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 SEP 10 2015
DAVID R. LLOYD
 DISTRICT CLERK JOHNSON COUNTY, TEXAS
 BY *W. L. ...* DEPUTY

CAUSE NO. F49060

THE STATE OF TEXAS § IN THE
 VS. § OF
 DUSTIN DEWAYNE WEST § JOHNSON COUNTY, TEXAS

CHARGE OF THE COURT

Ladies and Gentlemen of the Jury:

The Defendant DUSTIN DEWAYNE WEST stands charged by Indictment with the felony offense of Capital Murder, alleged to have been committed in Johnson County, Texas, on or about August 12, 2013.

To this charge the Defendant has pled not guilty. You are instructed that the law applicable to this case is as follows:

I.

Our law provides that a person commits the offense of murder if he knowingly causes the death of a n individual.

A person commits the offense of capital murder when such person knowingly causes the death of a n individual under ten years of age.

An "Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

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.

II.

A person commits the offense of Injury to a Child if he knowingly, recklessly or with

criminal negligence, causes serious bodily injury to a child. Such an offense is a felony offense.

"Child" means a person 14 years of age or younger.

"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.

III.

A person commits the offense of felony murder if he commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

A person commits the offense of criminal attempt if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

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 that 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 acts with criminal negligence, or is criminally negligent, with respect to the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that the failure to perceive it 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.

IV.

Now bearing in mind the foregoing instruction, if you believe from the evidence beyond a reasonable doubt that the Defendant, DUSTIN DEWAYNE WEST, on or about August 12, 2013, in the County of Johnson and State of Texas, did then and there knowingly cause the death of an individual, namely, Zayd Richey, by striking Zayd Richey with or against an object unknown to the Grand Jury, or did then and there cause the death of an individual, namely, Zayd Richey, by manner and means unknown to the Grand Jury, and the said Zaid Richey was then and there an individual younger than ten years of age, then you will find the Defendant guilty of the offense of Capital Murder as charged in the Indictment 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 the lesser-included offense of Felony Murder.

V.

Now bearing in mind the foregoing instruction, if you believe from the evidence beyond a reasonable doubt that the Defendant, DUSTIN DEWAYNE WEST, on or about August 12, 2013, in the County of Johnson and State of Texas, did then and there commit or attempt to commit a Felony, to-wit: Injury to a Child, and in the course of and in furtherance of the commission or attempt, the Defendant committed or attempted to commit an act clearly dangerous to human life, to-wit: by striking Zayd Richey with or against an object unknown to the Grand Jury, or by manner and means unknown to the Grand Jury, which caused the death of an individual, namely, Zayd Richey, then you

will find the Defendant guilty of the lesser-included offense of Felony 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 Felony Murder and next consider the lesser-included offense of Injury to a Child, Knowingly.

VI.

Now bearing in mind the foregoing instruction, if you believe from the evidence beyond a reasonable doubt that the Defendant, DUSTIN DEWAYNE WEST, on or about August 12, 2013, in the County of Johnson and State of Texas, did then and there knowingly cause serious bodily injury to ZAYD RICHEY, a child younger than 15 years of age, by striking Zayd Richey with or against an object unknown to the Grand Jury or by manner and means unknown to the Grand Jury, then you will find the Defendant guilty of the lesser-included offense of Injury to a Child, Knowingly, 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 Injury to a Child, Knowingly, and next consider the lesser-included offense of Injury to a Child, Recklessly.

VII.

Now bearing in mind the foregoing instruction, if you believe from the evidence beyond a reasonable doubt that the Defendant, DUSTIN DEWAYNE WEST, on or about August 12, 2013, in the County of Johnson and State of Texas, did then and there recklessly cause serious bodily injury to ZAYD RICHEY, a child younger than 15 years of age, by striking Zayd Richey with or against an object unknown to the Grand Jury or by manner and means unknown to the Grand Jury, then you

will find the Defendant guilty of the lesser-included offense of Injury to a Child, Recklessly, 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 Injury to a Child, Recklessly, and next consider the lesser-included offense of Manslaughter.

A person commits the offense of manslaughter if he recklessly causes the death of an individual.

VIII.

Now bearing in mind the foregoing instructions, if you believe from the evidence, beyond a reasonable doubt that the Defendant, ~~DUSTIN DEWAYNE RICHEY~~^{WEST}, on or about August 12, 2013, in the County of Johnson and State of Texas, did then and there recklessly cause the death of an individual, namely, Zayd Richey, by striking Zayd Richey with or against an object unknown to the Grand Jury or by manner and means unknown to the Grand Jury, then you will find the Defendant guilty of the lesser-included offense of Manslaughter 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 Manslaughter and next consider the lesser-included offense of Injury to a Child, with Criminal Negligence.

IX.

