving the crime with which the defendant is charged was committed and the defendant is the person who committed the crime.”).

Specific: Id. § 7.2 (“To prove the crime of First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt: [list of elements].”).

GEORGIA

General: GEORGIA SUGGESTED PATTERN JURY INSTRUCTIONS, CRIMINAL CASES § 1.20.10 (COUNCIL OF SUPERIOR COURT JUDGES OF GA. 2017) (similar to Florida instructions above.).

Specific: Elements merely listed.

HAWAII

General: HAWAII PATTERN JURY INSTRUCTIONS—CRIMINAL § 3.02 (STANDING COMM. ON PATTERN CRIMINAL JURY INSTRUCTIONS 2005) (“If, after consideration of the evidence and the law, you do not have a reasonable doubt of the defendant’s guilt, then the prosecution has proved the defendant’s guilt beyond a reasonable doubt and it is your duty to find the defendant guilty.”).

Specific: Id. § 5.01 (“There are (number) material elements of the offense of (charge), each of which the prosecution must prove beyond a reasonable doubt. These (number) elements are: [list of elements].”).

INDIANA

General: INDIANA PATTERN JURY INSTRUCTIONS—CRIMINAL No. 1.15 (CRIMINAL INSTRUCTIONS COMM. OF THE IND. JUDGES ASS’N 2017) (“The burden is upon the State to prove beyond a reasonable doubt that the Defendant is guilty of the crime(s) charged.”).

Specific: Id. No. 4.17 (“Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt: [list of elements]. If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of burglary.”).

MAINE

General: MAINE JURY INSTRUCTION MANUAL § 6-7 (DONALD G. ALEXANDER 2017) (“This presumption of innocence alone is sufficient to acquit the defendant, unless you decide that the defendant’s guilt is proven beyond a reasonable doubt, after careful consideration of all of the evidence in this case.”).

Specific: Id. § 6-62 (“If you find all four facts proven beyond a reasonable doubt, then you may return a verdict of guilty.”).

MASSACHUSETTS

General: CRIMINAL MODEL JURY INSTRUCTIONS § 2.180 (COMM. ON CRIMINAL PROCEEDINGS 2017) (“The burden is on the Commonwealth to prove beyond a reasonable doubt that the defendant is guilty of the charge(s) made against him.... A charge is proved beyond a reasonable doubt if, after you have compared and considered all of the evidence, you have in your minds an abiding conviction, to a moral certainty, that the charge is true.”).

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Specific: Id. § 8.120 (“In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt: [list of elements].”).

MONTANA

General: MONTANA CRIMINAL JURY INSTRUCTIONS No. 1-104 (MONT. CRIMINAL JURY INSTRUCTION COMM’N 2009) (“The Defendant is presumed to be innocent of the charge against him. This presumption ... is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the Defendant is guilty.”).

Specific: Id. No. 5-101(a) (“If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.”).

NEW JERSEY

General: NEW JERSEY MODEL CRIMINAL JURY CHARGES, *Reasonable Doubt* (SUPREME COURT COMM. ON MODEL CRIMINAL JURY CHARGES 2017) (“The prosecution must prove its case by more than a mere preponderance of the evidence, yet not necessarily to an absolute certainty. The State has the burden of proving the defendant guilty beyond a reasonable doubt.... If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find her guilty.”).

Specific: Id. § 2C:15-1 (“In order for you to find the defendant guilty of robbery, the State is required to prove each of the following elements beyond a reasonable doubt: [list of elements].”).

NEW MEXICO

General: NEW MEXICO UNIFORM JURY INSTRUCTIONS—CRIMINAL § 14-5060 (UNIF. JURY INSTRUCTIONS—CRIMINAL COMM. 2017) (“The law presumes the defendant to be innocent unless and until you are satisfied beyond a reasonable doubt of his guilt.”).

Specific: Id. § 14-201 (“For you to find the defendant guilty of first degree murder by a deliberate killing ... the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime: [list of elements].”).

NORTH DAKOTA

General: NORTH DAKOTA PATTERN JURY INSTRUCTIONS—CRIMINAL § K-1.10 (N.D. PATTERN JURY INSTRUCTION COMM’N 2016) (“The State must prove all of the essential elements of the crime charged by proof beyond a reasonable doubt.”).

