

AUG 30 2010

TIME 1:49
BY LC DEPUTY

CAUSE NO. 1078788D

THE STATE OF TEXAS

IN THE 213th DISTRICT COURT

VS.

OF

DUSTIN W. NALL

TARRANT COUNTY, TEXAS

COURT'S CHARGE

MEMBERS OF THE JURY:

The defendant, Dustin W. Nall, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 4th day of August 2007, in Tarrant County, Texas. To this charge, the defendant has pleaded not guilty.

You are instructed that the law applicable to this case is as follows:

A person commits the offense of murder if he intentionally causes the death of an individual.

A person commits capital murder when such person intentionally commits the murder in the course of committing or attempting to commit the felony offense of robbery or burglary of a habitation.

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 intentionally causes bodily injury to another; or intentionally threatens or places another in fear of imminent bodily injury or death.

A person commits the offense of burglary of a habitation if, without the effective consent of the owner, he enters a habitation with intent to commit a theft or an assault or a felony; or enters a habitation and commits or attempts to commit a theft or an assault.

Our law provides that a person commits an assault if he intentionally causes bodily injury to another or intentionally threatens another with imminent bodily injury.

“Individual” means a human being who has been born and is alive.

“Habitation” means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes each separately secured or occupied portion of the structure and each structure appurtenant to or connected with the structure.

“Enter” means to intrude any part of the body; or any physical object connected with the body.

“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.

“Attempt” means to commit an act with specific intent to commit an offense where the act committed amounts to more than mere preparation but fails to effect the commission of the offense intended.

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.

“Appropriation” and “appropriate,” as those terms are used herein, mean to acquire or otherwise exercise control over property other than real property.

“Deprive” as used herein, means to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner.

“Effective consent” means assent in fact, whether express or apparent and includes consent by a person legally authorized to act for the owner. Consent is not effective if induced

by deception or coercion.

“Owner” means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the defendant.

“Possession” means actual care, custody, control or management of the property.

“Property” as used herein, means tangible or intangible personal property, or documents, including money, that represents or embodies anything of value.

“Act” means a bodily movement, whether voluntary or involuntary, and includes speech.

“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.

You are instructed that voluntary intoxication does not constitute a defense to the commission of a crime.

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

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.

You are instructed that if there is any testimony before you in this case regarding the defendant having committed crimes, wrongs or acts other than the crime alleged in the indictment in this case, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other crimes, wrongs or acts, if any were committed, and even then you may only consider those other crimes, wrongs or acts in determining the proof of the defendant’s intent.

APPLICATION PARAGRAPH – CAPITAL MURDER

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about the 4th day of August 2007, in Tarrant County, Texas, the defendant, Dustin W. Nall, did then and there intentionally cause the death of an individual, Bertha Wilkerson, by cutting or stabbing her with a knife, and the said defendant was then and there in the course of committing or attempting to commit the offense of robbery of Bertha Wilkerson; or that the defendant did then and there intentionally cause the death of an individual, Bertha Wilkerson, by cutting or stabbing her with a knife and the said defendant was then and there in the course of committing or attempting to commit the offense of burglary of a habitation of Bertha Wilkerson, who was the owner of said habitation, then you will find the defendant guilty of capital murder as charged in the indictment.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty of the offense of capital murder as charged in the indictment.

You are instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship existing between the accused and the deceased, if any, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the cutting or stabbing in question, if any.

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, consider, or in any manner refer to the fact that

the defendant has not testified.

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 fact that the defendant has been arrested, confined, or indicted for or otherwise charged with the offense gives rise to no inference of guilt at the defendant's 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 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.

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 other source than the witness stand.

Your verdict must be by a unanimous vote of all members of the jury. In deliberating on the case you are not to refer to or discuss any matter or issue not in evidence before you.

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 herein given, and be governed thereby.

Any further communications must be in writing by your foreperson through the bailiff to the Court, except as to your personal needs which may be communicated orally to the bailiff in

charge.

After you retire to the jury room, you should select one of your members as your foreman. It is his or her duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form and signing the same as your foreman.


Louis Sturns, Judge
213th District Court

VERDICT FORMS

We, the jury, find the defendant, Dustin W. Nall, guilty of the offense of capital murder as charged in the indictment.



FOREPERSON

FILED
THOMAS A WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS
AUG 30 2010
TIME 2:33
BY AC DEPUTY

-OR-

We, the jury, find the defendant, Dustin W. Nall, not guilty.

