

CAUSE NO. 5580

THE STATE OF TEXAS § IN THE DISTRICT COURT  
VS. § 50TH JUDICIAL DISTRICT  
JACK WESLEY MELTON § BAYLOR COUNTY, TEXAS

CHARGE OF THE COURT

Members of the jury,

The defendant, Jack Wesley Melton, is accused of capital murder. The defendant has pled "not guilty," and you have heard all of the evidence that will be produced on whether the defendant has been proved guilty.

Both sides will soon present final arguments. Before they do so, I must now give you the instructions you must follow in deciding whether the defendant has been proved guilty or not.

You will have a written copy of these instructions to take with you and to use during your deliberations.

First I will tell you about some general principles of law that must govern your decision of the case. Then, I will tell you about the specific law applicable to this case. Finally, I will instruct you on the rules that must control your deliberations.

**GENERAL PRINCIPLES**

**The Indictment**

The indictment is not evidence of guilt. The indictment is only a document required to bring the case before you. The indictment cannot be considered in any way by the jury. Do not consider

**FILED**  
11:45 day of October 2014  
CHRIS JAKUBICEK  
Clerk District Court  
Baylor County, Texas  
By Deputy *[Signature]*

the fact that the defendant has been arrested, confined, or indicted or otherwise charged. You may not draw any inference of guilt from any of these circumstances.

### **Presumption of Innocence**

The defendant is presumed innocent of the charge. 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 law does not require a defendant to prove his innocence or produce any evidence at all. 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 presumption of innocence alone is sufficient to acquit the defendant.

### **Burden of Proof**

The burden of proof throughout the trial is always on the state. The defendant does not have the burden to prove anything. The state must prove every element of an offense beyond a reasonable doubt to establish guilt for that offense. If the state proves every element of the offense beyond a reasonable doubt, then you must find the defendant guilty. If the state does not prove every element of the offense beyond a reasonable doubt, then you must find the defendant not guilty. If, after you have considered all the evidence and these instructions, you have a reasonable doubt about whether the defendant is guilty, you must find the defendant not guilty.

### **Jury as Fact Finder**

As the jurors, you review the evidence and determine the facts and what they prove. You judge the believability of the witnesses and what weight to give their testimony.

In judging the facts and the believability of the witnesses, you must apply the law provided in these instructions.

### **Evidence**

The evidence consists of the testimony and exhibits admitted in the trial. You must consider only evidence to reach your decision. You must not consider, discuss, or mention anything that is not evidence in the trial. You must not consider or mention any personal knowledge or information you may have about any fact or person connected with this case that is not evidence in the trial.

Statements made by the lawyers are not evidence. The questions asked by the attorneys are not evidence. Evidence consists of the testimony of the witnesses and materials admitted into evidence.

Nothing the judge has said or done in this case should be considered by you as an opinion about the facts of this case or influence you to vote one way or the other.

You should give terms their common meanings, unless you have been told in these instructions that the terms are given special meanings. In that case, of course, you should give those terms the meanings provided in the instructions.

While you should consider only the evidence, you are permitted to draw reasonable inferences from the testimony and exhibits that are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence.

You are to render a fair and impartial verdict based on the evidence admitted in the case under the law that is in these instructions. Do not allow your verdict to be determined by bias or prejudice.

### **Admitted Exhibits**

You may, if you wish, examine exhibits. If you wish to examine an exhibit, the foreperson will inform the court and specifically identify the exhibit you wish to examine. Only exhibits that were admitted into evidence may be given to you for examination.

### **Note Taking**

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

## **Testimony**

Certain testimony will be read back to you by the court reporter if you request. To request that testimony be read back to you, you must follow these rules. The court will allow testimony to be read back to the jury only if the jury, in a writing signed by the foreperson, (1) states that it is requesting that testimony be read back, (2) states that it has a disagreement about a specific statement of a witness or a particular point in dispute, and (3) identifies the name of the witness who made the statement. The court will then have the court reporter read back only that part of the statement that is in disagreement.

## **The Verdict**

The law requires that you render a verdict of either “guilty” or “not guilty.” The verdict of “not guilty” simply means that the state’s evidence does not prove the defendant guilty beyond a reasonable doubt.

You may return a verdict only if all twelve of you agree on this verdict.

When you reach a verdict, the foreperson should notify the court.

## **Defendant’s Right to Remain Silent**

The defendant has a constitutional right to remain silent. The defendant may testify on his own behalf. The defendant may also choose not to testify. The defendant’s decision not to testify cannot be held against him, and it is not evidence of guilt. You must not speculate, guess, or even talk about what the defendant might have said if he had taken the witness stand or why he did not. The foreperson of the jury must immediately stop any juror from mentioning the defendant’s decision not to testify.