Specific: Id. § K-6.01 (“The State’s burden of proof is satisfied if the evidence shows beyond a reasonable doubt, the following essential elements: [list of elements].”).

OREGON

General: OREGON UNIFORM CRIMINAL JURY INSTRUCTIONS No. 1009 (UNIF. CRIMINAL JURY INSTRUCTIONS COMM. 2009) (“The burden is on the state, and the state alone, to prove the guilt of the defendant beyond a reasonable doubt.... You must return a verdict of not guilty if, after careful and impartial consideration of all the evidence in the case, you are not convinced that the defendant is guilty.”).

Specific: Id. No. 2101 (“In this case, to establish the crime of robbery in the first degree, the state must prove beyond a reasonable doubt the following elements: [list of elements].”).

SOUTH CAROLINA

General: SOUTH CAROLINA REQUESTS TO CHARGE—CRIMINAL § 1-5 (RALPH KING ANDERSON, JR. 2007) (“The State is required to prove every element of the charged offense by evidence which satisfies the jury of the guilt of the defendant beyond a reasonable doubt.... If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty.”).

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Specific: Id. § 2-10 (“[T]he State must prove beyond a reasonable doubt the elements of kidnapping ... [list of elements].”)

TENNESSEE

General: TENNESSEE PATTERN JURY INSTRUCTIONS—CRIMINAL § 2.03 (TPI-CRIMINAL COMM. OF THE TENN. JUDICIAL CONFERENCE 2016) (“Reasonable doubt is that doubt created by an investigation of all the proof in the case and an inability, after such investigation, to let the mind rest easily as to the certainty of guilt.”); *id.* § 2.04 (“The state must have proven beyond a reasonable doubt all of the elements of the crime charged, and that it was committed before the finding and returning of the indictment in this case.”).

Specific: Id. § 6.01 (“For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements: [list of elements].”).

FIFTH CIRCUIT

General: PATTERN JURY INSTRUCTIONS (CRIMINAL CASES) § 1.05 (COMM. ON PATTERN JURY INSTRUCTIONS DIST. JUDGES ASS’N FIFTH CIRCUIT 2015) (“The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant.”).

Specific: Id. § 2.19 (“For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt: [list of elements].”).

SIXTH CIRCUIT

General: PATTERN CRIMINAL JURY INSTRUCTIONS § 1.03 (SIXTH CIRCUIT COMM. ON PATTERN CRIMINAL JURY INSTRUCTIONS 2016) (“As you know, the defendant has pleaded not guilty to the crime charged in the indictment.... Th[e] presumption of innocence stays with him unless the government presents evidence here in court that overcomes the presumption, and convinces you beyond a

reasonable doubt that he is guilty.... If you are convinced that the government has proved the defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict.”).

Specific: Id. § 2.02 (“For you to find the defendant guilty of this crime, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge.”).

NINTH CIRCUIT

General: MANUAL OF MODEL CRIMINAL JURY INSTRUCTIONS FOR THE DISTRICT COURTS OF THE NINTH CIRCUIT § 3.5 (NINTH CIRCUIT JURY INSTRUCTIONS COMM. 2017) (“[I]f after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.”).

Specific: Id. § 9.30 (“In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt: [list of elements].”).

TENTH CIRCUIT

General: CRIMINAL PATTERN JURY INSTRUCTIONS § 1.05 (CRIMINAL PATTERN JURY INSTRUCTION COMM. OF THE U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT 2017) (similar to Fifth Circuit general instruction above).

ELEVENTH CIRCUIT

General: ELEVENTH CIRCUIT PATTERN JURY INSTRUCTIONS (CRIMINAL CASES) § B3 (COMM. ON PATTERN JURY INSTRUCTIONS OF THE JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT 2016) (similar to Ninth Circuit general instruction above).

Specific: Elements of crime merely listed.

*D. Aggregate Elements (9)**1. Civil (5)***ALABAMA**

Specific: ALABAMA PATTERN JURY INSTRUCTIONS—CIVIL § 5.00 (ALA. PATTERN JURY INSTRUCTIONS COMM.—CIVIL 2016) (“To recover, plaintiff must prove to your reasonable satisfaction from the evidence all of the following: [list of elements]. If plaintiff proved all the above you must find for her.”).

