

No. D-1-DC-08-300490

THE STATE OF TEXAS	)	IN THE 331ST DISTRICT
VS.	)	COURT OF
TERRELL MAXWELL	)	TRAVIS COUNTY, TEXAS

CHARGE OF THE COURT

Ladies and Gentlemen of the Jury:

The defendant, TERRELL MAXWELL, stands charged by indictment with the offense of capital murder, alleged to have been committed in Travis County, Texas, on or about the 15th day of December, 2007. To this charge the defendant has pleaded not guilty. You are instructed that the law applicable to this case is as follows:

I.

A person commits the offense of capital murder if the person intentionally causes the death of an individual and the person intentionally commits the murder in the course of committing or attempting to commit robbery.

II.

"Attempt" means to commit an act with specific intent to commit an offense where the act committed amounts 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.

III.

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

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

IV.

A person is criminally responsible if the result would not have occurred but for his

Filed in The District  
of Travis County, Texas  
on 12-11-08  
at 2:57 PM  
Amalia Rodríguez-Mendoza, Clerk *AM*

conduct.

V.

A person commits the offense of robbery if in the course of committing theft as hereinafter defined and with intent to obtain or maintain control of the property, he:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another; or
- (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

A person commits theft if he unlawfully appropriates property with intent to deprive the owner of property.

Appropriation of property is unlawful if it is without the owner's effective consent.

"In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.

VI.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the defendant, TERRELL MAXWELL, on or about the 15th day of December, 2007, in the County of Travis, and State of Texas, as alleged in the indictment, did then and there intentionally cause the death of an individual, FERNANDO SANTANDER, by shooting FERNANDO SANTANDER on or about the head with a firearm; and the said TERRELL MAXWELL was then and there in the course of committing or attempting to commit the offense of Robbery, of FERNANDO SANTANDER, you will find the defendant guilty of the offense of Capital Murder and so say by your verdict, but if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Capital Murder and proceed to consider whether the defendant is guilty of the lesser offense of Aggravated Robbery.

VII.

A person commits the offense of aggravated robbery, if he commits the offense of robbery as has been defined in V. above, and he uses or exhibits a deadly weapon.

"Deadly Weapon" means a firearm, or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury.

"Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

## VIII.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the defendant, TERRELL MAXWELL, on or about the 15th day of December, 2007, in the County of Travis, and State of Texas, did then and there while in the course of committing theft and with intent to obtain or maintain control of the property of FERNANDO SANTANDER, to wit: money, without the effective consent of the said FERNANDO SANTANDER and with intent to deprive the said FERNANDO SANTANDER of said property, did then and there by using and exhibiting a deadly weapon, to wit: a firearm intentionally or knowingly threaten or place FERNANDO SANTANDER in fear of imminent bodily injury or death, you will find the defendant guilty of the offense of Aggravated Robbery and so say by your verdict, but 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."

## IX.

You are instructed that Voluntary Intoxication does not constitute a defense to the commission of a crime.

## X.

*As to the offense of capital murder you are instructed that* A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession. Conduct is not rendered involuntary merely because the person did not intend the results of his conduct. Therefore, if you believe from the evidence beyond a reasonable doubt that the defendant, TERRELL MAXWELL, on or about the 15th day of December, 2007, in the County of Travis, and State of Texas, did then and there cause the death of an individual, FERNANDO SANTANDER, as alleged in the indictment but you further believe from the evidence, or have a reasonable doubt thereof, that the shooting of the gun was not the voluntary act or conduct of the defendant, you will acquit the defendant and say by your verdict "Not Guilty."

## XI.

A conviction cannot be had upon the testimony of an accomplice unless the jury first believe that the accomplice's evidence is true and that it shows the defendant is guilty of the offense charged against him, and even then you cannot convict unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

You are further instructed that accomplice witnesses can not corroborate each other.

You are further instructed that mere presence of the accused in the company of an accomplice witness shortly before or after the time of the offense, if any, is not, in itself, sufficient corroboration of the accomplice witness' testimony.

You are charged that RASHAD DUKES and MICHAEL JAMERSON were accomplices if any offense was committed, and you are instructed that you cannot find the defendant guilty upon the testimony of RASHAD DUKES and MICHAEL JAMERSON unless you first believe that the testimony of the said RASHAD DUKES and MICHAEL JAMERSON is true and that it shows the defendant is guilty as charged in the indictment; and even then you cannot convict the defendant, TERRELL MAXWELL, unless you further believe that there is other evidence in this case, outside the evidence of said RASHAD DUKES and MICHAEL JAMERSON, tending to connect the defendant with the commission of the offense charged in the indictment and then from all the evidence you must believe beyond a reasonable doubt that the defendant is guilty.

XII.

The defendant is on trial solely on the charge contained in the indictment. In reference to evidence, if any, that the defendant has previously participated in recent transactions or acts, other than but similar to that which is charged in the indictment in this case, you are instructed that you can not consider such other transactions or acts, if any, for any purpose unless you find and believe beyond a reasonable doubt that the defendant participated in such transactions or committed such acts, if any; and even then you may only consider the same for the purpose of determining intent, identity or absence of mistake or accident, if it does, and for no other purpose.

XIII.

Now, if you have found the defendant guilty of the offense of Aggravated Robbery and you further find beyond a reasonable doubt that the defendant used or exhibited a deadly weapon during the commission of the offense, you will so state in your verdict, but if you do not so find or if you have a reasonable doubt thereof you will state that the defendant did not use or exhibit a deadly weapon during the commission of the offense.

