

NO. 24,087

STATE OF TEXAS § IN THE DISTRICT COURT OF

V. § LEON COUNTY, T E X A S

JERRY DUANE MARTIN § 278Th JUDICIAL DISTRICT

COURT’S CHARGE

LADIES AND GENTLEMEN OF THE JURY:

The defendant, JERRY DUANE MARTIN, stands charged by indictment with the crime of Capital Murder, alleged to have been committed on or about the 24th day of September 2007, in Walker County, Texas. To this charge the defendant has pleaded “not guilty.”

You have taken an oath as a juror to render a true verdict based on the law and evidence. You have heard the evidence in this case and I will now give you the law of the case which you shall carefully and strictly follow during your deliberations in reaching a true verdict in this case.

1. Presumption of Innocence. A person accused of a crime is presumed to be innocent. This means that you must start with the presumption that the defendant is innocent. This presumption continues throughout the trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that the defendant is guilty.

2. Burden of Proof. Every crime is made up of parts called elements. The prosecutor must prove each element of the crime beyond a reasonable doubt. The defendant is not required to prove his innocence or to do anything. If you

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 TIME 9:27 am
 30 DAY OF Nov 2007
Sally Flowers
 District Clerk, Walker County, Texas

find that the prosecutor has not proven every element of the crime beyond a reasonable doubt then you must find the defendant not guilty.

3. Duty of Jurors. You must decide what facts have been proved by the prosecutor beyond a reasonable doubt. It is up to you exclusively, to decide these facts, based only on the evidence that has been presented to you in trial. The jury is the sole judge of the facts proved, the credibility of the witnesses and the weight, if any, to be given their testimony. You must follow the law as I explain it to you, even if you disagree with it.

4. Evidence. The word "evidence" as used in this Charge means the testimony of the witnesses and exhibits admitted as evidence by the Court. In arriving at your verdict consider only the testimony introduced here under oath and such exhibits, if any, as have been admitted as evidence under the rulings by the Court. Statements made by the attorneys are not evidence. In your deliberations you will not consider or discuss anything that is not represented by the evidence in this case. You must disregard any testimony or exhibit the Court has stricken or not admitted. Evidence admitted for a limited purpose must be considered for that limited purpose only.

5. Indictment. You are instructed that a grand jury indictment is the written statement of a grand jury accusing a person therein named of some act or omission which, by law, is declared to be a crime. The indictment is not evidence of guilt nor can it be considered by you as evidence in passing upon the question of the guilt of the defendant.

6. Election of Defendant to not testify. The United States and Texas Constitutions provide that a defendant may elect to not testify in his own behalf if he chooses. The defendant has elected to not testify and you are instructed that you cannot and must not refer to or allude to that fact during your

deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

CAPITAL MURDER

7. A person commits the offense of capital murder if he intentionally or knowingly causes the death of an individual while escaping, or attempting to escape from a penal institution.

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 commits the offense of “escape” when such person escapes from custody when the person is convicted of a felony offense and is confined in a secure correctional facility. Escape is a felony offense. The Wynne Unit of the Texas Department of Criminal Justice Institutional Division is a secure correctional facility and is a penal institution.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 24th day of September 2007, in Walker County, Texas, the defendant, JERRY DUANE MARTIN, did intentionally or knowingly cause the death of Susan Canfield, by striking her or the horse she was riding with a deadly weapon, to wit: a motor vehicle that in the manner of its use or intended use was capable of causing death or serious bodily injury, and the defendant was then and there escaping or attempting to escape from a penal institution, to wit: the Texas Department of Criminal Justice Institutional Division, Wynne Unit, then you will find the defendant, JERRY DUANE MARTIN, guilty of capital murder as charged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder and next consider whether the defendant is guilty of murder.

MURDER

8. A person commits the offense of murder if he commits or attempts to commit a felony, other than manslaughter, ^{and} in the course of and in furtherance of the commission or the attempt, or in immediate flight from the commission or attempt, intentionally or knowingly or recklessly, commits or attempts to commit an act clearly dangerous to human life which causes the death of an individual.

