



Project-Based Instruction: A History-Based Mock Trial

This history-based mock trial is based on the Boston Massacre. It contains instructional activities and one performance task. The instructional activities include an analysis of the political environment surrounding the Boston Massacre; the development of a written mock trial including opening and closing arguments, direct and cross examination, and analysis of the crime.

Prior Instruction

Students should be familiar with the political climate in America leading up to the Revolutionary War. This should include an understanding of the tension between America's status as British colonies and Americans' growing desire for freedom from British rule.

Statement of the Case

On the evening of March 5, 1770, a British soldier named Private Hugh White stood guard over the Boston Custom House, which held the King's money. Private White was the only soldier guarding the Custom House. A group of Boston townfolk approached Private White and began insulting and threatening him, and even throwing snowballs at him. Over the past decade, many Boston citizens had grown angry at the King of England for imposing what they considered to be unfair taxes on the American colonies.

Private White fought back against the Boston citizens and hit one man with his bayonet. This caused alarm throughout Boston, bells began to ring, and more people gathered in the streets. British reinforcements arrived to guard the Custom

House, led by Captain Thomas Preston. The taunting and threats against the soldiers continued; some colonists even hit the soldiers with sticks and clubs. Someone eventually yelled the word “fire!”. British troops fired on the colonists, killing five men as a result.

Is Captain Thomas Preston, as the commander of the British troops on the night of the Massacre, guilty of Manslaughter under Massachusetts law?

Background Information—The Tension Between British Soldiers and Boston Colonists

Boston was a crucial shipping town for the British Empire. Many goods manufactured in Britain and sent to the colonies travelled through Boston; likewise, many natural resources obtained in America and sent to Britain made their way through the Boston ports. Boston was also a center of American resistance towards British rule (for example, the Boston Tea Party occurred in 1773, three years after the Boston Massacre).

In 1768, the British Parliament passed the Townshend Acts, which placed a tariff (tax) on glass, lead, paints, paper and tea imported from Britain to the colonies. American colonists were outraged, and the Massachusetts House of Representatives petitioned King George III to repeal the Townshend Acts.

Bostonians were further outraged when John Hancock’s ship, the *Liberty*, was confiscated by British customs officials, who alleged that Hancock was smuggling wine to evade paying the tariffs imposed by the Townshend Acts. The colonists began to riot.

In response to the turmoil in Boston, Lord Hillsborough, the Secretary of State for the Colonies, sent an increased military presence to Boston. Over 2,000 British soldiers occupied Boston, which at the time was home to 16,000 colonists. On February 22, a British Customs officer shot and killed an 11-year-old boy, which further outraged the Boston colonists.

The Law

Crimes

In Massachusetts, manslaughter is derived from common law and not defined by statute. There are two types of manslaughter recognized by Massachusetts common law: voluntary manslaughter and involuntary manslaughter.

Voluntary manslaughter has two elements and both must be present for the defendant to be guilty of voluntary manslaughter:

- (1) an intentional infliction of an injury likely to cause death and actually causing death, and
- (2) unlawfulness, or a lack of legal justification or excuse, such as self-defense, defense of another, or accident.

Involuntary manslaughter is defined as a death unintentionally caused during the commission of wanton and reckless conduct.

Penalty (Mass. Gen. Laws Ch. 265, § 13, 2019)

Anyone who is found guilty of manslaughter (either voluntary or involuntary) is liable to be sentenced to:

Imprisonment for not more than twenty years

OR

A fine of not more than one thousand dollars and imprisonment for not more than two- and one-half years.



The State v. Preston

Bailiff: All rise. The Court of Room _____ is now in session.
The Honorable Judge _____ presiding.

Judge: You may be seated. Today we are going to hear the case of The State v. Preston, a case of manslaughter. Prosecution, please introduce yourself:

Prosecution: [All prosecution attorneys stand.] Your Honor, my name is _____ and I represent the State. [Each student-prosecutor then introduces themselves.]

Judge: Thank you. Defense counsel, please introduce yourselves.

Defense: [All defense attorneys stand.] Your Honor, my name is _____ and I represent Captain Thomas Preston, the defendant. [Each student-defense attorney then introduces themselves.]

Judge: Prosecution, are you ready to give your Opening Statement?

Prosecution: We are, Your Honor.