LOUISIANA

General: RULES OF THE SUPREME COURT OF LOUISIANA R. 44 (SUPREME COURT OF LA. 2017) (“[T]he plaintiff has to prove his case by what the law calls a ‘preponderance of the evidence.’ This means that the evidence shows that the facts the plaintiff is seeking to prove are more likely true than not true.”).

Specific: Id. (“The plaintiff has the burden of proving the following elements by a preponderance of the evidence, which means that the facts the plaintiff is seeking to prove are more likely true than not true. He has to demonstrate: [list of elements]. If you believe that the plaintiff has established that these three elements are more likely true than not true, then the plaintiff is entitled to recover and you should return a verdict for the plaintiff.”).

MICHIGAN

General: MODEL CIVIL JURY INSTRUCTIONS § 8.01 (COMM. ON MODEL CIVIL JURY INSTRUCTIONS 2007) (“I have just listed for you the propositions on which the plaintiff has the burden of proof. For the plaintiff to satisfy this burden, the evidence must persuade you that it is more likely than not that the proposition is true.”).

Specific: Id. § 16.02 (“The plaintiff has the burden of proof on each of the following propositions: [list of elements] Your verdict will

be for the plaintiff, if he was injured, and defendant was negligent, and such negligence was a proximate cause of his injuries.”).

EIGHTH CIRCUIT

Specific: MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE DISTRICT COURTS OF THE EIGHTH CIRCUIT § 5.40 (COMM. ON MODEL JURY INSTRUCTIONS FOR THE EIGHTH CIRCUIT 2017) (“Your verdict must be for plaintiff and against defendant on plaintiff’s claim if all the following elements have been proved: [list of elements].”).

NINTH CIRCUIT

General: MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE DISTRICT COURTS OF THE NINTH CIRCUIT § 1.6 (NINTH CIRCUIT JURY INSTRUCTIONS COMM. 2017) (“When a party has the burden of proving any claim by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more probably true than not true.”).

Specific: Id. § 6.2 (“[T]he plaintiff has the burden of proving both of the following elements by a preponderance of the evidence: [list of elements]. If you find that the plaintiff has proved both of these elements, your verdict should be for the plaintiff.”).

2. Criminal (4)

IOWA

Specific: IOWA CRIMINAL JURY INSTRUCTIONS § 800.1 (SPECIAL COMM. ON UNIF. COURT INSTRUCTIONS OF THE IOWA STATE BAR ASSOC. (2004)) (“If the State has proved both of the elements, the defendant is guilty of Assault.”).

MISSISSIPPI

General: MISSISSIPPI MODEL JURY INSTRUCTIONS—CRIMINAL § 108 (MISS. MODEL JURY INSTRUCTIONS COMM’N 2012) (“If you find

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beyond a reasonable doubt from the evidence in this case that: [list of elements], then you shall find ... defendant guilty as charged.”).

OKLAHOMA

General: OKLAHOMA UNIFORM JURY INSTRUCTIONS—CRIMINAL § 1-8 (OKLA. COURT OF CRIMINAL APPEALS COMM. 2013) (“The defendant must be found not guilty unless the State produces evidence which convinces you beyond a reasonable doubt of each element of the crime(s).”).

Specific: Id. § 4-61 (“No person may be convicted of murder in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are: [list of elements].”).

EIGHTH CIRCUIT

General: MANUAL OF MODEL CRIMINAL JURY INSTRUCTIONS FOR THE DISTRICT COURTS OF THE EIGHTH CIRCUIT § 3.05 (JUDICIAL COMM. ON MODEL JURY INSTRUCTIONS FOR THE EIGHTH CIRCUIT 2014) (“The presumption of innocence ... can be overcome only if the government proved during the trial, beyond a reasonable doubt, each element of the crime charged.”).

Specific: Id. § 3.09 (“If all of these elements have been proved beyond a reasonable doubt ... then you must find the defendant guilty.”).

E. Elements Only, Permissive (10)

1. Civil (9)

ALASKA

General: ALASKA CIVIL PATTERN JURY INSTRUCTIONS § 2.04 (CIVIL PATTERN JURY INSTRUCTIONS COMM. 2017) (“Many of the instructions that follow ask you to decide whether something is more likely true than not true. Something is more likely true than not true if

you believe that the chance that it is true is even the slightest bit greater than the chance that it is not true.”).

