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TULALIP TRIBAL COURT
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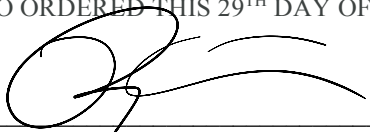


2019 STANDING ORDER OF THE TULALIP TRIBAL COURT FOR
THE MANUAL OF MODEL CRIMINAL JURY INSTRUCTIONS

Effective April 29, 2019

The following attached document is established and shall be implemented as the Standing Order of the Chief Judge of the Tulalip Tribal Court as the Manual of Model Criminal Jury Instructions for the Tulalip Tribal Court. These model jury instructions shall be used in all criminal trials unless proposed instructions are motioned for and ordered under Tulalip Tribal Court Rule 4.35.

SO ORDERED THIS 29TH DAY OF APRIL, 2019.



Hon. Ron J. Whitener – Chief Judge

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**MANUAL OF
MODEL CRIMINAL
JURY INSTRUCTIONS
FOR TULALIP TRIBAL COURT**

Prepared by Tulalip Tribal Court
Jury Instructions Committee

2019 Edition

Last updated 04/29/2019

Jury Instruction Number Conversion Table

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TRIBES' JURY INSTRUCTION

**PART 1
PRELIMINARY INSTRUCTIONS**

The following instructions are to be given after voir dire and prior to opening statements, except for instruction 2.1, which is to be given immediately prior to the first recess.

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1 **TRIBES' JURY INSTRUCTION**

2 **#1.1 DUTY OF THE JURY**

3 Jurors: You are now the jury in this case and I want to take a few minutes to go over your
4 duties as jurors and give you some preliminary instructions. At the end of the trial I will give
5 you more detailed written instructions that will control your deliberations.

6 When you deliberate, it will be your duty to weigh and evaluate all of the evidence
7 received in the case and, in that process, to decide the facts. To the facts as you find them, you
8 will apply the law as I give it to you, whether you agree with the law or not.

9 You have nothing whatever to do with any punishment that may be imposed in case of a
10 violation of the law. You may not consider the fact that punishment may follow conviction
11 except insofar as it may tend to make you careful.

12 As jurors, you are officers of this court. You must not let your emotions overcome your
13 rational thought process. You must reach your decision based on the facts proved to you and on
14 the law given to you, not on sympathy, prejudice, or personal preference. To assure that all
15 parties receive a fair trial, you must act impartially with an earnest desire to reach a proper
16 verdict.

17 Finally, please do not take anything that I may say or do during the trial as indicating
18 what I think of the evidence or what your verdict should be—that is entirely up to you. Thank
19 you for your willingness to serve this court and our system of justice.

1 **TRIBES' JURY INSTRUCTION**

2 **#1.2 THE CHARGE—PRESUMPTION OF INNOCENCE**

3 This is a criminal case brought by the Tulalip Indian Tribes against [*Defendant's name*].
4 The Tribes have charged the defendant with [*specify crime(s) charged*]. Specifically, the
5 charge(s) allege that [*Defendant's name*], [*Brief statement of the elements of the crime(s)*].

6 The filing of a complaint is not evidence that the charge is true. The defendant has pled
7 not guilty and is presumed innocent unless and until the Tribes, as the plaintiff, proves every
8 element of a charge beyond a reasonable doubt. A reasonable doubt may arise from the evidence
9 or lack of evidence. A reasonable doubt is a doubt that would exist in the mind of a reasonable
10 person after fully, fairly, and carefully considering all of the evidence or lack thereof. If, from
11 such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond
12 a reasonable doubt.

13 The defendant has the right to remain silent and never has to prove innocence or present
14 any evidence. Your decision as jurors must be made solely upon the evidence presented during
15 these proceedings.

TRIBES' JURY INSTRUCTION

#1.3 WHAT IS EVIDENCE

I will now explain what evidence is. Evidence is a legal term. The evidence you are to consider in deciding what the facts are consists of:

- (1) The sworn testimony of any witness;
- (2) The exhibit(s) which are received in evidence; and
- (3) Any facts to which the parties agree upon.

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TRIBES' JURY INSTRUCTION

#1.4 WHAT IS NOT EVIDENCE

The following things are not evidence and you must not consider them as evidence when deciding the facts of this case:

- (1) Remarks, statements, and arguments of the attorneys;
- (2) Questions and objections of the attorneys;
- (3) Anything that I instruct you to disregard; and
- (4) Anything you may see or hear when the court is not in session, even if what you see or hear is done or said by one of the parties or by one of the witnesses.

TRIBES' JURY INSTRUCTION

#1.5 DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness(s) about what that witness(s) personally saw or heard or did. Circumstantial evidence is indirect proof of a fact. Circumstantial evidence refers to evidence from which, based on your common sense and experience, you may reasonably infer the existence of another fact. Either form of evidence, direct or circumstantial, can be used to prove any fact. The law makes no distinction between the weight to be given to any particular piece or form of evidence; that is for you to decide.

