

Spoliation

There has been evidence that the State of Alabama at one time possessed **[describe evidence allegedly destroyed]**. The State of Alabama contends that the **[insert State's evidence - evidence never existed, evidence was not in its possession, evidence was not destroyed, loss of evidence was accidental, etc.]**.

Spoliation is an attempt to suppress or destroy material evidence possibly favorable to the Defendant by the State and/or an agent of the State.

You may assume that such evidence would have been unfavorable to the State only if you find by a preponderance of the evidence that:

1. The State of Alabama intentionally destroyed the evidence or caused the evidence to be destroyed; **(AND)**
2. The State of Alabama destroyed the evidence or caused the evidence to be destroyed in bad faith.

[Insert instruction for preponderance of the evidence.]

The fact of spoliation may be established by direct or circumstantial evidence and proof is sufficient if from the facts and circumstances adduced, it can be reasonably inferred. You are not required to make this inference, however, and you must consider any rebuttal evidence that has been offered by the State. Whether you ultimately choose to make the inference is your decision as the finder of fact.

Spoliation is sufficient to infer the Defendant's innocence.

Use Notes

This instruction is based in part on the footnote of a civil case, *Campbell v. Williams*, 638 So. 2d 804, 817 n. 9 (Ala. 1994). See also *May v. Moore*, 424 So. 2d 596, 603 (Ala. 1982).

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