FOREPERSON

NAME DUSTIN W NALL
ADDRESS 1706 W DIVISION
ARLINGTON TX 76012
RACE W SEX M AGE 25 DOB 4/24/1982
CASE NO. 1078788 DATE FILED 8/9/2007
CID NO. 0541024

OFFENSE MURDER-CAPITAL (AFTER 9/1/99)
DATE 8/4/2007 Habitual
I.P. BERTHA WILKERSON
AGENCY Arlington PD
OFFENSE NO. 070056277
COURT 213th District Court

INDICTMENT NO. 1078788 **D**

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURORS OF TARRANT COUNTY, TEXAS,

duly elected, tried, empaneled, sworn, and charged to inquire of offenses committed in Tarrant County, in the State of Texas, upon their oaths do present in and to the

213th DISTRICT COURT

of said County that DUSTIN W NALL, hereinafter called Defendant, in the County of Tarrant and State aforesaid, on or about the 4th day of August 2007, did

THEN AND THERE INTENTIONALLY CAUSE THE DEATH OF AN INDIVIDUAL, BERTHA WILKERSON, BY CUTTING OR STABBING HER WITH A KNIFE AND THE SAID DEFENDANT WAS THEN AND THERE IN THE COURSE OF COMMITTING OR ATTEMPTING TO COMMIT THE OFFENSE OF ROBBERY, OF BERTHA WILKERSON;

PARAGRAPH TWO: AND IT IS FURTHER PRESENTED IN AND TO SAID COURT THAT THE DEFENDANT IN THE COUNTY OF TARRANT AND STATE AFORESAID ON OR ABOUT THE 4TH DAY OF AUGUST, 2007, DID THEN AND THERE INTENTIONALLY CAUSE THE DEATH OF AN INDIVIDUAL, BERTHA WILKERSON, BY CUTTING OR STABBING HER WITH A KNIFE AND THE SAID DEFENDANT WAS THEN AND THERE IN THE COURSE OF COMMITTING OR ATTEMPTING TO COMMIT THE OFFENSE OF BURGLARY OF A HABITATION OF BERTHA WILKERSON, WHO WAS THE OWNER OF SAID HABITATION;

DEADLY WEAPON FINDING NOTICE: AND IT IS FURTHER PRESENTED TO SAID COURT THAT A DEADLY WEAPON, TO-WIT: A KNIFE, THAT IN THE MANNER OF ITS USE OR INTENDED USE WAS CAPABLE OF CAUSING DEATH OR SERIOUS BODILY INJURY, WAS USED OR EXHIBITED DURING THE COMMISSION OF THE FELONY OFFENSE OR FELONY OFFENSES SET OUT ABOVE,

HABITUAL OFFENDER NOTICE: AND IT IS FURTHER PRESENTED TO SAID COURT THAT PRIOR TO THE COMMISSION OF THE OFFENSE OR OFFENSES SET OUT ABOVE, THE DEFENDANT WAS FINALLY CONVICTED OF THE FELONY OFFENSE OF CREDIT CARD ABUSE, IN THE CRIMINAL DISTRICT COURT NUMBER ONE OF TARRANT COUNTY, TEXAS, IN CAUSE NUMBER 0907128D, ON THE 17TH DAY OF DECEMBER, 2003, AND, THAT PRIOR TO THE COMMISSION OF THE OFFENSE OR OFFENSES FOR WHICH THE DEFENDANT WAS CONVICTED AS SET OUT ABOVE, THE DEFENDANT WAS FINALLY CONVICTED OF THE FELONY OFFENSE OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON, TO-WIT: A FIREARM, IN THE 372ND DISTRICT COURT OF TARRANT COUNTY, TEXAS, IN CAUSE NUMBER 0770978D, ON THE 5TH DAY OF FEBRUARY, 2001,

NAME DUSTIN W NALL
CASE NO. 1078788D
PAGE 2 of 2

Testified in front of the Grand Jury

Marissa C. Corder

Laura D. Addison

Richard C. Addison

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Imi Curry

Criminal District Attorney
Tarrant County, Texas
INDICTMENT - ORIGINAL

Don Lerner

Foreman of the Grand Jury

Filed (Clerk's use only)	
FILED	
THOMAS A. WILDER, DIST. CLERK TARRANT COUNTY, TEXAS	
OCT 26 2007	
TIME	<u>3:30</u>
BY	<u>VB</u> DEPUTY