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1 **TRIBES' JURY INSTRUCTION**

2 **#1.6 RULING ON OBJECTIONS**

3 There are rules of evidence that control what can be received into evidence. One of my
4 duties as the judge is to decide whether or not evidence will be admitted during this trial. When
5 a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks
6 that the evidence should not be permitted, that lawyer may make an objection. If I overrule the
7 objection, the question may be answered or the exhibit received into evidence. If I sustain the
8 objection, the questions cannot be answered, or the exhibit cannot be received. If I sustain an
9 objection to a question, you must ignore the questions and must not guess what the answer would
10 have been.

11 Sometimes I may order that evidence be stricken from the record and that you disregard
12 or ignore the evidence. You should not be concerned about or try to guess the reason for my
13 ruling. When you are in deliberation, you must not consider the evidence that I told you to
14 disregard.

1 **TRIBES' JURY INSTRUCTION**

2 **#1.7 CREDIBILITY OF WITNESSES**

3 You are the judges of the credibility of each witness. You are also the judges of the value
4 or weight to be given to the testimony of each witness. You may believe everything a witness
5 says, or part of it, or none of it at all.

6 In considering a witness's testimony, you may take into account:

- 7 (1) The witness's opportunity and ability to see or hear or know the things testified to;
8 (2) The witness's memory;
9 (3) The witness's manner while testifying;
10 (4) Any personal interest that the witness might have in the outcome or the issues;
11 (5) Any bias or prejudice that the witness may have shown;
12 (6) Whether other evidence contradicted the witness's testimony;
13 (7) The reasonableness of the witness's testimony in light of all the evidence; and
14 (8) Any other factors that bear on believability.

15 The weight of the evidence as to a fact does not necessarily depend on the number of
16 witnesses who testify about it. What is important is how believable the witnesses were, and how
17 much weight you think their testimony deserves.

1 **TRIBES' JURY INSTRUCTION**

2 **#1.8 CONDUCT OF THE JURY**

3 I will now say a few words about your conduct as jurors. First, I ask that you keep an
4 open mind throughout the trial and do not decide what the verdict should be until you and your
5 fellow jurors have completed your deliberations at the end of the case.

6 Second, because you must decide this case based only on the evidence received in the
7 case and on my instructions as to the law that applies, until the end of the case or unless I tell
8 you otherwise:

9 Do not communicate with anyone in any way and do not let anyone else communicate
10 with you in any way about the merits of the case or anything to do with it. This includes
11 discussing the case in person, in writing, by phone or electronic means, via email, text messaging,
12 or any internet chat room, blog, website, or other feature. This applies to communicating with
13 your fellow jurors until I give you the case for deliberation, and it applies to communicating with
14 everyone else, including your family members, your employer, the media or press, and the
15 people involved in the trial. You may notify people (like your family, employer, or childcare
16 provider) that you have been seated as a juror in the case, however, do not mention being on a
17 jury when using social media, such as Facebook or Twitter, because you do not want to do
18 anything to encourage others to talk to you about your jury duty. If you are asked or approached
19 in any way about your jury service or anything about this case, you must respond that you have
20 been ordered not to discuss the matter and to report this contact to this court.

21 Because you will receive all the evidence and legal instruction you properly may consider
22 to return a verdict: do not read, watch, or listen to any outside news or media accounts or
23 commentary about the case or anything to do with it; do not search the internet or use any other
24 reference materials; do not do any research, not even to consult a dictionary; and do not make
25 any investigation or in any other way try to learn about the case on your own.
26

1 The law requires these restrictions to ensure that the parties have a fair trial based on the
2 same evidence that each party has had an opportunity to address. A juror who violates these
3 restrictions jeopardizes the fairness of these proceedings. If you become aware that any juror is
4 exposed to any outside influence, please notify this court immediately.

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TRIBES' JURY INSTRUCTION

#1.9 NO TRANSCRIPT AVAILABLE TO JURY

Please listen to all testimony very carefully. At the end of the trial you will need to remember all of the testimony during your deliberations. Testimony will rarely, if ever, be repeated for you, and you will not have a written transcript of the trial. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

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TRIBES' JURY INSTRUCTION

#1.10 OUTLINE OF THE TRIAL

I will now briefly go over what will take place for the rest of this trial. First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

Next, the Tribes will present evidence or witness testimony, and the counsel for the defendant may cross-examine. Then, if the defendant chooses to offer evidence or witness testimony, the Tribes may cross-examine.

After the evidence has been presented, the attorneys will make closing arguments and I will instruct you on the law that applies to the case. After that you will go to the jury room to deliberate on your verdict. You will be given copies of the written instructions for your use during deliberations.