Specific: Id. § 3.01 (“In order to find that the plaintiff is entitled to recover, you must decide it is more likely true than not true that: [list of elements].”).

CALIFORNIA

General: JUDICIAL COUNCIL OF CALIFORNIA CIVIL JURY INSTRUCTIONS § 200 (JUDICIAL COUNCIL OF CAL. ADVISORY COMM. ON CIVIL JURY INSTRUCTIONS 2016) (“A party must persuade you, by the evidence presented in court, that what he or she is required to prove is more likely to be true than not true.”)

Specific: Id. § 400 (“To establish this claim, plaintiff must prove all of the following: [list of elements].”).

DELAWARE

General: PATTERN JURY INSTRUCTIONS FOR CIVIL PRACTICE IN THE SUPERIOR COURT OF THE STATE OF DELAWARE § 4.1 (REVIEW COMM. 2006) (“In a civil case such as this one, the burden of proof is by a preponderance of the evidence.... Plaintiff must prove all the elements of her claim ... by a preponderance of the evidence. Those elements are as follows: [list of elements].”).

MAINE

General: MAINE JURY INSTRUCTION MANUAL § 7-11 (DONALD G. ALEXANDER 2017) (“The plaintiff has the burden of proof in this case. This means that the plaintiff must convince you that each element of her claim is proven more likely than not. To find for the plaintiff you must determine that the facts that she must prove are more likely true than not true.”).

Specific: Id. § 7-61 (“To prove negligence, the plaintiff must prove that it is more likely than not that: (1) the defendant was negligent,

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and (2) the defendant's negligence was a proximate cause of the plaintiff's injury and consequent damages.”).

NORTH DAKOTA

General: NORTH DAKOTA PATTERN JURY INSTRUCTIONS—CIVIL § C-1.40 (N.D. PATTERN JURY INSTRUCTION COMM'N 2016) (“The essential elements of a claim or an affirmative defense must be proven by the greater [sic] weight of the evidence.”).

Specific: *Id.* § C-14.00 (“To establish a claim for negligence, Plaintiff must prove by the greater weight of evidence: [list of elements].”).

NEW MEXICO

General: NEW MEXICO UNIFORM JURY INSTRUCTIONS—CIVIL § 13-304 (UNIF. JURY INSTRUCTIONS—CIVIL COMM. 2017) (similar to North Dakota general instruction above).

Specific: Elements merely listed.

OKLAHOMA

General: OKLAHOMA CIVIL JURY INSTRUCTIONS § 3.1 (OKLA. SUPREME COURT COMM. FOR UNIF. CIVIL JURY INSTRUCTIONS 2016) (similar to North Dakota general instruction above).

Specific: Elements merely listed.

TENNESSEE

General: TENNESSEE PATTERN JURY INSTRUCTIONS—CIVIL § 2.40 (TENN. JUDICIAL CONFERENCE COMM. ON PATTERN JURY INSTRUCTIONS 2016) (“In this action, the plaintiff has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues: The term ‘preponderance of the evidence’ means that amount of evidence that causes you to conclude that an allegation is probably true.”).

Specific: Id. § 13.41 (“The plaintiff has the burden of proving by a preponderance of the evidence: [list of elements].”).

UTAH

General: MODEL UTAH JURY INSTRUCTIONS § CV117 (CIVIL MODEL JURY INSTRUCTIONS COMM. 2011) (“[B]y a ‘preponderance of the evidence,’ I mean that the party must persuade you, by the evidence, that the fact is more likely to be true than not true.”).

Specific: Id. § CV1501 (“To prove a claim for intentional infliction of emotional distress, plaintiff must prove each of the following elements: [list of elements].”).

2. Criminal (1)

MICHIGAN

General: MICHIGAN MODEL CRIMINAL JURY INSTRUCTIONS § 3.2 (MICH. SUPREME COURT COMM. ON MODEL CRIMINAL JURY INSTRUCTIONS 2017) (“The prosecutor must prove each element of the crime beyond a reasonable doubt.”).

Specific: Id. § 17.1 (“The defendant is charged with the crime of assault. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt: [list of elements].”).

