

CAUSE NO. 43506

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § BURNET COUNTY, TEXAS
GARRETT JAMES BALLARD § 33rd JUDICIAL DISTRICT

INSTRUCTIONS OF THE COURT

MEMBERS OF THE JURY:

The defendant, GARRETT JAMES BALLARD, is accused of CAPITAL MURDER. The defendant has pleaded “not guilty,” and you have heard all of the evidence that will be produced on whether the defendant has been proved guilty.

Both sides will soon present final arguments. Before they do so, I must now give you the instructions you must follow in deciding whether the defendant has been proved guilty or not.

You will have a written copy of these instructions to take with you and to use during your deliberations.

First, I will tell you about some general principles of law that must govern your decision of the case. Then, I will tell you about the specific law applicable to this case. Finally, I will instruct you on the rules that must control your deliberations.

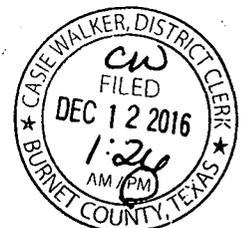
GENERAL PRINCIPLES

The Indictment

The indictment is not evidence of guilt. The indictment is only a document required to bring the case before you. The indictment cannot be considered in any way by the jury. Do not consider the fact that the defendant has been arrested, confined, or indicted or otherwise charged. You may not draw any inference of guilt from any of these circumstances.

Presumption of Innocence

The defendant is presumed innocent of the charge. 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 law does not require a defendant to prove his innocence or produce any evidence at all. Unless the jurors are satisfied beyond a reasonable doubt of the defendant’s guilt after careful and impartial consideration of all of the evidence in the case, the presumption of innocence alone is sufficient to acquit the defendant.



Burden of Proof

The burden of proof throughout the trial is always on the state. The defendant does not have the burden to prove anything. The state must prove every element of the offense beyond a reasonable doubt to establish guilt for the offense. If the state proves every element of the offense beyond a reasonable doubt, then you must find the defendant guilty. If the state does not prove every element of the offense beyond a reasonable doubt, then you must find the defendant not guilty. If, after you have considered all of the evidence and these instructions, you have a reasonable doubt about whether the defendant is guilty, you must find the defendant not guilty.

Voluntariness of Statement

A statement of an accused may be considered against the accused only if the statement was freely and voluntarily made without compulsion or persuasion. Therefore, you may consider any statement you believe the defendant made only if you all agree the state has proved, beyond a reasonable doubt, that the defendant made the statement freely and voluntarily without compulsion or persuasion.

Voluntary Intoxication

A person is criminally responsible for a result if the result would not have occurred but for the person's conduct.

Voluntary intoxication is not 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.

But you are reminded that the state must prove all elements of the offense beyond a reasonable doubt.

Evidence of Wrongful Acts Possibly Committed by Defendant

During the trial, you heard evidence that the defendant may have committed wrongful acts not charged in the indictment. Specifically, that the defendant consumed marihuana. You are not to consider that evidence at all unless you find, beyond a reasonable doubt, that the defendant did, in fact, commit the wrongful act. Those of you who believe the defendant did the wrongful act may consider it. You may not consider this evidence to prove that the defendant is a bad person and for this reason was likely to commit the charged offense.

Jury as Fact Finder

As the jurors, you review the evidence and determine the facts and what they prove. You

judge the believability of the witnesses and what weight to give their testimony.

In judging the facts and the believability of the witnesses, you must apply the law provided in these instructions.

Evidence

The evidence consists of the testimony and exhibits admitted in the trial. You must consider only evidence presented in this case to reach your decision. You must not consider, discuss, or mention anything that is not evidence in the trial. You must not consider or mention any personal knowledge or information you may have about any fact or person connected with this case that is not evidence in the trial.

Statements made by the lawyers are not evidence. The questions asked by the attorneys are not evidence. Evidence consists of the testimony of the witnesses and materials admitted into evidence.

Nothing the judge has said or done in this case should be considered by you as an opinion about the facts of this case or influence you to vote one way or the other.

You should give terms their common meanings, unless you have been told in these instructions that the terms are given special meanings. In that case, of course, you should give those terms the meanings provided in the instructions.

While you should consider only the evidence, you are permitted to draw reasonable inferences from the testimony and exhibits that are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence.