TRIBES' JURY INSTRUCTION

**PART 2
INSTRUCTIONS IN THE COURSE OF TRIAL**

The following instruction(s) is/are to be given immediately prior to the first recess.

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TRIBES' JURY INSTRUCTION

#2.1 STIPULATION OF FACT

The parties have agreed to certain facts that have been stated to you. You should therefore treat these facts as having been proved.

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TRIBES' JURY INSTRUCTION

#2.2 CAUTIONARY INSTRUCTION—FIRST RECESS

We are about to take out first break. Remember, until the trial is over, do not discuss this case with anyone, including your fellow jury members, your family, people involved in the trial, or anyone else, and do not allow others to discuss the case with you. This includes discussing the case on the internet, in any manner, or via email or text messaging. If anyone tries to communicate with you about the case, please let me know about it immediately. Do not read, watch, or listen to any news reports or other accounts about the trial or anyone associated with it, including any online information. Do not do any research, such as consulting dictionaries, searching the internet or using other reference materials, and do not make any investigation about the case on your own.

If you need to speak with me about anything, simply give a signed note to the court clerk to give to me.

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TRIBES' JURY INSTRUCTION

**PART 3
END OF CASE, PRIOR TO DELIBERATIONS**

The following instructions are to be given after a trial and prior to deliberations.

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1 **TRIBES' JURY INSTRUCTION**

2 **#3.1 DUTY TO FIND FACTS AND FOLLOW LAW**

3 Now that you have heard all of the evidence, it is my duty to instruct you on the law that
4 applies to this case. A copy of these instructions will be available in the jury room for you to
5 consult.

6 It is your duty to weigh and to evaluate all of the evidence received in the case and, in
7 that process, to decide the facts. It is also your duty to apply the law as I give it to you to the
8 facts as you find them, whether you agree with the law or not. You must decide the case solely
9 on the evidence and the law and must not be influenced by any personal likes or dislikes,
10 opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at
11 the beginning of the case.

12 You must follow all of these instructions and not single out some and ignore others; they
13 are all important. Please do not read into these instructions or into anything I may have said or
14 done any suggestion as to what verdict you should return—that is a matter entirely up to you.
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1 **TRIBES' JURY INSTRUCTION**

2 **#3.2 CHARGE AGAINST DEFENDANT EVIDENCE – PRESUMPTION OF**
3 **INNOCENCE – BURDEN OF PROOF**

4 The complaint is not evidence. The Defendant has pleaded not guilty to the charge(s).
5 The Defendant is presumed to be innocent unless and until the Tribes, as plaintiff, proves the
6 Defendant guilty beyond a reasonable doubt. In addition, the Defendant does not have to
7 testify or present any evidence to prove innocence. The Tribes has the burden of proving every
8 element of the charge(s) beyond a reasonable doubt.

9 A reasonable doubt may arise from the evidence or lack of evidence. A reasonable doubt
10 is a doubt that would exist in the mind of a reasonable person after fully, fairly, and carefully
11 considering all of the evidence or lack thereof. If, from such consideration, you have an abiding
12 belief in the truth of the charge, you are satisfied beyond a reasonable doubt.
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TRIBES' JURY INSTRUCTION

#3.3 DEFENDANT'S DECISION NOT TO TESTIFY

A Defendant has a constitutional right not to testify. You may not draw any inference of any kind from the fact that the Defendant did not testify.

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TRIBES' JURY INSTRUCTION

#3.4 DEFENDANT'S DECISION TO TESTIFY

The Defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

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1 **TRIBES' JURY INSTRUCTION**

2 **#3.5 WHAT IS EVIDENCE**

3 I will now explain what evidence is. Evidence is a legal term. The evidence you are to
4 consider in deciding what the facts are consists of:

- 5 (1) The sworn testimony of any witness;
6 (2) The exhibit(s) which are received in evidence; and
7 (3) Any facts to which the parties agree upon.
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1 **TRIBES' JURY INSTRUCTION**

2 **#3.6 WHAT IS NOT EVIDENCE**

3 The following things are not evidence and you must not consider them as evidence when
4 deciding the facts of this case:

- 5 (1) Remarks, statements, and arguments of the attorneys;
- 6 (2) Questions and objections of the attorneys;
- 7 (3) Anything that I instruct you to disregard; and
- 8 (4) Anything you may see or hear when the court is not in session, even if what you see or
9 hear is done or said by one of the parties or by one of the witnesses.
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1 **TRIBES' JURY INSTRUCTION**

2 **#3.7 DIRECT AND CIRCUMSTANTIAL EVIDENCE**

3 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such
4 as testimony by a witness(s) about what that witness(s) personally saw or heard or did.
5 Circumstantial evidence is indirect proof of a fact. Circumstantial evidence refers to evidence
6 from which, based on your common sense and experience, you may reasonably infer the
7 existence of another fact. Either form of evidence, direct or circumstantial, can be used to prove
8 any fact. The law makes no distinction between the weight to be given to any particular piece
9 or form of evidence; that is for you to decide.
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TRIBES' JURY INSTRUCTION

#3.8 SEPARATE CONSIDERATION FOR MULTIPLE DEFENDANTS

Although the Defendants are being tried together, you must give separate consideration to each Defendant. In doing so, you must determine which evidence in the case applies to each Defendant, disregarding any evidence admitted solely against some other Defendant(s). The fact that you may find one of the Defendants guilty or not guilty should not control your verdict as to any other Defendant(s).

