

AUG 23 2017

Cause No. 1395156D

TIME 3:36 PM  
BY SS DEPUTY

THE STATE OF TEXAS	§	IN THE 297 <sup>TH</sup> JUDICIAL
	§	
VS.	§	DISTRICT COURT
	§	
CLARENCE DAVID MALLORY, JR.	§	TARRANT COUNTY, TEXAS

**COURT'S CHARGE**

**MEMBERS OF THE JURY:**

The defendant, Clarence David Mallory, Jr., stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 28<sup>th</sup> day of November 2014, in Tarrant County, Texas. To this charge, the defendant has pleaded "not guilty."

A person commits the offense of "capital murder" if he intentionally commits murder in the course of committing or attempting to commit robbery, obstruction or retaliation.

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

"Robbery" is committed if, in the course of committing theft and with intent to obtain or maintain control of the property, a person 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.

"Theft" is committed if a person unlawfully appropriates property with the intent to deprive the owner of the property.

"Appropriate" means to acquire or otherwise exercise control over property other than real property.

"Deprive" 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.

"Appropriation of property" is unlawful if it is without the owner's effective consent.

"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.

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

is not effective if induced by deception or coercion.

“Property” means a document, including money that represents or embodies anything of value.

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

A person commits the offense of “obstruction or retaliation” if the person intentionally or knowingly harms or threatens to harm another by an unlawful act in retaliation for or on account of the service or status of another as a person who has reported or who the actor knows intends to report the occurrence of a crime.

“Harm” means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

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.

All persons are parties to an offense who are guilty of acting together in the commission of the offense. A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for whom he is criminally responsible, or by both. A person is criminally responsible for an offense committed by the conduct of another, if acting with the intent to promote or assist the commission of the offense; he encourages, directs, aids, or attempts to aid the other person to commit the offense. Mere presence alone does not constitute being a party to an offense.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 28<sup>th</sup> day of November 2014, in Tarrant County, Texas, the defendant, Clarence David Mallory, Jr., did then and there intentionally cause the death of an individual, Ashlea Harris, by suffocating her by a means which is unknown to the grand jury, and the said defendant was then and there in the course of committing or attempting to commit the offense of robbery of Ashlea Harris; **OR**

if you find from the evidence beyond a reasonable doubt that on or about the 28<sup>th</sup> day of November 2014, in Tarrant County, Texas, the defendant did then and there intentionally cause the death of an individual, Ashlea Harris, by striking her head with an object, the exact nature of which is unknown to the grand jury, and the said defendant was then and there in the course of

committing or attempting to commit the offense of robbery of Ashlea Harris; **OR**

if you find from the evidence beyond a reasonable doubt that on or about the 28<sup>th</sup> day of November 2014, in Tarrant County, Texas, the defendant did then and there intentionally cause the death of an individual, Ashlea Harris, by suffocating her by a means which is unknown to the grand jury, and the said defendant was then and there in the course of committing or attempting to commit the offense of retaliation or obstruction of Ashlea Harris; **OR**

if you find from the evidence beyond a reasonable doubt that on or about the 28<sup>th</sup> day of November 2014, in Tarrant County, Texas, the defendant did then and there intentionally cause the death of an individual, Ashlea Harris, by striking her head with an object, the exact nature of which is unknown to the grand jury, and the said defendant was then and there in the course of committing or attempting to commit the offense of retaliation or obstruction of Ashlea Harris; **OR**

if you find from the evidence beyond a reasonable doubt that on or about the 28<sup>th</sup> day of November 2014, in Tarrant County, Texas, that the defendant, Clarence David Mallory, Jr., acting with the intent to promote or assist in the commission of the offense of capital murder encouraged, directed, aided, or attempted to aid Carter Carol Cervantez, to commit the offense of capital murder, then you will find the defendant guilty of the offense of capital murder.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty of capital murder.

You are instructed that if there is any testimony before you in this case regarding the defendant's 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 motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, if any, in connection with the crimes alleged in the indictment in this case, and for no other purpose.

You are instructed that our law provides that in the event a defendant chooses not to testify, that fact cannot be taken as a circumstance against him. Clarence David Mallory, Jr., has chosen 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 him.

Your verdict must be by a unanimous vote of all members of the jury. In deliberating on this case, you shall consider the charge in its entirety and you must not refer to or discuss any matters not in evidence.

In all criminal cases, the burden of proof is on the State. The burden of proof rests upon the State throughout the trial and never shifts to the defendant. The State 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. If the State fails to do so, you must acquit the defendant.

The indictment in this case is no evidence whatsoever of the guilt of the defendant. It is a mere pleading that is necessary in order to bring this case into court for trial and you will not consider it for any purpose.

All persons are presumed to be innocent. The fact that a defendant has been arrested, confined, indicted for, or otherwise charged with an offense gives no rise to any 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.

You are charged that the jury is only permitted to receive evidence presented in open court and no juror is permitted to communicate to any other juror anything he may have heard regarding the case or regarding any witness therein from any other source.

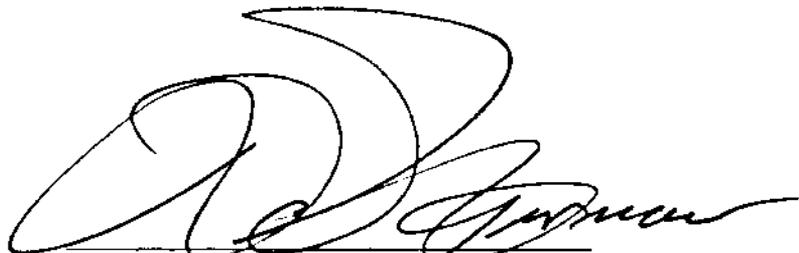
You are the exclusive judges of the facts proven, of the credibility of the witnesses, and of the weight to be given their testimony. But you are bound to receive the law from the Court, which is given in these written instructions, and be governed thereby.

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, to vote with you, to speak for you in the courtroom, 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.

Any further communication must be in writing signed by your foreperson through the bailiff to the Court. The foreperson should sign any written jury note, ring the jury call button on

the wall, and give the note to the bailiff. The Court will reply in writing or bring the jury back into the courtroom to answer your note. Do not attempt to talk to the bailiff, the attorneys, or the Court regarding any question you may have concerning the trial of the case.

After you have reached a unanimous verdict, please use the jury call button on the wall and one of the bailiffs will respond.



JUDGE DAVID HAGERMAN  
297<sup>TH</sup> Judicial District Court  
Tarrant County, Texas

VERDICT FORMS

We, the Jury, find the defendant, Clarence David Mallory, Jr., guilty of the offense of capital murder.

  
Foreperson

-OR-

We, the Jury, find the defendant, Clarence David Mallory, Jr., not guilty.

\_\_\_\_\_  
Foreperson

FILED  
THOMAS A WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

AUG 24 2017

TIME 12:48 PM  
BY 88 DEPUTY