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MAY

NO. 69,920

THE STATE OF TEXAS \* IN THE 264<sup>TH</sup> JUDICIAL  
VS. \* DISTRICT COURT OF  
CHANCE DEALLEN KELLER \* BELL COUNTY, TEXAS

**CHARGE OF THE COURT**

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, Chance Deallen Keller, stands charged by indictment with the offense of Capital Murder, alleged to have occurred on or about the 26th day of February, 2012, in Bell County, Texas. To this indictment the Defendant has pleaded not guilty. You are instructed the law applicable to this case is as follows:

I.

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

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

A person commits the offense of capital murder if he commits murder, as defined above, in the course of committing or attempting to commit the offense of robbery.

II.

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:

(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.

"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.

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

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.

"Appropriate" means:

(1) to bring about a transfer or purported transfer of title to or other nonpossessory interest in property, whether to the actor or another; or

(2) to acquire or otherwise exercise control over property other than real property.

"Deprive" means:

(1) 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;

(2) to restore property only upon payment of reward or other compensation; or

(3) to dispose of property in a manner that makes recovery of the property by the owner unlikely.

"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 actor.

"Property" means:

(A) tangible or intangible personal property including anything severed from land; or

(B) a document, including money, that represents or embodies anything of value.

"Consent" means assent in fact, whether express or apparent.

"Effective consent" includes consent by a person legally authorized to act for the owner.

Consent is not effective if:

- (A) induced by deception or coercion;
- (B) given by a person the actor knows is not legally authorized to act for the owner;
- (C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions; or
- (D) given solely to detect the commission of an offense.

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

### III.

A person acts intentionally, or with intent, with respect to the 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 nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. 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 circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or 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.

A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated or risked is that:

- (1) a different offense was committed; or
- (2) a different person or property was injured, harmed, or otherwise affected.

Voluntary intoxication does not constitute a defense to the commission of crime.

#### IV.

You are further instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, of Steven Wright, and the previous relationship existing between the defendant and Steven Wright, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense alleged in the indictment.

You are instructed that in order to convict the Defendant of the offense of capital murder you must find from the evidence beyond a reasonable doubt that the murder, if any, occurred in the course of the commission or attempted commission of the offense of robbery, as herein defined, or *that it occurred in an attempt to commit, during the commission, or in the immediate flight after the attempt or the commission of the offense of robbery.*

#### V.

Now bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt that the defendant, Chance Deallen Keller, on or about the 26<sup>th</sup> day of February, 2012, in the county of Bell, State of Texas, did then and there intentionally cause the death of an individual, namely, Steven Wright, by shooting the said Steven Wright with a firearm, and the defendant was then and there in the course of committing or attempting to commit the offense of robbery of Steven Wright, you will find the defendant guilty of Capital

Murder and so say by your verdict. But if you do not so believe or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Capital Murder and next consider whether the defendant is guilty of the lesser included offense of Murder.

#### VI.

As used in this Section VI, a person commits the offense of murder if the person intentionally or knowingly causes the death of an individual, or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.

"Serious bodily injury" means a 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.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that on or about the 26th day of February, 2012, in the County of Bell, and State of Texas, the Defendant, Chance Deallen Keller, intentionally or knowingly cause the death of an individual, namely, Steven Wright, by shooting him with a firearm, or intending to cause serious bodily injury to Steven Wright committed an act clearly dangerous to human life, to-wit: shooting him with a firearm, thereby causing his death, then, in either of those events, you will find the defendant guilty of murder. But, if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict not guilty.

#### VII.

In a criminal case, the law permits the defendant to testify in his own behalf; but the same law provides that his failure to testify shall not be considered as a circumstance against him. You will, therefore, not consider the failure of the defendant to testify as a circumstance against him;

and you will not in your retirement to consider your verdict allude to, comment on, or in any manner refer to the fact that the defendant has not testified.

#### VIII.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed offenses other than the offense alleged against him 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 offenses, if any were committed, and even then you may only consider the same in determining the identity, intent, knowledge, preparation, motive, or plan of the defendant, in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

#### IX.

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 a person has been arrested, confined, indicted for, or otherwise charged with an 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 this 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.

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 him and say by your verdict "Not guilty".

#### X.

You are further instructed as a part of the law in this case that the indictment against the defendant is not evidence in the case, and that the true and sole use of the indictment is to charge the offense, and to inform the defendant of the offense alleged against him. The reading of the indictment to the jury in the statement of the case of the State against the defendant cannot be considered as a fact or circumstance against the defendant in your deliberations.

In deliberating on the cause you are not to refer to or discuss any matter or issue not in evidence before you; and in determining the guilt or innocence of the defendant, you shall not discuss or consider the punishment, if any, which may be assessed against the defendant in the event he is found guilty.

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 source other than the witness stand.

You have a right to consider all of the facts that are shown by the evidence, and to draw natural and reasonable inferences from such facts. You alone have the authority and the duty to determine what the facts are in this case. In evaluating the evidence, you must totally disregard what you believe is my opinion about any factual matter.

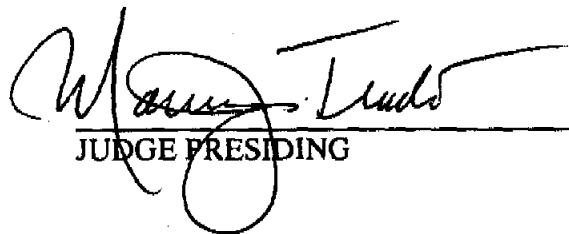
You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given to the testimony. But you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

You must not consider facts that have not been introduced into evidence or legal principles not contained in this charge. It is improper for a juror to discuss or consider anything which they know or have learned outside of the testimony presented to you, and the law contained in this charge. If a juror should discover that they have any outside information, they must not mention this information to any other juror, nor consider it themselves in arriving at a verdict.

Questions and comments of the attorneys do not constitute testimony and must not be considered as evidence. You must also disregard any statement of the attorneys that is inconsistent with the law contained in this charge.

XI.

After the reading of this Charge, you shall not be permitted to separate from each other, nor shall you talk with anyone not of your jury. After argument of counsel, you will retire and select one of your members as your foreman. It is his or her duty to preside at your deliberations and to vote with you in arriving at a unanimous verdict. After you have arrived at your verdict, you may use one of the forms attached hereto by having your foreman sign his or her name to the particular form that conforms to your verdict, but in no event shall he or she sign more than one of such forms.

  
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JUDGE PRESIDING