May it please the Court. Your Honor and Ladies and Gentlemen of the jury, we are here today to prove beyond a reasonable doubt that Captain Thomas Preston, commander of the 29th Regiment in Boston on the evening of March 5, 1770, is guilty of manslaughter with respect to the deaths of the Boston citizens who died that very night. We will prove beyond a reasonable doubt that Captain Preston intentionally inflicted injuries leading to death and did not have legal justification for doing so, and is therefore guilty of voluntary manslaughter. We will hear from

Isaac Pierce, John Cole, and Samuel Hemmingway, first-hand witnesses to the event who heard the Captain speak with malice and intent to fire, and who will confirm the anti-colonist animosity Preston and his soldiers held. Let us be clear: the actions of the British soldiers on the night of March 5, 1770 resulted in the deaths of five American colonists, honest and loyal men who would still be alive today if not for Preston's wanton disregard for their lives. Captain Preston must be punished to the fullest extent of the law.

Judge: Defense are you ready to give your opening statement?

Defense: We are, Your Honor.

May it please the Court. Your Honor and Ladies and Gentlemen of the Jury, we are here today to prove that Captain Thomas Preston is not guilty of manslaughter, and that the prosecution cannot fulfill its burden of proving beyond a reasonable doubt that he is. We will hear from Benjamin Lee, a first-hand witness who will relay what he saw that night: that Captain Preston did not give an order to fire. We will also hear from Benjamin Burdick, a night watchman and another first-hand witness who heard the venerable Captain nobly instruct his soldiers to stop firing. And finally, we will hear from the defendant himself. Ladies and gentlemen, Captain Preston was an honorable, law-abiding man of the highest character who served his country with the utmost sense of duty. We are all aware that tensions were rising in Boston between American radicalizers and the British Crown, the fact that these tensions existed are not alone enough to convict a man of manslaughter. Captain Preston's soldier, Private Hugh White, was under attack by a gang of rebellious, malicious colonists who were looking for violence. Captain Preston nobly responded to Private White's call for help, and defended the Custom House as was his duty. At no time did he order his troops to fire on the American insurgents, despite their attacks on his troops. Captain Preston is not guilty of manslaughter—he did not commission the violence that occurred; he defended against and ceased it. To find him guilty would be a grave miscarriage of justice. Thank you.

Judge: Prosecution, you may call your first witness.

Prosecution: We call Mr. John Cole to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

John Cole: I do.

Bailiff: You may be seated.

Prosecution: What is your name and occupation?

John Cole: My Name is Jonathan Cole, but everyone calls me John, sir. I am a former judge and practicing lawyer here in Boston.

Prosecution: And where were you on the night of March 5, 1770?

John Cole: I was in my office, attending to legal work there. I heard the bells sound and sometime thereafter gun shots fired. I came out after the gun shots stopped and went to find out what happened.

Prosecution: And where did you go?

John Cole: Well, to the Custom House of course.

Prosecution: What did you see at the Custom House?

John Cole: Soldiers were gathered, and some men lay on the frozen ground, bleeding.

Prosecution: And what did you do then?

John Cole: Well, I saw the officer and spoke to the soldiers and told 'em it was a cowardly action to kill men at the end of their bayonets. They were pushing at the people who seemed to be trying to come into the street.

Prosecution [pointing at Captain Preston]: and was this man there?

John Cole: Yes, sir. I recognized him as the captain immediately, too. He came up to me and stamped and said, "damn their bloods, fire again, and let 'em take the consequence." I was within four feet of him.

Prosecution: Thank you, Mr. Cole. No further questions, Your Honor.

Judge: Defense, you may question the witness.

Defense: Hello Mr. Cole. You mentioned earlier that you didn't come out to the Custom House until after the gun shots were over, correct?

John Cole: That is correct.

Defense: Why not?

Prosecution: Objection. Your Honor, the defense's question is irrelevant to the matter at hand.

Judge: Overruled. Mr. Cole, you may answer.

John Cole: Well, as I said, I was attending to work. And I didn't want to get involved in the violence one way or the other, either.

Defense: Mr. Cole, did you hear anyone shout "fire?"

John Cole: No sir, my office was too far away to hear what folks were saying.

Defense: And you didn't see anyone shoot their guns?

John Cole: No, sir.

Defense: And so, you didn't hear anyone say "fire," and you didn't see anyone discharge their weapons, do I have this correct?

John Cole: Correct, sir.

