

PRACTICAL OUTLINE FOR EFFECTIVE USE OF JURY INSTRUCTIONS

I. Pre-trial

Copy and read the jury instructions

This is the first thing I do once it is established that a case may, possibly, be headed for trial.

The software on our computers, NC Research Assistant, is really easy to use. If you don't have the software, make sure you have access to the old school three ring binders. This is non-negotiable.

Copy and read all instructions that apply to your case.

- The substantive crime(s).
- Any affirmative defenses upon which you might rely.
- If it's a constructive possession case, review that.
- If the state has only circumstantial evidence, copy that.
- If the state has unreliable witnesses, review credibility instructions.

Go through the instruction on the charge(s) and imagine how it will be given in your case. How was the charge indicted? Do you want the DA to be limited to the language he or she chose in the indictment? If the judge will have alternative options within the instruction, think about how you want it read to the jury and why.

This is also an excellent time to look at the annotated statutes. That helps you focus on issues with good case law. If the case law supports you, you should get an instruction.

If there is not a standard jury instruction covering any aspect of your theory of defense, write one. Don't leave that to the last minute; try to write any proposed non-standard instructions at the same time that you review all the standard jury instructions that you believe apply.

In the sample case that we are using, you would want to review, at a minimum, sale of cocaine, possession with intent to sell or deliver cocaine, actual versus constructive possession, acting in concert and aiding and abetting.

II. At trial

The charge conference

BE PRESENT!!!

This is one of your chances, as a newer lawyer, to establish yourself as a serious litigator. In the most basic sense, you do this by **BEING HEARD**.

A good judge will tell you which instructions s/he is planning to give and then will ask you if you have any additions/modifications that you want to propose.

A jerk judge will rattle off some numbers (of standard instructions) and will give you no opportunity for input.

Some things to think about:

- Most judges won't give all of the "standard" instructions. You need to listen, and if you aren't sure s/he has included an instruction that you think is important, stand up and ask for clarification.
- If they are bowling you over, and not asking for input, make sure to stand up and say that you want to be heard.
- Even if you don't object to the proposed instructions, if they don't ask for your input, stand up and ask some questions. Never let the charge conference end without the sound of your voice.
- If you have written and are proposing a non-standard instruction, act like doing so is the most normal thing in the world. Ask to approach with it like it's your fee app.

BOTTOM LINE.

If you believe any of that primacy/recency business, jury instructions are important. The instructions are the last thing the jury is going to hear, and the jurors will hear them from the judge. If jurors have already heard something from you, when they hear it, again, from the bench, it is more likely to make an impression. But, the only way to effectively utilize the language of the jury instructions in your closing argument ('cause that's what this is all about, right?) is to think about that language throughout your trial preparation and throughout the trial.

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The jury must not only consider the case in accordance with the State's theory of the occurrence but also in accordance with the defendant's theory. Defendant in apt time requested that the law bearing upon his theory of the case be presented to the jury. He was merely asking the court to charge the law arising on the evidence. Justice and the law countenance nothing less.

*-State v. Tioran, 65 N.C. App. 122, 125 (1983),
citing State v. Harrington, 260 N.C. 663, 666 (1963)*