

DEC 19 2007

TIME 9:21
BY WB DEPUTY

NO. 1023944D

THE STATE OF TEXAS () IN THE 372ND JUDICIAL
VS. () DISTRICT COURT
ROGER EUGENE FAIN () TARRANT COUNTY, TEXAS

COURT'S CHARGE

MEMBERS OF THE JURY:

The Defendant, Roger Eugene Fain, stands charged by indictment with the offense of capital murder, alleged to have been committed in Tarrant County, Texas, on or about the 1st day of June 1987. To this charge the Defendant has pleaded not guilty.

A person commits the offense of capital murder if he intentionally causes the death of an individual, and the person intentionally commits the murder in the course of committing or attempting to commit aggravated sexual assault.

A person commits the offense of aggravated sexual assault if he intentionally or knowingly causes the penetration of the mouth of another person, who is not the spouse of the actor, by the sexual organ of the actor, without that person's consent, and if the person causes serious bodily injury or attempts to cause the death of the victim.

An aggravated sexual assault is without the consent of the other person if the actor compels the other person to submit or participate by the use of physical force or violence.

A person commits the offense of murder if he:

1. intentionally or knowingly causes the death of an individual; OR
2. intends to cause serious bodily injury and commits an act clearly dangerous

to human life that causes the death of an individual.

A person commits the offense of involuntary manslaughter if he recklessly causes the death of an individual.

"Attempt" means an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

"Individual" means a human being who is alive.

"Actor" means a person whose criminal responsibility is in issue in a criminal action.

"Spouse" means a person who is legally married to another.

"Consent" means assent in fact, whether express or apparent.

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

A person acts intentionally, or with intent, with respect to a result of his conduct when it is his conscious objective or desire to cause the result.

A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person acts recklessly, or is reckless, with respect to the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Our law provides a defendant may testify in his own behalf if he elects to do so. This, however, is a privilege accorded to the defendant, and in the event he does not testify, that fact cannot be taken as a circumstance against him. In this case the Defendant has not testified, and you are instructed that you cannot and must not refer or allude to the fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against the Defendant.

You are instructed that if there is any evidence before you in this case that the Defendant is or was in custody, incarcerated, or confined for any reason, if he was, you are not to consider that fact of confinement or being in custody or incarcerated as any evidence of guilt of the accusations in this indictment.

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that a person has been arrested, confined, or indicted for, or otherwise charged with the offense gives rise to no inference of guilt at his trial. The law does not require a Defendant to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the Defendant, unless the jurors are satisfied beyond a reasonable doubt of the Defendant's guilt after careful and impartial consideration of all the evidence in the case.

The prosecution has the burden of proving the Defendant guilty and it must do so by proving each and every element of the offense charged beyond a reasonable doubt and if it fails to do so, you must acquit the Defendant.

It is not required that the prosecution prove guilt beyond all possible doubt; it is required that the prosecution's proof excludes all "reasonable doubt" concerning the Defendant's guilt.

In the event you have a reasonable doubt as to the Defendant's guilt after considering all the evidence before you, and these instructions, you will acquit him and say by your verdict "Not Guilty".

Now, if you find from the evidence beyond a reasonable doubt that the Defendant, Roger Eugene Fain, in Tarrant County, Texas, on or about the 1st day of June 1987, did then and there intentionally cause the death of an individual, Linda Donahew, by strangling her with his hand or hands, or with an object unknown to the Grand Jury, or by stabbing her with a knife, or by any combination of strangling her with his hand or hands, or with an object unknown to the Grand Jury or stabbing her with a knife, and the said Defendant was then and there in the course of committing or attempting to commit the offense of aggravated sexual assault, then you will find the Defendant guilty of the offense of capital murder, as charged in the indictment.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of capital murder and next consider whether he is guilty of the offense of murder.

Now, if you find from the evidence beyond a reasonable doubt that the Defendant, Roger Eugene Fain, in Tarrant County, Texas, on or about the 1st day of June 1987, did then and there intentionally or knowingly cause the death of an individual, Linda Donahew, by strangling her with his hand or hands, or with an object unknown to the Grand Jury, or by stabbing her with a knife, or by any combination of strangling her with his hand or hands, or with an object unknown to the Grand Jury or stabbing her with a knife; OR

If you find from the evidence beyond a reasonable doubt that the Defendant, Roger Eugene Fain, in Tarrant County, Texas, on or about the 1st day of June 1987, did then and there intentionally, with the intent to cause serious bodily injury to Linda Donahew, commit an act clearly dangerous to human life, namely, strangling her with his hand or hands, or with an object unknown to the Grand Jury, or by stabbing her with a knife, or by any combination of strangling her with his hand or hands, or with an object unknown to the Grand Jury or stabbing her with a knife, which caused the death of Linda Donahew, then you will find the Defendant guilty of the offense of murder.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of murder and next consider whether he is guilty of the offense of involuntary manslaughter.