Defense: And so, would you say you are completely unqualified to weigh in on whether or not Captain Thomas Preston instructed his troops to fire?

Prosecution: Objection, Your Honor! The jury is responsible for making that determination.

Judge: Sustained. Defense, please rephrase.

Defense: No further questions, Your Honor.

Judge: Mr. Cole, you may step down. Prosecution, please call upon your next witness.

Prosecution: We call Mr. Isaac Pierce to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Isaac Pierce: I do.

Bailiff: You may be seated.

Prosecution: Please state your name and occupation.

Isaac Pierce: My name is Isaac Pierce, and I am an assistant to Lieutenant Governor Hutchinson.

Prosecution: And what brought you to the Custom House on the night of March 5, 1770?

Isaac Pierce: Well, after the shooting, Lieutenant Governor Hutchinson took a party of us to investigate what had happened. Four or five of us went over to the Custom House to talk to the soldiers.

Prosecution: What happened when you got there?

Isaac Pierce: Well, the Lieutenant Governor found Captain Preston and asked him how he came to fire without orders from a civil magistrate giving him the authority to do so.

Prosecution: And what did Captain Preston respond?

Isaac Pierce: I remember his words clear as day, as I was so shocked by them. Captain Preston said, "I was obliged to, to save my sentry."

Prosecution: Obligated? He said he was obliged to shoot?

Isaac Pierce: Yes sir.

Prosecution: And so did you think then that he gave the orders to fire? That he admitted that he instructed his soldiers to fire despite the fact that he didn't have the authority to give those orders?

Defense: Objection, Your Honor. Leading Question.

Judge: Sustained. Prosecution, please rephrase.

Prosecution: Apologies, Your Honor. Mr. Pierce, you said you were shocked by the venerable Captain's statement. Why were you so shocked?

Isaac Pierce: Well, I guess I didn't think he would admit that he was the one who gave orders to fire. But by his words, it seemed pretty clear that he did.

Prosecution: Thank you, Mr. Pierce. No further questions, Your Honor.

Judge: Defense, you may now cross-examine.

Defense: Mr. Pierce, you weren't there at the time of the shootings, were you?

Isaac Pierce: No, sir, I was home with my wife.

Defense: While you were home, did you hear anyone give the order to fire?

Isaac Pierce: No, sir. My house is much too far from the Custom House for me to be able to hear such a thing.

Defense: And so, you did not actually witness the event first-hand, is that correct?

Isaac Pierce: Technically, yes, that is correct. However, our investigation party went out the very same night as the shootings took place. The soldiers were still there outside the Custom House.

Defense: Yes, but you admit that you weren't a witness to the shootings. One more question: can you remind me and the honorable members of the jury once more of Captain Preston's exact words?

Isaac Pierce: Of course. He said, "I was obliged to, to save my sentry."

Defense: Mr. Pierce, do you know what a sentry is?

Isaac Pierce: Well sir, I believe it's a soldier stationed to keep guard or control access to a place.

Defense: That is correct. Sort of like Private White, who was dutifully guarding the Custom House that evening, right?

Isaac Pierce: I suppose so.

Defense: And so Captain Preston wanted to save his sentry. Those are strong words. What do you suppose he felt the need to save Private White from, Mr. Pierce.

Isaac Pierce: Well, I believe there were a group of Bostonians taunting him that night, but I'm not sure. As I said, I wasn't there until after the attack.

Defense: I understand, Mr. Pierce. But surely if the colonists were simply taunting Private White, as you say, Captain Preston wouldn't have felt that he needed saving, correct? Doesn't the word "save" imply that Private White was in real danger?

Isaac Pierce: I suppose you could say that, sir. I suppose I'd agree with you.

Defense: Thank you, Mr. Pierce. Your Honor, I have no further questions at this moment.

Judge: Prosecution, you may call your final witness.

Prosecution: We call Mr. Samuel Hemmingway to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Samuel Hemmingway: I do.

Bailiff: You may be seated.

Prosecution: Please state your name and your occupation.

Samuel Hemmingway: My name is Samuel Hemmingway, and I am a barkeep at the local tavern.

Prosecution: What brought you to the Custom House on the night of March 5, 1770, Mr. Hemmingway?

Samuel Hemmingway: I was tending bar at the tavern when I heard people in the streets clamoring. Then bells went off and a few patrons went out to see what it

was all about. I joined them and followed them to the scene outside the Custom House.