XIV.

In all criminal cases, the burden of proof is on the State. All persons are presumed innocent and no person may be convicted unless each element of the offense is proved beyond a reasonable doubt. The fact that the defendant has been arrested, confined, or indicted for, or otherwise charged with an offense gives rise to no inference of guilt at his trial. The law does not require the 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 a 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 prosecutor'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 the defendant and say by your verdict "Not Guilty."

In a criminal case the law permits a defendant to testify in his own behalf but he is not compelled to do so, and the same law provides that the fact that a defendant does not testify shall not be considered as a circumstance against him. You will, therefore, not consider the fact that the defendant did not testify as a circumstance against him; and you will not in your retirement to consider your verdict allude to, comment on, or in any manner refer to the fact that the defendant has not testified.

You are further instructed as a part of the law in this case that the indictment against the defendant is not evidence in the case, and that the true and sole use of the indictment is to charge the offense and to inform the defendant of the offense alleged against him. The reading of the indictment to the jury in the statement of the case of the state against the defendant cannot be considered as a fact or circumstance against the defendant in your deliberations.

In deliberating on the cause you are not to refer to or discuss any matter or issue not in evidence before you; and in determining the guilt or innocence of the defendant, you shall not discuss or consider the punishment, if any, which may be assessed against the defendant in the event he is found guilty beyond a reasonable doubt.

You are charged that it is only from the witness stand 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 may have heard regarding the case or any witness therein, from any source other than the witness stand.

You are instructed that your verdict must be unanimous and it must reflect the individual verdict of each individual juror, and not a mere acquiescence in the conclusion of the other jurors.

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

A juror may believe any, all, none or part of any evidence given by any witness.

You are instructed that upon your request to the bailiff you shall be furnished any exhibits admitted as evidence in the case.

After the reading of this charge, you shall not be permitted to separate from each other nor shall you talk to anyone not of your jury. After argument of counsel, you will retire and select one of your members as your foreperson. It is his or her duty to preside at your deliberations and to vote with you in arriving at a unanimous verdict. After you have arrived at your verdict, you may use one of the forms attached hereto by having your foreperson sign his or her name to the particular form that conforms to your verdict, but in no event shall he or she sign more than one of such forms.



BOB PERKINS  
Judge, 331st District Court

No. D-1-DC-08-300490

THE STATE OF TEXAS

)

IN THE 331ST DISTRICT

VS.

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COURT OF

TERRELL MAXWELL

)

TRAVIS COUNTY, TEXAS

VERDICT OF THE JURY

We, the jury, find the defendant, TERRELL MAXWELL, guilty of the offense of Capital Murder as alleged in the indictment.

*Eddie Moreno*  
FOREPERSON OF THE JURY

*Eddie Moreno*

*5:30 pm*

Filed in The District  
of Travis County, Texas  
on 12-11-08  
at \_\_\_\_\_ A.M.  
Amalia Rodriguez-Mendoza, Clerk *AR*

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IN THE 331ST DISTRICT

VS.

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COURT OF

TERRELL MAXWELL

)

TRAVIS COUNTY, TEXAS

VERDICT OF THE JURY

We, the jury, find the Defendant, TERRELL MAXWELL, "Guilty" of the lesser included offense of Aggravated Robbery.

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FOREPERSON OF THE JURY

We further find that the defendant (did or did not) \_\_\_\_\_ use or exhibit a deadly weapon, to wit: a firearm during the commission of the offense.

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FOREPERSON OF THE JURY

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THE STATE OF TEXAS

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IN THE 331ST DISTRICT

VS.

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COURT OF

TERRELL MAXWELL

)

TRAVIS COUNTY, TEXAS

VERDICT OF THE JURY

We the jury, find the defendant, TERRELL MAXWELL, "Not Guilty."

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FOREPERSON OF THE JURY



Can we consider the Law  
of parties?

If so, can you please provide  
the definition?

Eddie Morse  
Eddie Morse

3:57 pm

You have the law applicable  
to this case.

Bob Perkin  
Judge Presiding

Read Twana Eggland  
testimony

Eddie Moore  
Eddie Moore

4:20 pm

NO. 08-300490

THE STATE OF TEXAS

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IN THE 331ST DISTRICT

VS.

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COURT OF

Terrell Maxwell

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TRAVIS COUNTY, TEXAS

SUPPLEMENTAL CHARGE—READING BACK TESTIMONY

Ladies and Gentlemen of the Jury:

I have your request for the testimony of a witness to be read back by the court reporter.

Your request is governed by the following rule: "If the jury disagree as to the statement of any witness, they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness' testimony on the point in dispute."

Therefore, if you certify that you disagree concerning the statement of a witness and specify the point on which you disagree, the court reporter will be instructed to search her notes and read to you the testimony of the witness on that point.

Judge Presiding

JURY'S CERTIFICATE

We certify that we disagree concerning the statement of Witness Twana Egglund to attorney State of TX.

The statement in dispute is about what Twana stated regarding

We respectfully request that the statement of the witness which is in dispute be read back to the jury.

Foreperson of the Jury

Rashad Dukas recollection of who had the gun in Twana's statement on 12/10/08 and the reading of Twana's same statement in the reading of 2/25/08 testimony

Eddie Moore  
Eddie Moore

4:44 PM