

CAUSE NO. B-15,717

MAY 09 2008

THE STATE OF TEXAS

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IN THE DISTRICT COURT OF

VS.

HENDERSON COUNTY, TEXAS Henderson County, Texas

RANDALL WAYNE MAYS

By AA Deputy

392ND JUDICIAL DISTRICT

SITTING FOR THE

173RD JUDICIAL DISTRICT

COURT'S CHARGE

MEMBERS OF THE JURY:

The Defendant, Randall Wayne Mays, stands charged by indictment with the offense of Capital Murder, alleged to have been committed on or about the 17th day of May, 2007, in Henderson County, Texas. To this charge, the Defendant, Randall Wayne Mays, has pled not guilty. You are instructed that the law applicable to this case is as follows:

I.

You are instructed that our law provides that a person commits the offense of Capital Murder if he intentionally or knowingly causes the death of an individual, knowing that the individual was then and there a peace officer acting in the lawful discharge of an official duty.

II.

"Individual" means a human being who is alive.

A deputy sheriff is a "peace officer."

III.

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.

IV.

You are instructed that you may consider all relevant facts and circumstances surrounding the killing and any previous relationship existing between the Defendant and Tony Ogburn, if any, together with all relevant facts and circumstances going to show the condition of the mind of the Defendant at the time of the alleged offense.

You are further instructed that you may consider any mental condition, if any, of the Defendant, that he did or did not act intentionally or knowingly in committing the alleged offense, but you cannot consider any mental condition, if any, that the Defendant lacked the capacity to act intentionally or knowingly.

V.

You are instructed that if there is evidence before you regarding the Defendant having committed crimes, wrongs, or acts on dates other than May 17, 2007, you cannot consider the same in determining whether the Defendant is guilty of the offense alleged against him in this case.

VI.

CAPITAL MURDER

Now, bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the Defendant, RANDALL WAYNE MAYS, in Henderson County, Texas, on or about the 17th day of May, 2007, did then and there intentionally or knowingly cause the death of an individual, namely, Tony Ogburn, by shooting Tony Ogburn in the head,

and the said Tony Ogburn was then and there a peace officer who was acting in the lawful discharge of an official duty, to-wit: attempting to arrest or detain the Defendant, and the Defendant knew Tony Ogburn was a peace officer, then you will find the Defendant guilty of the offense of Capital Murder as charged in the indictment, and so say by your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of Capital Murder and next consider whether he is guilty of the offense of Murder.

VII.

MURDER

A person commits the offense of Murder if he intentionally or knowingly causes the death of an individual.

Now, bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the Defendant, Randall Wayne Mays, on or about the 17th day of May, 2007, in Henderson County, Texas, did intentionally or knowingly cause the death of an individual, namely, Tony Ogburn, by shooting the said Tony Ogburn in the head, then you will find the Defendant guilty of Murder.

If you find from the evidence beyond a reasonable doubt that the Defendant is either guilty of Capital Murder or Murder, under the instructions herein given you, but you have a reasonable doubt as to which of said offenses he is guilty, then you should resolve that doubt in the Defendant's favor and find him guilty of only the lesser offense of Murder.

VIII

Our law provides that a Defendant may testify in his own behalf if he elects to do so.

This, however, is a privilege accorded a Defendant, and in the event he elects not to testify, that fact cannot be taken as a circumstance against him. In this case, the Defendant has elected not to testify, and you are instructed that you cannot and must not refer or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against the Defendant.

IX

All persons are presumed 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 the Defendant and say by your verdict "not guilty".

X.

The indictment in this case is no evidence whatsoever of the guilt of the Defendant. It is a mere pleading necessary in order to bring this case into court for trial and you will consider it for no purpose at all.

XI.

It is your duty to consult with one another and to deliberate in an effort to reach a verdict based on these instructions if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are the judges of the facts. Your sole duty is to decide whether the State has proved the Defendant guilty beyond a reasonable doubt.

You are instructed that your verdict must be unanimous.

You are the exclusive judges of the facts proven, 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 given herein, and be governed thereby.

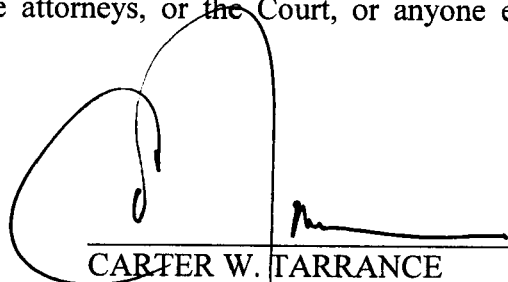
You must decide the issues in the case solely on the testimony and exhibits admitted into evidence before you. You must not consider any fact or evidence learned by you outside the courtroom. You also may not consider any fact or evidence that you were instructed to disregard during trial.

You must not tell other jurors matters of your own personal or professional knowledge or those of other persons, nor relate to them any special knowledge you may have about any facts or person connected with this case that is not a part of the evidence you heard during the trial.

You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against the State or the Defendant in this case, for each is entitled to the same fair and impartial consideration.

After you retire to the jury room, you should select one of your members as your Foreperson. It is his or her duty to preside at your deliberations, vote with you, and when you have reached a unanimous verdict, to certify to your verdict by using the attached forms and signing the same as your Foreperson.

If the jury wishes to communicate with the Court pertaining to this case, such communication must be in writing and signed by the Foreperson and handed to the Bailiff. Please ring the buzzer in the jury room and wait for the Bailiff who will be in attendance. Do not attempt to talk to the Bailiff, or the attorneys, or the Court, or anyone else concerning any question you may have.



CARTER W. TARRANCE
Judge Presiding

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VERDICT FORM

CAPITAL MURDER

We, the Jury, find the Defendant, Randall Wayne Mays:

not guilty of Capital Murder, as charged in the indictment.

Foreperson

-OR-

guilty of Capital Murder, as charged in the indictment.



Foreperson

ONLY if you have found the Defendant not guilty of Capital Murder, then consider the following offense of Murder.

MURDER

We, the Jury, find the Defendant, Randall Wayne Mays:

not guilty of Murder.

Foreperson

-OR-

guilty of Murder.

Foreperson