Prosecution: And what did you see there?

Samuel Hemmingway: There were a group of about a dozen soldiers dressed in red. Captain Preston was there standing behind the soldiers in the middle of the group. A group of men was taunting them and shouting at them. From what I could tell, they were mad about the taxes we have to pay.

Prosecution: Did you hear Captain Preston say anything?

Samuel Hemmingway: I didn't hear Captain Preston, exactly, but I did hear one man. I think it was Private Killroy. He said that he would never miss an opportunity, when he had one, to fire on the inhabitants, and that he wanted to have an opportunity ever since he got to Boston.

Prosecution: What happened next?

Samuel Hemmingway: The next thing I remember is that someone fired a shot. One of the Captain's men. And he didn't try to stop them. I watched as he watched his men fire on my fellow citizens.

Prosecution: No further questions, Your Honor.

Judge: Defense, you may now question the witness.

Defense: Hello Mr. Hemmingway. Isn't it true that you did not hear anyone give the command to fire upon the crowd?

Samuel Hemmingway: Well, as I said, someone fired. A lot of people were saying the word fire. Some in the crowd were taunting the soldiers to fire, and some were telling them not to fire. And like I said, Private Killroy said that he wanted to fire.

Defense: Very well. So a lot of people were saying the word "fire." But you would agree that you did not hear Captain Preston say that word?

Samuel Hemmingway: I can't say that I did, sir, no.

Defense: But many other people, on both sides of the conflict, were saying that word?

Samuel Hemmingway: Yes, sir, I heard more than a couple people use that word in the minutes leading up to the shootings.

Defense: But just to be clear, not Captain Preston?

Samuel Hemmingway: That is correct.

Defense: No further questions, Your Honor.

Judge: Prosecution, please call your next witness.

Prosecution: The prosecution rests, Your Honor.

Judge: Very well. Defense, you may call your first witness.

Defense: The Defense calls Mr. Benjamin Lee to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Benjamin Lee: I do.

Bailiff: You may be seated.

Defense: Please state your name and occupation.

Benjamin Lee: I am Benjamin Lee, and I'm an apprentice with the silversmith here in Boston.

Defense: Where were you on the night of March 5, 1770?

Benjamin Lee: I was outside of the Custom House with the group who was confronting the British soldiers. I was there when it was just Private White outside and then when Captain Preston and his reinforcements came, too.

Defense: So you saw Captain Preston that night?

Benjamin Lee: Yes, I saw him as soon as the Soldiers were ranged. A man went up and asked him if he was going to fire.

Defense: How did Captain Preston respond?

Benjamin Lee: He said that no sir, upon my honor I'm not going to fire if I can find any way to avoid it?

Defense: Did it seem to you like he really meant it? That is, did you believe him?

Benjamin Lee: Yes sir, most definitely. It was clear that the Captain really did not want anyone to shoot or anyone to get injured more than Private White already had been.

Defense: Did you hear the Captain instruct the troops to fire?

Benjamin Lee: No sir, I never heard him say so, although many people were talking and using that word.

Defense: Would you have been able to hear him if he had said it?

Benjamin Lee: Yes sir, most definitely. I was in the front of the group and, as I said before, was able to hear Captain Preston.

Defense: No further questions, Your Honor.

Judge: The prosecution may now question the witness.

Prosecution: Mr. Lee, you mentioned that you were able to hear everything Captain Preston said.

Benjamin Lee: Yes sir, I do believe that is true.

Prosecution: Mr. Lee, did you ever once hear Captain Preston give the command to stop firing? That is, after the first shot went off, did Captain Preston ever instruct his troops to hold their fire?

Benjamin Lee: No sir, I never heard him say that.

Prosecution: Would you expect him to? Don't you think that's the duty of an officer to reign in his troops, and that failure to do so is dereliction of duty?

Defense: Objection! Your Honor, that question calls for speculation as this witness is not a military officer.

Judge: Sustained. Prosecution, please rephrase.

Prosecution: Apologies, Your Honor. No further questions.

Judge: The Defense may now call its next witness.

Defense: We call Mr. Benjamin Burdick to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Benjamin Burdick: I do.

Bailiff: You may be seated.

Defense: Please state your name and occupation.

Benjamin Burdick: My name is Benjamin Burdick and I'm one of the town watchmen in Boston.

Defense: And what brought you to the Custom House on the night in question?