Now, if you find from the evidence beyond a reasonable doubt that the Defendant, Roger Eugene Fain, in Tarrant County, Texas, on or about the 1st day of June 1987, did then and there recklessly cause the death of an individual, Linda Donahew, by strangling her with his hand or hands, or with an object unknown to the Grand Jury, then you will find the Defendant guilty of the offense of involuntary manslaughter.

If you do not so believe or if you have a reasonable doubt thereof, you will acquit the Defendant and say by your verdict "Not Guilty".

The indictment in this case is no evidence whatsoever of the guilt of the Defendant. It is a written instrument necessary in order to bring this case into court for trial, and you will not consider the indictment as any evidence in this case or as any circumstance whatsoever against the Defendant.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given to their testimony, but you are bound to receive the law from the Court, which is herein given, and be governed thereby.

You are charged that it is only in open court that the jury is permitted to receive evidence regarding the case, or any witness therein, and no juror is permitted to communicate to any other juror anything he or she may have seen or heard regarding the case or any witness therein, from any source other than in open court.

Your verdict must be by a unanimous vote of all members of the jury. In your deliberations you shall consider the charge as a whole and you must not refer to or discuss any matters not in evidence.

At times throughout the trial the Court may have been called upon to rule on the question of whether or not certain offered evidence might properly be admitted. You are not to concern yourselves with the reasons for the Court's ruling nor draw any inferences therefrom. Whether offered evidence is admissible is a question of law and in admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does the Court pass on the credibility of the witness. You must not consider any evidence offered that has been rejected by the Court. As to any question to which an objection was sustained, you must not engage in conjecture as to what the answer might have been or as to the reason for the objection.

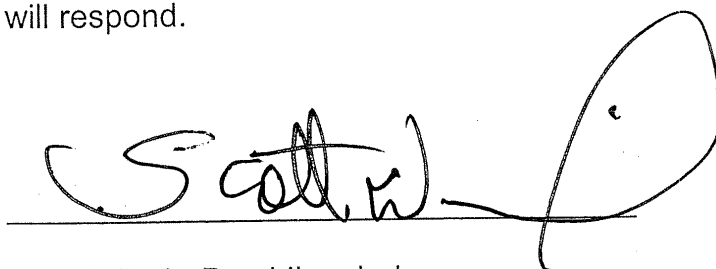
You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting the outcome of the case. The Court has not intended to express any opinion upon any matter of fact, and if you have observed anything which you may have interpreted as the Court's opinion as to any matter of fact, you must wholly disregard it.

After you retire to the jury room, you should select one of your members as your Presiding Juror. Any member of the jury may serve as Presiding Juror. It is the Presiding Juror's duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form and signing the same as your Presiding Juror.

At this time you will confine your deliberations solely to the issue of whether the Defendant is guilty or not guilty of the offenses set forth in this charge.

Should the jury desire to have any or all of the admitted exhibits delivered to you for your deliberations, your Presiding Juror shall so notify the Court in writing and the requested exhibits will be delivered.

After you have retired, you may communicate with the Court in writing through the bailiff who has you in charge. Your written communication must be signed by the Presiding Juror. Do not attempt to talk to the bailiffs, the attorneys, or the Court regarding any question you may have concerning the trial of the case. After you have reached a unanimous verdict or if you desire to communicate with the Court, please use the jury call button on the wall and one of the bailiffs will respond.

A handwritten signature in black ink, appearing to read "Scott Wisch", is written over a horizontal line. To the right of the signature is a large, loopy flourish that extends upwards and to the right.

Scott Wisch, Presiding Judge
372nd Judicial District Court
Tarrant County, Texas

VERDICT FORMS

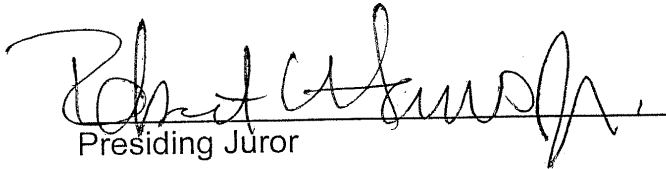
FILED
THOMAS A. WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS
DEC 19 2007
TIME 12:45
BY WAB DEPUTY

We, the Jury, find the Defendant, Roger Eugene Fain, not guilty.

Presiding Juror

-OR-

We, the Jury, find the Defendant, Roger Eugene Fain, guilty of the offense of capital murder, as charged in the indictment.


Presiding Juror

-OR-

We, the Jury, find the Defendant, Roger Eugene Fain, guilty of the offense of murder.

Presiding Juror

-OR-

We, the Jury, find the Defendant, Roger Eugene Fain, guilty of the offense of involuntary manslaughter.

Presiding Juror