

CAUSE NO. CR-17-0854-A

FILED this 3 day of March
20 17 11:37 A.M.
CLERK DISTRICT COURT, HAYS CO. TX
By: [Signature] Deputy

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 22ND JUDICIAL DISTRICT
KYLE RANDALL SAMPLE § HAYS COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, Kyle Randall Sample, is accused of Capital Murder (Count 1) and Murder (Count 2). The defendant has pleaded “not guilty” to both charges, 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 the fact that the defendant has been arrested,

confined, 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 the offense beyond a reasonable doubt to establish guilt for the offense. It is not required that the prosecution prove guilt beyond all possible doubt. If the State proves every element 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 of 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.

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.

Evidence of Other Crimes or Bad Acts by the Defendant

During the trial, you heard evidence that the defendant may have committed wrongful acts not charged in the indictment. The State offered the evidence as proof of the defendant's identity, motive, intent, knowledge, or absence of mistake or accident as these factors relate to the offense charged in the indictment. You are not to consider evidence of such a wrongful act at all unless you find, beyond a reasonable doubt, that the defendant did, in fact, commit the wrongful act. Those of you who believe the defendant did the wrongful act may consider it.

Even if you do find that the defendant committed a wrongful act, you may consider this evidence only for the limited purpose I have described. You may not use this evidence to prove that the defendant is a bad person and for this reason was likely to commit the charged offense.

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.

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.

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.

Evidence in Prosecutions for Capital Murder or Murder

You may consider all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense, if any.

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.

INSTRUCTIONS OF THE COURT COUNT 1: CAPITAL MURDER

Accusation

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 Ryan Kincaid, by shooting him with a firearm, and the defendant was then

and there in the course of committing or attempting to commit the offense of Robbery.

Relevant Statutes

A person commits the offense of Capital Murder if the person intentionally causes the death of an individual while in the course of committing or attempting to commit Robbery.

To prove that the defendant is guilty of Capital Murder as alleged, the State must prove, beyond a reasonable doubt, three elements. The elements are that—

1. The defendant caused the death of an individual; and
2. The defendant did this intentionally; and
3. This was done in the course of committing or attempting to commit Robbery.

Burden of Proof

The State must prove, beyond a reasonable doubt, the accusation of Capital Murder.

Definitions

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 that 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 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.

“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 commits Robbery if, in the course of committing theft and with intent to obtain or maintain control of the property, the person—

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.

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

A person commits Theft if the person—

1. Appropriates the property of another; and
2. The appropriation was unlawful; and

3. The appropriation was done with the intent to deprive the owner of the property.

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.

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.

“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.

A person causes the death of another if, but for that person’s conduct, the death of the other would not have occurred.

Application of Law to Facts

To find the defendant guilty of Capital Murder, you must determine whether the State has proved, beyond a reasonable doubt, three elements. The elements are that on or about the 19th day of June, 2017, in Hays County, Texas—

1. The defendant, Kyle Randall Sample, caused the death of Ryan Kincaid by shooting him with a firearm; and
2. The defendant intentionally caused Ryan Kincaid’s death; and
3. The defendant caused Ryan Kincaid’s death while in the course of committing or attempting to commit Robbery.

If you all agree the State has proved, beyond a reasonable doubt, each of the three elements listed above, you must find the defendant “guilty” of Capital Murder and so indicate on the attached verdict form.

If you all agree the State has failed to prove, beyond a reasonable doubt, one or more of elements 1, 2, or 3 listed above, you must find the defendant “not guilty” and so indicate on the attached verdict form.

The State has charged the defendant of both Capital Murder (Count 1) and Murder (Count 2). You may discuss the offenses in any order you choose. If, after considering both the charge of Capital Murder and Murder, and you believe from the evidence, beyond a reasonable doubt, that the defendant is guilty of either Capital Murder or Murder, but you have a reasonable doubt about which of the two offenses he is guilty of, you must resolve that doubt in the defendant’s favor. In that situation, you must find him guilty of Murder, the lesser offense. However, the jury may return a guilty verdict as to both counts if it believes the State has proved both Capital Murder and Murder beyond a reasonable doubt, and has no reasonable doubt about which of the two offenses was in fact proved.

Regardless of whether you have found the defendant “guilty” or “not guilty” with respect to Count 1, you shall consider whether the defendant has been proved guilty as to Count 2.

**INSTRUCTIONS OF THE COURT
COUNT 2: MURDER**

Accusation

The State accuses the defendant of having committed the offense of Murder. Specifically, the accusation is that the defendant—

1. Intentionally or knowingly caused the death of Ryan Kincaid, by shooting Ryan Kincaid with a firearm; or
2. With intent to cause serious bodily injury to Ryan Kincaid, committed an act clearly dangerous to human life that caused the death of Ryan Kincaid, by shooting Ryan Kincaid with a firearm; or
3. Committed or attempted to commit a felony, namely Robbery or Aggravated Assault, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, committed or attempted to commit an act clearly dangerous to human life that caused the death of Ryan Kincaid, by shooting Ryan Kincaid with a firearm.