Benjamin Burdick: Well see I was already close by patrolling the streets, as is my job. And I heard the commotion across the way so I came over to see what it was about.

Defense: And what did you see?

Benjamin Burdick: When I came into King Street about at 9 o'clock I saw the soldiers gathered round. I asked one if he was loaded and he said yes. I asked him if he would fire, he said yes by the Eternal God and pushed his bayonet at me. Then shots went off. Soon the Captain came before the soldiers and ordered them to stop firing.

Defense: You saw Captain Preston order the soldiers to stop firing?

Benjamin Burdick: Yes.

Defense: Why do you think he did that?

Benjamin Burdick: Well, I don't think the Captain wanted the violence to occur. It seemed like some of the soldiers wanted to inflict injury but my sense was that the Captain really didn't.

Defense: No further questions, Your Honor.

Judge: Prosecution, you may now cross-examine the witness.

Prosecution: Mr. Burdick, did you hear anyone give the order to fire that night?

Benjamin Burdick: In fact, I did, sir. I heard someone yell fire right before the first shots went off.

Prosecution: Who gave that command?

Benjamin Burdick: I can't say who exactly it was as I didn't exactly see, but I am certain that it came from behind the soldiers.

Prosecution: Behind the soldiers?

Benjamin Burdick: Yes sir.

Prosecution: Mr. Burdick, do you happen to know where Captain Preston was standing at the time the shots went off?

Benjamin Burdick: Yes sir, I saw him standing in the middle of the group of soldiers, behind the ones forming the front line.

Prosecution: He was standing behind the soldiers? In the same area from which you heard the command to fire come?

Benjamin Burdick: Yes sir.

Prosecution: No further questions, Your Honor.

Judge: Very well. Defense, you may call your next witness.

Defense: Your Honor, the Defense calls Captain Thomas Preston to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Captain Preston: I do.

Bailiff: You may be seated.

Defense: Please state your name and occupation.

Captain Preston: My name is Thomas Preston, and I am a Captain in the 29th regiment of the King's Army.

Defense: Can you tell me, and the venerable members of the jury, what happened on the night of March 5, 1770?

Captain Preston: Certainly. It was a Monday night and I was in charge of the forces that evening. At about 9 o'clock, some of my soldiers came to my barracks and informed me that the town inhabitants were assembling to attack the troops, and that the bells were ringing for that purpose. I assembled a group of troops to defend the Custom House, as that's where the inhabitants were preparing to attack. On our way to the Custom House, rioters and mobbers cursed us, threatened us, and some told us that they were going to take Private White away from his post and murder him.

Defense: They said they were going to murder Private White?

Captain Preston: Yes.

Defense: What happened next?

Captain Preston: I arrived with my soldiers and formed a defense around the Custom House, as I was afraid the mob would raid the King's purse. One person asked me if I would order my soldiers to fire.

Defense: And what did you reply?

Captain Preston: I told him of course not, it was my duty as an officer to refrain from sanctioning violence if at all possible. Then one of my soldiers was hit forcefully with a stick; the impact caused him to discharge his weapon. I asked him why he fired without being ordered to do so, at which point a mobber hit me on the arm with a large club. More soldiers began to fire.

Defense: And what did you do then?

Captain Preston: I asked again why they were firing without orders. They said they heard the command to fire and assumed it came from me. I assure you it did not. I told the soldiers to stop firing, don't fire, for the love of God don't fire. But at that point it was too late.

Defense: No more questions, Your Honor.

Judge: Prosecution, you may now question the witness.

Prosecution: Captain Preston, what would you say was the general feeling toward American colonists among your troops?

Captain Preston: Certainly opinions varied among the men.

Prosecution: Is it not true that there was anti-colonist sentiment in your soldiers?

Captain Preston: Certainly, there were some soldiers who didn't fancy the American colonists.

Prosecution: Is it not true that there were soldiers who harbored anti-American sentiments among the soldiers you brought with you to meet the mob at the Custom House?

Captain Preston: Some may have been.

Prosecution: Do you think, Captain, that by bringing those soldiers with you, you encouraged violence to unfold?

Captain Preston: I was defending Private White and the Custom House, which held the King's coin. It was my duty as commanding officer to do so. If I did not bring reinforcements to the Custom House, I would've all but commissioned Private White's murder.

Prosecution: But instead, you commissioned the murder of five colonists.