## **INSTRUCTIONS OF THE COURT**

### **Accusation**

In the indictment, the state accuses the defendant of having committed the offense of capital murder. Specifically, the accusation is that the defendant intentionally caused the death of an individual, namely, Florence Martin, by shooting her with a firearm, a deadly weapon, and the defendant was then and there in the course of committing or attempting to commit the offense of burglary, robbery, or aggravated sexual assault of Florence Martin.

### **Relevant Statutes**

A person commits capital murder as alleged if the person intentionally causes the death of an individual while in the course of committing or attempting to commit burglary, robbery, or aggravated sexual assault.

To prove that the defendant is guilty of capital murder, the state must prove, beyond a reasonable doubt, three elements. The elements are that —

1. the defendant caused the death of an individual;
2. the defendant did this intentionally;
3. that the defendant was at the time of the death committing or attempting to commit burglary, robbery, or aggravated sexual assault.

### **Burden of Proof**

The state must prove, beyond a reasonable doubt, the accusation of capital murder.

## **Definitions**

### *Intentionally Causing the Death of an Individual*

A person intentionally causes the death of an individual if the person has the conscious objective or desire to cause that death.

### *Burglary*

A person commits burglary if, without the effective consent of the owner, he enters a habitation not then open to the public, with the intent to commit a felony or theft; remains concealed, with the intent to commit a felony or theft, in a habitation; or enters a habitation and commits or attempts to commit a felony or theft.

### *Enter*

“Enter” means to intrude any part of the body.

### *Course of Committing Theft*

Conduct is engaged in “in the course of committing theft” if that conduct was engaged in during an attempt to commit, during the commission of, or in immediate flight after the attempt or commission of theft.

### *Attempt to Commit Theft*

Conduct is engaged in during an attempt to commit theft if at the time of the conduct the person has the intent to commit theft and engages in an act pursuant to that intent amounting to more than mere preparation to commit theft.

### *Theft*

Theft is a criminal offense requiring proof that—

1. the person appropriated property of another;
2. that appropriation was unlawful; and
3. the person did this with the intent to deprive the owner of the property.

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

"Appropriate" means to acquire or otherwise exercise control over property other than real property.

"Property" means real property, tangible or intangible personal property, including anything severed from land; or a document, including money, that represents or embodies anything of value.

#### *Course of Committing Burglary*

Conduct is engaged in "in the course of committing burglary" if that conduct was engaged in during an attempt to commit, during the commission of, or in immediate flight after the attempt or commission of burglary.

#### *Attempt to Commit Burglary*

Conduct is engaged in during an attempt to commit burglary if at the time of the conduct the person has the intent to commit burglary and engages in an act pursuant to that intent amounting to more than mere preparation to commit burglary.



### *Robbery*

A person commits robbery if, in the course of committing theft and with intent to obtain or maintain control of the property, the person intentionally, knowingly, or recklessly causes bodily injury to another.

### *Bodily Injury*

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

### *Intentionally Causing Bodily Injury*

A person intentionally causes bodily injury to another if it is the person’s conscious objective or desire to cause the bodily injury to another.

### *Knowingly Causing Bodily Injury*

A person knowingly causes bodily injury to another if the person is aware that the person’s conduct is reasonably certain to cause the bodily injury to another.

### *Recklessly Causing Bodily Injury*

A person recklessly causes bodily injury to another if the person is aware of but consciously disregards a substantial and unjustifiable risk that the person’s action will cause bodily injury to another. 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.

### *Course of Committing Theft*

Conduct is engaged in “in the course of committing theft” if that conduct was engaged in during an attempt to commit, during the commission of, or in immediate flight after the attempt or commission of theft.

### *Attempt to Commit Theft*

Conduct is engaged in during an attempt to commit theft if at the time of the conduct the person has the intent to commit theft and engages in an act pursuant to that intent amounting to more than mere preparation to commit theft.

### *Theft*

Theft is a criminal offense requiring proof that—

1. the person appropriated property of another;
2. that appropriation was unlawful; and
3. the person did this with the intent to deprive the owner of the property.

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

“Appropriate” means to acquire or otherwise exercise control over property other than real property.

“Property” means real property, tangible or intangible personal property, including anything severed from land; or a document, including money, that represents or embodies anything of value.

### *Course of Committing Robbery*

Conduct is engaged in “in the course of committing robbery” if that conduct was engaged in during an attempt to commit, during the commission of, or in immediate flight after the attempt or commission of robbery.

### *Attempt to Commit Robbery*

Conduct is engaged in during an attempt to commit robbery if at the time of the conduct the person has the intent to commit robbery and engages in an act pursuant to that intent amounting to more than mere preparation to commit robbery.

### *Aggravated Sexual Assault*

A person commits aggravated sexual assault if he intentionally or knowingly causes the penetration of the anus or female sexual organ of another person by any means, without that person’s consent; causes the penetration of the mouth of another person by the sexual organ of the actor, without the person’s consent; or causes the sexual organ of another person, without that person’s consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor, and the person causes serious bodily injury or attempts to cause the death of the victim in the course of the same criminal episode; by acts or words places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person; or uses or exhibits a deadly weapon in the course of the same criminal episode.