Relevant Statutes

A person commits the offense of Murder if the person—

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; or
3. Commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

To prove that the defendant is guilty of Murder, the State must prove, beyond a reasonable doubt, various elements. The elements are that:

1. The defendant—
 - a. Caused the death of another individual; and

- b. Did so intentionally or knowingly; or
- 2. The defendant—
 - a. Intended to cause serious bodily injury; and
 - b. Committed an act clearly dangerous to human life; and
 - c. The act clearly dangerous to human life caused the death of another individual; or
- 3. The defendant—
 - a. Committed or attempted to commit a felony, other than manslaughter; and
 - b. In the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt of that felony, committed or attempted to commit an act clearly dangerous to human life; and
 - c. The act clearly dangerous to human life caused the death of an individual.

Burden of Proof

The State must prove, beyond a reasonable doubt, the accusation of Murder.

Definitions

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 the 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 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.

“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 commits Robbery if, in the course of committing theft and with intent to obtain or maintain control of the property, the person—

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.

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

A person commits Aggravated Assault if—

1. The person intentionally or knowingly threatens another with imminent bodily injury, and uses or exhibits a deadly weapon during the commission of the assault; or

2. The person intentionally, knowingly, or recklessly causes bodily injury to another, and uses or exhibits a deadly weapon during the commission of the assault; or
3. The person intentionally, knowingly, or recklessly causes serious bodily injury to another.

Conduct is engaged “in the course of committing Aggravated 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 Assault.

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

The offenses of Robbery and Aggravated Assault are felony offenses other than manslaughter.

“Deadly weapon” means:

1. A firearm; or
2. Anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or
3. Anything that in the manner of use or intended use is capable of causing 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.

A person causes the death of another if, but for that person's conduct, the death of the other would not have occurred.

Application of Law to Facts

To find the defendant guilty of Murder, you must determine whether the State has proved, beyond a reasonable doubt, various elements. The elements are that on or about the 19th day of June, 2017, in Hays County, Texas:

1. The defendant, Kyle Randall Sample—
 - a. Caused the death of Ryan Kincaid, by shooting Ryan Kincaid with a firearm; and
 - b. Intentionally or knowingly caused Ryan Kincaid's death; or
2. The defendant—
 - a. Intended to cause serious bodily injury to Ryan Kincaid; and
 - b. Committed an act clearly dangerous to human life by shooting Ryan Kincaid with a firearm; and
 - c. Shooting Ryan Kincaid with a firearm caused the death of Ryan Kincaid; or
3. The defendant—
 - a. Committed or attempted to commit Robbery or Aggravated Assault; and
 - b. In the course of and in furtherance of the commission or attempted commission, or in immediate flight from the commission or attempted commission of Robbery or Aggravated Assault, committed or attempted to commit an act clearly dangerous to human life by shooting Ryan Kincaid with a firearm; and

- c. Shooting Ryan Kincaid with a firearm caused the death of Ryan Kincaid.

Before you may convict the defendant of Murder, each of you must agree that the State has proved, beyond a reasonable doubt, all of the elements of either theory 1, 2, or 3, listed above. All of you need not agree on which theory of Murder applies, so long as each of you finds that all of the elements of one or more of the theories listed above have been proven beyond a reasonable doubt.

If you all agree the State has proved, beyond a reasonable doubt, all of the elements of either 1, 2, or 3, listed above, you must find the defendant “guilty” of Murder and so indicate on the attached verdict form.

If you all agree the State has failed to prove, beyond a reasonable doubt, each of 1, 2, and 3 listed above, you must find the defendant “not guilty” and so indicate on the attached verdict form.

**INSTRUCTIONS OF THE COURT—SPECIAL ISSUE
RELEVANT TO USE OR EXHIBITION OF DEADLY WEAPON**

You must also address, with respect to both Counts 1 and 2, whether the State has proved, beyond a reasonable doubt, that the defendant used or exhibited a deadly weapon during the commission of the offense or during immediate flight from committing it.

Definitions

“Deadly weapon” means:

1. A firearm; or
2. Anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

3. Anything that in the manner of use or intended use is capable of causing 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.

“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.

Application of Law to Facts—Count 1

With respect to Count 1 of the indictment, the State has alleged that the defendant used or exhibited a deadly weapon, namely, a firearm, in the course of committing the offense of Capital Murder.

You must decide whether the State has proved, beyond a reasonable doubt, that the defendant used or exhibited a deadly weapon, namely, a firearm, during the commission of the offense or in immediate flight therefrom.

If you decide the State has proved this, beyond a reasonable doubt, indicate this on the verdict form for Count 1. If you decide the State has not proved this, indicate this in your verdict.

Application of Law to Facts—Count 2

With respect to Count 2 of the indictment, the State has alleged that the defendant used or exhibited a deadly weapon, namely, a firearm, in the course of committing the offense of Murder.

You must decide whether the State has proved, beyond a reasonable doubt, that the defendant used or exhibited a deadly weapon, namely, a firearm, during the commission of the offense or in immediate flight therefrom.

If you decide the State has proved this, beyond a reasonable doubt, indicate this on the verdict form for Count 2. If you decide the State has not proved this, indicate this in your verdict.

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 case 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. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with other jurors. Turn off all phones and other electronic devices. While you are deliberating, do not communicate with anyone through any electronic device. For example, do not communicate by phone, text message, email message, chat room, blog, or social networking site. Do not record or photograph any part of these court proceedings.
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 of the form that conforms to your verdict.

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



The Honorable Bruce Boyer
22nd Judicial District Court
Hays County, Texas