Defense: Objection! Your Honor, unfair and prejudicial as well as argumentative!

Judge: Sustained. Prosecution, do you have any other questions?

Prosecution: No, Your Honor.

Judge: Alright. The witness may step down. Defense please call your next witness.

Defense: The Defense rests Your Honor.

Judge: Then please proceed with your Closing Statement.

Defense: Of course.

Ladies and Gentlemen of the jury, today we heard testimony from Benjamin Lee, who told us that Captain Preston said he never intended his troops to fire. Mr. Lee also never heard Captain Preston order his troops to fire. We also heard from Benjamin Burdick, who testified that Captain Preston commanded his troops to stop firing once they began. Indeed, this is in line with Captain Preston's own testimony, as he has testified that he never gave the order to fire upon the crowd, but once that firing began, he told his soldiers to cease. Such is the behavior and the story of a noble, honorable military officer.

But the fact remains, Ladies and Gentlemen, that *even if he had given the orders to fire*—which, as we've heard, he didn't—that firing would have been justified in self-defense. The British troops were under attack by more than just words; a gang of malicious mobsters was out for blood that night. They intended to kill Private White; they were the ones who instigated the violence by attacking the soldiers with clubs; they, and not Captain Preston, caused the unfortunate deaths of their fellow colonists.

Finally, the fact remains that the Prosecution has failed to satisfy the burden of proof necessary for finding Captain Preston guilty of manslaughter. It is clear that Captain Preston is not guilty of voluntary manslaughter, as he had no intention of inflicting injury. The Prosecution knows this and has not even tried to say otherwise. The Prosecution has not shown that Captain Preston commissioned wanton and reckless conduct. Because of this, you must acquit the noble Captain.

Judge: Prosecution. Are you ready to present your closing argument?

Prosecution: We are Your Honor.

Your Honor and Ladies and Gentlemen of the Jury, we have heard testimony today that proves beyond a reasonable doubt that Captain Thomas Preston commissioned the very wanton and reckless conduct that led to the deaths of five American men. By Massachusetts law, he is therefore guilty of manslaughter.

Multiple witness place Captain Preston as the man who gave the order to fire. We have heard Isaac Pierce's testimony, which indicates that Captain Preston *did* give the order to fire. And we have heard the testimony of Samuel Hemmingway, which shows so clearly the animosity and penchant for violence of the British troops that unfortunate evening. Captain Preston's own ruthlessness is shown by John Cole's testimony, which I repeat again: "damn their bloods, fire again, and let 'em take the consequence." Damn their bloods, fire again. Those are not the words of an honorable officer just doing his job; those are the words of an officer abusing his power in contradiction to reason and justice. And even if Captain Preston didn't give the order to fire—which, testimony confirms, he did—he still commissioned the wanton and ruthless conduct which led to the death of multiple men by failing to stop the conduct of his subordinates. For that reason, the jury must find him guilty of manslaughter. Thank you.

Judge's instructions to the Jury:

Ladies and Gentlemen of the jury, you are the only judges of whether the witnesses are believable. As you decide this case, you should pay attention to how the witnesses looked and acted when they were testifying, to what they said, and to whether different witnesses said things that were the opposite or different from one another. You should pay attention to all the evidence that shows the witness is credible, and you should pay attention to whether a witness might have reason to say what he/she did even though it might not be the truth. You should also ask yourself whether a witness actually saw the things he/she testified to and whether he/she seems to have a good memory about what he/she saw. Finally, you should remember that two people who see something happen may see or hear it differently, and sometimes people do not remember things correctly and may make an honest mistake. When witnesses disagree with each other, you should decide whether they disagree on something important or on something that is unimportant.

You should decide whether the disagreement is because one person made a mistake or because someone told a lie.

Voluntary manslaughter has two elements: (1) an intentional infliction of an injury likely to cause death and actually causing death, and (2) unlawfulness, or a lack of legal justification or excuse, such as self-defense, defense of another, or accident. Both elements must be present for the defendant to be guilty of voluntary manslaughter.

If you conclude that the defendant did not intentionally inflict an injury likely to cause death and actually cause death or had legal justification or excuse for inflicting that injury, you must find the defendant not guilty of voluntary manslaughter. If on the other hand you conclude that the defendant did inflict such an injury and did not have a legal justification or excuse for doing so, you must find the defendant guilty of voluntary manslaughter.

The jury may leave the Courtroom now to deliberate.