

Judge's Role – Charge to the Jury

For your charge to the jury, you can draw upon the following statement:

Mr./Madam Foreman, ladies and gentlemen of the jury, it is now my duty to give you certain instructions before you begin your deliberations.

We have separate responsibilities in this case. It is my responsibility to instruct you concerning the legal principles you must consider during your deliberations. You must accept my statements defining and explaining the law. It is your collective responsibility to assess the events that gave rise to the charge against Nicole Girard and to decide what happened. You are not obliged to accept the submissions of counsel or my own observations concerning the facts of the case.

There is a fundamental principle that you must understand and always recall during your deliberations. In Canada, when a person is accused of criminal wrongdoing, he or she does not have to prove innocence. It is the task of the prosecution to prove guilt beyond all reasonable doubt. If the evidence before you does not go that far, Ms. Girard is entitled to be acquitted or, possibly, to be found not guilty of murder, but guilty of the lesser offence of manslaughter.

The evidence in this case, like the evidence in almost every case, was, at times, surprising, conflicting, and confusing. It is your task to sort through the testimony of the various witnesses. You will use common sense and the wisdom that experience has taught you during your own lives. You may accept all or most of the testimony given by some witnesses. You may reject all or most of the testimony given by other witnesses. You may decide that some witnesses were honest, observed well, and recalled the events accurately. You may feel that other witnesses were untruthful or that their testimony cannot safely be relied upon for any number of reasons. Honest persons can be mistaken in their observations and recollections of traumatic events.

I am required to review those areas of evidence that may be particularly important to your deliberations. We know that Nicole Girard killed Kevin Steel in Williams Lake on October 29, 1990; she admits this. But she claims that killing was an act of justifiable self-defence and that she is therefore innocent of any crime. Alternatively, she says that if you find she acted in a criminally wrongful way, you should find the crime was manslaughter, not murder.

I believe that when you are deliberating you will wish to pay particular attention to the evidence from three persons:

First, there is the evidence of Ken Cato. He was Kevin Steel's long-time and good friend and was clearly not sympathetic or partial to the situation of the accused. But his testimony reveals a good deal about the violence inflicted upon the accused by Kevin Steel and her apparent inability to terminate the relationship. You will have to consider the testimony of this witness very carefully.

Second, there is evidence provided by Nicole Girard herself. She exercised her perfect right and chose not to testify in the courtroom, but her story of the killing was related to Cst. Stevens. You heard what she told Constable Stevens, and you have copies of that statement in transcribed form. You must decide how much weight or value you can give to this very important evidence, keeping in mind the circumstance under which the accused made her admissions to Cst. Stevens and the fact that they were not made under oath or subjected to cross-examination.

Third, there is the testimony of the expert witness, Dr. Longsio. When you are considering Dr. Longsio's testimony, you will remember that, although Dr. Longsio is a highly educated and respected professional person, it is your responsibility to decide this case. You may choose to act upon opinions of Dr. Longsio. But it is your perfect right to decide that you cannot go that far.

I must also direct your attention to the fact that Dr. Longsio's opinions may have been influenced by considerations that were not established during this trial. For instance, you will recall Dr. Longsio's reference to marijuana having been smoked that night by the accused. There is no actual evidence of that having taken place. If you consider this to be a matter of substantial importance, you may wish to assess Dr. Longsio's opinions with particular caution. On the other hand, you may decide that nothing much really turns on Dr. Longsio's unproven belief that the accused smoked a little marijuana that night.

I must tell you as a matter of law that not every killing of another person is unlawful. In this case s. 34 (2) of the Criminal Code is of particular importance. You must decide whether it provides a defence for the accused. I shall read that section to you:

(Read s. 34 (2) of the Criminal Code)

If you decide that the accused reasonably feared that she would suffer grievous bodily harm or death unless she acted to protect herself, and, if you also find that when she shot Kevin Steel, the accused reasonably believed she could not otherwise protect herself, then you will find the accused not guilty.

Crown counsel says you should not find that the accused shot Kevin Steel in a moment of fear and only to defend herself. Crown counsel points out that the accused had previously threatened Kevin Steel with the same rifle, and the Crown also reminds you of the accused's own statement to the effect that Kevin Steel was going downstairs when he was killed. You must weigh these facts along with all the other evidence in this tragic case. Crown says that the law does not permit any person to apply force to another person to prevent an imaginary assault. Crown counsel says that it is a sad but very clear case of murder.

Defence counsel says that you should not judge Nicole Girard's action by the standard of the so-called "reasonable man." Defence counsel says that you must try to put yourselves in the shoes of Nicole Girard that terrible night, and you must understand that she had no other options. Defence counsel says that Nicole Girard believed she could not preserve herself from being killed by Kevin Steel that night except by killing him first. And defence counsel says that that belief is supported by that valuable testimony of Dr. Longsio. It is the submission of defence counsel that his/her client was not guilty of any crime when she shot and killed Kevin Steel.

If you find that Nicole Girard's action in shooting Kevin Steel was justifiable self-defence, then you will find her not guilty. If, however, you decide that her actions were not justified, or, if you find that they were excessive, then you will find her guilty of a criminal offence.

If you find that Nicole Girard's actions were unlawful, you will find her guilty of murder if you also find that she intended to kill Kevin Steel or cause grievous bodily harm to him. If you are satisfied that her actions were unlawful, but cannot be sure beyond a reasonable doubt that she intended to kill Kevin Steel or cause grievous bodily harm to him, then you will find her not guilty of murder, but guilty of manslaughter.

Ladies and Gentlemen, you may now retire and begin your deliberations. The clerk will give you a cope of s. 34 (2) of the Criminal Code. You may also wish to take the exhibits with you into the jury room.

CAUTION: This "charge to the jury" was prepared for use during a mock trial only. It is necessarily abbreviated and simplified. It is not intended that any person should presume that the law is stated definitely here.