A person commits the offense of "escape" when such person escapes from custody when the person is convicted of a felony offense and is confined in a secure correctional facility. Escape is a felony offense. The Wynne Unit of the Texas Department of Criminal Justice Institutional Division is a secure correctional facility and is a penal institution.

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 defendant's standpoint.

Now if you find from the evidence beyond a reasonable doubt that on or about the 24th day of September 2007, in Walker County, Texas, the defendant, JERRY DUANE MARTIN, committed or attempted to commit the felony offense of escape and in the course of and in furtherance of the commission of that offense, or in immediate flight from the commission of that offense, intentionally or knowingly or recklessly, committed an act clearly dangerous to human life by striking Susan Canfield or the horse she was riding with a deadly weapon, to wit: a motor vehicle, that in its manner of use or intended use was

capable of causing death or serious bodily injury, which caused the death of Susan Canfield, then you will find the defendant, JERRY DUANE MARTIN, guilty of the offense of murder.

If you should find from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder or murder, but you have a reasonable doubt as to which offense he is guilty of, then you should resolve that doubt in the defendant's favor, and in such event, you will find the defendant guilty of the lesser offense of murder.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of murder and next consider whether the defendant is guilty of aggravated assault.

AGGRAVATED ASSAULT

9. A person commits an "assault" if the person intentionally, knowingly, or recklessly causes bodily injury to another. A person commits "aggravated assault" if the person commits an assault, as defined above, and causes serious bodily injury or uses or exhibits a deadly weapon during the commission of the assault.

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 defendant's standpoint.

"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 or any bodily member or organ.

Now if you find from the evidence beyond a reasonable doubt that on or about the 24th day of September 2007, in Walker County, Texas, the defendant, JERRY DUANE MARTIN, did intentionally or knowingly or recklessly cause serious bodily injury to Susan Canfield by striking Susan Canfield or the horse she was riding with a deadly weapon, to wit; a motor vehicle which in the manner of its use or intended use was capable of causing death or serious bodily injury, then you will find the defendant, JERRY DUANE MARTIN, guilty of the offense of aggravated assault.

If you should find from the evidence beyond a reasonable doubt that the defendant is guilty of either murder or aggravated assault, but you have a reasonable doubt as to which offense he is guilty of, then you should resolve that doubt in the defendant's favor, and in such event, you will find the defendant guilty of the lesser offense of aggravated assault.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of aggravated assault and next consider whether the defendant is guilty of manslaughter.

MANSLAUGHTER

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

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 defendant's standpoint.

Now if you find from the evidence beyond a reasonable doubt that on or about the 24th day of September 2007, in Walker County, Texas, the defendant, JERRY DUANE MARTIN, did recklessly cause the death of Susan Canfield by striking Susan Canfield or the horse she was riding with a deadly weapon, to

wit; a motor vehicle which in the manner of its use or intended use was capable of causing death or serious bodily injury, then you will find the defendant, JERRY DUANE MARTIN, guilty of the offense of manslaughter.

If you should find from the evidence beyond a reasonable doubt that the defendant is either guilty of aggravated assault or manslaughter, but you have a reasonable doubt as to which offense he is guilty of, then you should resolve that doubt in the defendant's favor, and in such event, you will find the defendant guilty of the lesser offense of manslaughter.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of manslaughter and next consider whether the defendant is guilty of criminally negligent homicide.

CRIMINALLY NEGLIGENT HOMICIDE

11. A person commits the offense of "criminally negligent homicide" if he causes the death of an individual by criminal negligence.

A person acts with "criminal negligence" or is criminally negligent, with respect to the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the result complained of will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances, as viewed from the defendant's standpoint.