F. Holistic (8)

1. Civil (4)

NEW YORK

General: NEW YORK PATTERN JURY INSTRUCTIONS—CIVIL § 1:60 (COMM. ON PATTERN JURY INSTRUCTIONS, ASS’N OF SUPREME COURT JUSTICES 2016) (“To say that a party has the burden of proof on a particular issue means that, considering all the evidence in the case,

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the party's claim on that issue must be established by a fair preponderance of the credible evidence.”).

Specific: Elements are described as being comprised within a broad prose statement of claim. *See, e.g., id.* § 3:56.

NORTH CAROLINA

General: NORTH CAROLINA PATTERN INSTRUCTIONS FOR CIVIL CASES § 101.10 (COMM. ON PATTERN JURY INSTRUCTIONS 1994) (“The party having th[e] burden [of proof] is required to prove, by the greater weight of the evidence, the existence of those facts which entitle that party to a favorable answer to the issue.”).

Specific: Elements are described as being comprised within the broader “issue,” which appears synonymous with “claim.” *See, e.g., id.* § 645.20.

OHIO

General: OHIO JURY INSTRUCTIONS—CIVIL § 207.05 (OHIO JURY INSTRUCTIONS COMM. OF THE OHIO JUDICIAL CONFERENCE 2017) (“Preponderance of the evidence is the greater weight of the evidence; that is, evidence that you believe because it outweighs in your mind the evidence opposed to it.”).

Specific: *Id.* § 421.03 (“The plaintiff must prove by the greater weight of the evidence that the defendant was negligent and that the defendant’s negligence was a proximate cause of injury to the plaintiff.”).

RHODE ISLAND

General: MODEL CIVIL JURY INSTRUCTIONS FOR RHODE ISLAND § 302.1 (SUBCOMM. ON MODEL JURY INSTRUCTIONS 2002) (similar to Ohio general instruction above).

Specific: *Id.* § 2103.

2. *Criminal* (4)

ARKANSAS

General: ARKANSAS MODEL JURY INSTRUCTIONS—CRIMINAL § 107 (ARK. SUPREME COURT COMM. ON CRIMINAL JURY INSTRUCTIONS 2016) (“The State must prove beyond a reasonable doubt each element of the offense charged.”).

Specific: *Id.* § 1202 (“To sustain this charge the State must prove beyond a reasonable doubt that with the purpose of committing a theft ... defendants employed or threatened to immediately employ physical force upon another.”).

KENTUCKY

General: KENTUCKY INSTRUCTIONS TO JURIES—CRIMINAL § 2.03B (WILLIAM S. COOPER & DONALD P. CETRULO 2017) (“You shall find the Defendant not guilty unless you are satisfied from the evidence alone and beyond a reasonable doubt that he is guilty. If upon the whole case you have a reasonable doubt that he is guilty, you shall find him not guilty.”).

Specific: *Id.* § 6.14 (“You will find the Defendant guilty of First-Degree Robbery under this Instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following: [list of elements].”).

NORTH CAROLINA

General: NORTH CAROLINA PATTERN INSTRUCTIONS—CRIMINAL § 101.10 (COMM. ON PATTERN JURY INSTRUCTIONS 2008) (“The State must prove to you that the defendant is guilty beyond a reasonable doubt.... Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the defendant’s guilt.”).

Specific: *See, e.g., id.* § 206.10 (2014) (lengthy discussion of elements).

OHIO

General: OHIO JURY INSTRUCTIONS—CRIMINAL § 405.05 (OHIO JURY INSTRUCTION COMM. OF THE OHIO JUDICIAL CONFERENCE 2017) (“The defendant(s) must be acquitted unless the state produces evidence which convinces you beyond a reasonable doubt of every essential element of the offense.”); *id.* § 405.07 (“‘Reasonable doubt’ is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge.”).

Specific: Id. § 511.01(B) (“Before you can find the defendant guilty, you must find beyond a reasonable doubt that ... the defendant, without privilege to do so, knowingly removed a deadly weapon from the person of a law enforcement officer and the law enforcement officer, at the time of the removal was acting within the scope of his/her duties and the defendant knew or had reasonable cause to know that the law enforcement officer was a law enforcement officer.”).