Now bearing in mind the foregoing instruction, if you believe from the evidence beyond a reasonable doubt that the Defendant, DUSTIN DEWAYNE WEST, on or about August 12, 2013, in the County of Johnson and State of Texas, did then and there cause serious bodily injury to ZAYD RICHEY with Criminal Negligence, a child younger than 15 years of age, by striking

Zayd Richey with or against an object unknown to the Grand Jury or by manner and means unknown to the Grand Jury, then you will find the Defendant guilty of the lesser-included offense of Injury to a Child, with Criminal Negligence, 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 Injury to a Child, with Criminal Negligence, and next consider the lesser-included offense of Criminally Negligent Homicide.

A person commits the offense of criminally negligent homicide if he causes the death of an individual by criminal negligence.

X.

Now bearing in mind the foregoing instructions, if you believe from the evidence, beyond a reasonable doubt that the Defendant, DUSTIN DEWAYNE WEST, on or about August 12, 2013, in the County of Johnson and State of Texas, did then and there with criminal negligence cause the death of an individual, namely, Zayd Richey, by striking Zayd Richey with or against an object unknown to the Grand Jury or by manner and means unknown to the Grand Jury, then you will find the Defendant guilty of the lesser-included offense of Criminally Negligent Homicide 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 and say by your verdict "not guilty."

XI.

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, 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 charge 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.

The Defendant is on trial solely on the charges contained in the indictment. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. However, such evidence may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident or to rebut a defensive theory.

XII.

The State has introduced evidence of extraneous matters other than the offenses charged in the indictment in this case. You are instructed that said evidence was admitted only for the purpose of showing proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, or to rebut a defensive theory, if it does. You are further charged that if there is any evidence before you in this case tending to show that the Defendant committed the extraneous transaction, you cannot consider said evidence for any purpose unless you first find and believe beyond a reasonable doubt, that the Defendant committed said extraneous transaction. If you find

and believe beyond a reasonable doubt, from such testimony that the Defendant committed the extraneous transaction, you may then consider the same for the purpose for which it was introduced, namely as evidence of proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, or to rebut a defensive theory, if any, and for no other purpose.

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 into consideration for any purposes whatsoever as a circumstance against the defendant.

In all prosecutions for murder, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing 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 offense.

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. The true and sole use of the Indictment is to charge the offense and to inform the Defendant of the offense alleged. 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. In determining the guilt or innocence of the Defendant, you shall not discuss or consider punishment, if any, which may be assessed against the defendant in the event the Defendant is found guilty beyond a reasonable doubt.

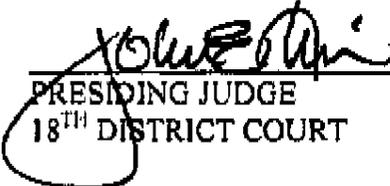
You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, or any witness therein. No juror is permitted to communicate to any other juror anything he or she may have heard regarding the case or any witness therein from any source other than the witness stand.

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 to you, and be governed thereby.

You are to restrict your deliberations solely to the issue of guilt or innocence of the defendant.

After argument of counsel, you will retire and select one of your members as a presiding juror. It is the presiding juror's 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 the forms attached hereto by having the presiding juror sign his or her name to the particular form that conforms to your verdict.

After you have retired to consider your verdict, no one has any authority to communicate with you except the officer who has you in charge. You may communicate with this Court in writing, signed by your presiding juror, through the officer who has you in charge. Do not attempt to talk to the officer, the attorneys or the Court concerning questions you may have.



PRESIDING JUDGE
18TH DISTRICT COURT

CAUSE NO. F49060

THE STATE OF TEXAS	§	IN THE 18TH DISTRICT COURT
VS.	§	OF
DUSTIN DEWAYNE WEST	§	JOHNSON COUNTY, TEXAS

VERDICT OF THE JURY

We, the Jury, find the Defendant, DUSTIN DEWAYNE WEST, guilty of the offense of Capital Murder, as alleged in the Indictment.



 PRESIDING JUROR

OR

We, the Jury, find the Defendant, DUSTIN DEWAYNE WEST, guilty of the lesser-included offense of Felony Murder.

 PRESIDING JUROR

OR

We, the Jury, find the Defendant, DUSTIN DEWAYNE WEST, guilty of the lesser-included offense of Injury to a Child, Knowingly.

 PRESIDING JUROR

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OR

We, the Jury, find the Defendant, DUSTIN DEWAYNE WEST, guilty of the lesser-included offense of Injury to a Child, Recklessly.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, DUSTIN DEWAYNE WEST, guilty of the lesser-included offense of Manslaughter.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, DUSTIN DEWAYNE WEST, guilty of the lesser-included offense of Injury to a Child, with Criminal Negligence.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, DUSTIN DEWAYNE WEST, guilty of the lesser-included offense of Criminally Negligent Homicide.

PRESIDING JUROR

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OR

We, the Jury, find the Defendant, DUSTIN DEWAYNE WEST, not guilty.

PRESIDING JUROR