1 **TRIBES' JURY INSTRUCTION**

2 **#3.9 LESSER INCLUDED OFFENSE**

3 The crime of [*specify crime charged*] includes the lesser crime of [*specify crime*
4 *charged*]. If [any/all] of you are not convinced beyond a reasonable doubt that the Defendant
5 is guilty of [*specify crime charged*]; and if all of you are convinced beyond a reasonable doubt
6 that the Defendant is guilty of the lesser crime of [*specify lesser included crime*], you may find
7 the Defendant guilty of [*specify lesser included crime*].
8

9 In order for the Defendant to be found guilty of the lesser crime of [*specify lesser*
10 *included crime*], the Tulalip Tribal Prosecutors must prove each of the following elements
11 beyond a reasonable doubt:

12 [*List elements of lesser included crime.*]
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1 **TRIBES' JURY INSTRUCTION**

2 **#3.10 TO CONVICT – COUNT [List the count number]**

3 To convict the defendant of the crime of [*specify crime(s) charged*], each of the following
4 element(s) of the crime must be proved beyond a reasonable doubt:

- 5 (1) That [*Defendant's name*] is an enrolled member of the [*specify the Defendant's tribe*].
6 (2) That on or about [*date of incident*], the defendant;
7 (3) knowingly or purposefully;
8 (4) [*Brief statement of the elements of the crime(s)*];
9 (5) [*Brief statement of the elements of the crime(s)*]; and that
10 (6) this crime occurred within the exterior boundaries of the Tulalip Indian Reservation.
11

12 **Comment**

13 If the Defendant is charged with multiple counts of the same crime, list each count
14 separately.
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TRIBES' JURY INSTRUCTION

**PART 4
JURY DELIBERATIONS**

The following instructions are to be given prior to deliberations.

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1 **TRIBES' JURY INSTRUCTION**

2 **#4.1 DUTY TO DELIBERATE—UNANIMOUS VERDICT REQUIRED**

3 When you begin your deliberations, elect one member of the jury as your foreperson who
4 will preside over the deliberations and speak for you here in court. The foreperson's duty is to
5 see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss
6 each issue submitted for your decision fully, and that each one of you has a chance to be heard
7 on every question before you.

8 You will then discuss the case with your fellow jurors to reach agreement if you can do
9 so. Your verdict, whether guilty or not guilty, must be unanimous. This means that each of you
10 must agree to you to return a verdict.

11 Each of you must decide the case for yourself, but you should do so only after you have
12 considered all of the evidence, discussed it fully with the other jurors, and listened to the views
13 of your fellow jurors.

14 Do not be afraid to change your opinion if the discussion persuades you that you should.
15 But do not come to a decision simply because other jurors think it is right.

16 It is important that you attempt to reach a unanimous verdict, but only if each of you can
17 do so after having made your own conscientious decision. Do not change an honest belief about
18 the weight and effect of the evidence simply to reach a verdict.

TRIBES' JURY INSTRUCTION

#4.2 MULTIPLE COUNTS – SINGLE DEFENDANT

The Defendant is charged with [number] criminal offense(s): [list each charge]. A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on [any/the] other count(s).

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TRIBES' JURY INSTRUCTION

#4.3 COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the clerk, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

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TRIBES' JURY INSTRUCTION

#4.3 VERDICT FORM INSTRUCTIONS

A verdict form has been prepared for you. You must fill in the blank provided in the verdict form the words “not guilty” or the word “guilty”, according to the decision you reach.

After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.

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**IN THE TULALIP TRIBAL COURT
FOR THE TULALIP INDIAN RESERVATION
TULALIP, WASHINGTON**

THE TULALIP TRIBES
A Federally-Recognized Indian Tribe,

Plaintiff,

v.

[*Defendant's name*]
DOB: [XX/XX/XXXX]

Defendant.

NO. TUL/QCV-CR-XX-20XX-XXXX

VERDICT FORM

We, the jury, find the defendant:

_____ of the crime of [*specify crime(s) charged*] as charged in Count [*list each out*].
(guilty/not guilty)

DATED: _____

FOREPERSON