Now if you find from the evidence beyond a reasonable doubt that on or about the 24th day of September 2007, in Walker County, Texas, the defendant, JERRY DUANE MARTIN, did cause the death of Susan Canfield by criminal negligence, namely by striking Susan Canfield or the horse she was riding with a deadly weapon, to wit; a motor vehicle which in the manner of its use or intended use was capable of causing death or serious bodily injury, then you will find the defendant, JERRY DUANE MARTIN, guilty of the offense of criminally negligent homicide.

If you should find from the evidence beyond a reasonable doubt that the defendant is guilty of either manslaughter or criminally negligent homicide, but

you have a reasonable doubt as to which offense he is guilty of, then you should resolve that doubt in the defendant's favor, and in such event, you will find the defendant guilty of the lesser offense of criminally negligent homicide.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "NOT GUILTY."

12. You are instructed that in considering your verdict you may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship, if any, existing between the defendant and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the alleged killing, if any.

CLOSING INSTRUCTIONS

You cannot render a verdict unless it is based upon the individual vote of all twelve (12) members of the jury. The same twelve of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than twelve jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury.

These instructions are given to you because your conduct is subject to review the same as that of the witnesses, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other juror who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

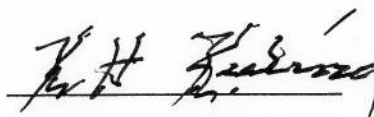
When words are used in this Charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition which you are bound to accept in place of any other meaning. The legal definitions applicable to this case are set forth in ADDENDUM "A."

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete Charge read and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror to preside during your deliberations; to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this Charge; to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge; to vote on the questions; and to certify to your verdict in the space provided for the presiding juror's signature on the verdict form. The Verdict Form applicable to this case is attached as ADDENDUM "B."

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should any one attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, report this to the judge immediately.

When you have answered all the questions you are required to answer under these instructions and your presiding juror has signed the verdict as presiding juror, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.


JUDGE PRESIDING

ADDENDUM "A"

Definitions

"Intentional" 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.

"Knowingly" 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.

"Recklessly" 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 defendant's standpoint.

"Criminal Negligence" A person acts with "criminal negligence" or is criminally negligent, with respect to the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the result complained of will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard care of that an ordinary person would exercise under all the circumstances, as viewed from the defendant's standpoint.

You are instructed that a "deadly weapon" is anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

"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 or any bodily member or organ.

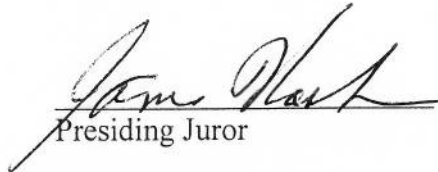
A person commits the offense of “escape” when such person escapes from custody when the person is convicted of a felony offense and is confined in a secure correctional facility. Escape is a felony offense.

ADDENDUM "B"

VERDICT SHEET

(You are instructed to answer only one of the following)

WE, THE JURY find the defendant, Jerry Duane Martin, **GUILTY** of the offense of **Capital Murder**, as alleged in the indictment.


Presiding Juror

or

WE, THE JURY find the defendant, Jerry Duane Martin, **GUILTY** of the offense of **Murder**.

Presiding Juror

or

WE, THE JURY find the defendant, Jerry Duane Martin, **GUILTY** of the offense of **Aggravated Assault**.

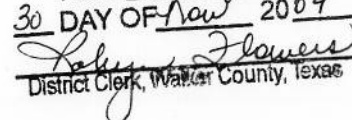
Presiding Juror

or

WE, THE JURY find the defendant, Jerry Duane Martin, **GUILTY** of the offense of **Manslaughter**.

Presiding Juror

or

FILED
TIME 3:05 pm
30 DAY OF Nov 2009

District Clerk, Waller County, Texas

WE, THE JURY find the defendant, Jerry Duane Martin, **GUILTY** of the offense of **Criminally Negligent Homicide.**

Presiding Juror

or

WE, THE JURY, find the defendant, Jerry Duane Martin, **NOT GUILTY.**

Presiding Juror