A 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 or the actor compels the

other person to submit or participate by threatening to use force or violence against the other person and the other person believes that the actor has the present ability to execute the threat.

*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 of any bodily member or organ.

*Bodily Injury*

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

*Deadly Weapon*

“Deadly Weapon” means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury or anything that in the manner of its use or intended use is capable of causing serious bodily injury.

*Course of Committing Aggravated Sexual Assault*

Conduct is engaged in “in the course of committing aggravated sexual assault” if that conduct was engaged in during an attempt to commit, during the commission of, or in immediate flight after the attempt or commission of aggravated sexual assault.

*Attempt to Commit Aggravated Sexual Assault*

Conduct is engaged in during an attempt to commit aggravated sexual assault if at the time of the conduct the person has the intent to commit aggravated sexual assault and engages in an act

pursuant to that intent amounting to more than mere preparation to commit aggravated sexual assault.

### **Application of Law to Facts**

You must determine whether the state has proved, beyond a reasonable doubt, three elements. The elements are that —

1. the defendant, in Baylor County, Texas, on or about October 30, 1994, caused the death of Florence Martin, by shooting her with a firearm;
2. the defendant did this intentionally;
3. the defendant was then and there in the course of committing or attempting to commit the offense of (a) burglary, (b) robbery, or (c) aggravated sexual assault of Florence Martin.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of elements 1, 2, and 3 as listed above, you must find the defendant “not guilty” as alleged in the indictment.

If you all agree the state has proved, beyond a reasonable doubt, each of the three elements 1, 2, and 3 listed above, you must find the defendant “guilty” of capital murder as alleged in the indictment. You do not have to all agree as to whether the state has proved 3(a)(burglary), 3(b)(robbery), or 3(c)(aggravated sexual assault), as long as each of you believes that the State has proven, beyond a reasonable doubt, elements 1, 2, and at least one of the following elements: 3(a)(burglary), 3(b)(robbery), or 3(c)(aggravated sexual assault).

## **VOLUNTARY INTOXICATION**

“Intoxication” means a disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

Voluntary intoxication is not a defense to the commission of a crime.

But you are reminded that the state must prove all elements of the offense beyond a reasonable doubt.

## **RULES THAT CONTROL DELIBERATIONS**

You must follow these rules while you are deliberating and until you reach a verdict. After the closing arguments by the attorneys, you will go into the jury room.

Your first task will be to pick your foreperson. The foreperson should conduct the deliberations in an orderly way. Each juror has one vote, including the foreperson. The foreperson must supervise the voting, vote with other members on the verdict, and sign the verdict sheet.

While deliberating and until excused by the trial court, all jurors must follow these rules:

1. You must not discuss this trial with any court officer, or the attorneys, or anyone not on the jury.
2. You must not discuss this case unless all of you are present in the jury room. If anyone leaves the room, then you must stop your discussions about the case until all of you are present again.
3. You must communicate with the judge only in writing, signed by the foreperson and given to the judge through the officer assigned to you.
4. You must not conduct any independent investigations, research, or experiments.
5. You must tell the judge if anyone attempts to contact you about the case before you reach your verdict.

Your sole duty at this point is to determine whether the defendant has been proved guilty.

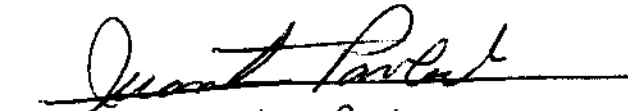
You must restrict your deliberations to this matter.

After you have arrived at your verdict, you are to use the form attached to these instructions.

You should have your foreperson sign his or her name to the particular section that conforms to your verdict.

After the closing arguments by the attorneys, you will begin your deliberations to decide your verdict.

SIGNED this 27<sup>th</sup> day of October, 2014.

  
Juanita Parlick  
Judge Presiding

CAUSE NO. 5580

THE STATE OF TEXAS

§

IN THE DISTRICT COURT

VS.

§

50TH JUDICIAL DISTRICT

JACK WESLEY MELTON

§

BAYLOR COUNTY, TEXAS

**VERDICT— GUILTY**

We, the jury, find the defendant, Jack Wesley Melton, guilty of Capital Murder, as charged in the indictment.

*Tim H. Orsak*

Foreperson of the Jury

*Tim H. Orsak*

Printed Name of Foreperson

**VERDICT — NOT GUILTY**

We, the jury, find the defendant, Jack Wesley Melton, not guilty as charged in the indictment.

\_\_\_\_\_  
Foreperson of the Jury

\_\_\_\_\_  
Printed Name of Foreperson

*Verdict accepted at order  
entered upon minutes  
of Court Panel  
10-27-2011*