You are to render a fair and impartial verdict based on the evidence admitted in the case under the law that is in these instructions. Do not allow your verdict to be determined by bias or prejudice.

Admitted Exhibits

You may, if you wish, examine exhibits. If you wish to examine an exhibit, the foreperson will inform the court and specifically identify the exhibit you wish to examine. Only exhibits that were admitted into evidence may be given to you for examination.

Testimony

Certain testimony will be read back to you by the court reporter if you request. To request that testimony be read back to you, you must follow these rules. The court will allow testimony

to be read back to the jury only if the jury, in a writing signed by the foreperson, (1) states that it is requesting that testimony be read back, (2) states that it has a disagreement about a specific statement of a witness or a particular point in dispute, and (3) identifies the witness who made the statement. The court will then have the court reporter read back only that part of the statement that is in disagreement.

Defendant's Right to Remain Silent

The defendant has a constitutional right to remain silent. The defendant may testify on his own behalf. The defendant may also choose not to testify. The defendant's decision not to testify cannot be held against him, and it is not evidence of guilt. You must not speculate, guess, or even talk about what the defendant might have said if he had taken the witness stand or why he did not. The foreperson of the jury must immediately stop any juror from mentioning the defendant's decision not to testify.

SPECIFIC LAW APPLICABLE TO THIS CASE

CAPITAL MURDER

Relevant Statutes

A person commits MURDER if the person intentionally or knowingly causes the death of an individual.

To prove that the defendant is guilty of MURDER, the state must prove, beyond a reasonable doubt, two elements. The elements are that—

1. the defendant caused the death of an individual; and
2. the defendant did this intentionally or knowingly.

A person commits the offense of CAPITAL MURDER if he commits MURDER as defined above, and the person murders more than one person during the same criminal transaction.

Definitions

A person "**intentionally**" causes the death of an individual if the person has the conscious objective or desire to cause that death.

A person "**knowingly**" causes the death of an individual if the person is aware that his conduct is reasonably certain to cause that death.

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

The term "**deadly weapon**" means a firearm or anything that in the manner of its use or

intended use is capable of causing death or serious bodily injury.

“**Firearm**” means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

The term “**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.

Application of Law to Facts

You must determine whether the state has proved, beyond a reasonable doubt, five elements. The elements are that—

1. the defendant, in Burnet County, Texas, on or about August 19, 2014, caused the death of an individual, namely, Travis Fox, by shooting Travis Fox with a firearm; and
2. the defendant did this either intentionally or knowingly; and
3. the defendant caused the death of an individual, namely, Elijah Benson by shooting Elijah Benson with a firearm; and
4. the defendant did this either intentionally or knowingly; and
5. the murder of Travis Fox and Elijah Benson were committed during the same criminal transaction.

You must all agree on elements 1, 2, 3, 4, and 5 listed above in order to render a verdict of guilty.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of elements 1, 2, 3, 4, and 5 listed above, you must find the defendant “not guilty” of CAPITAL MURDER of Travis Fox and/or Elijah Benson.

If you all agree the state has proved, beyond a reasonable doubt, each of the elements listed above, you must find the defendant “guilty” of CAPITAL MURDER.

The Indicted Offense

Now bearing in mind the foregoing instructions, if you believe beyond a reasonable doubt, that the Defendant, GARRETT JAMES BALLARD, on or about 19th day of August 2014, in the County of Burnet and State of Texas, as charged in the indictment, did then and there intentionally or knowingly cause the death of an individual, namely, Travis Fox, by shooting him

with a firearm, and did then and there intentionally or knowingly cause the death of another individual, namely, Elijah Benson, by shooting him with a firearm, and that both murders were committed during the same criminal transaction, you will find the Defendant guilty of the offense 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 say by your verdict "not guilty".

The Verdict

The law requires that you render a verdict of either "guilty" or "not guilty." The verdict of "not guilty" simply means that the state's evidence does not prove the defendant guilty beyond a reasonable doubt.

You may return a verdict only if all twelve of you agree on this verdict.

When you reach a verdict, the foreperson should notify the court.

RULES THAT CONTROL DELIBERATIONS

You must follow these rules while you are deliberating and until you reach a verdict. After the closing arguments by the attorneys, you will go into the jury room.

Your first task will be to pick your foreperson. The foreperson should conduct the deliberations in an orderly way. Each juror has one vote, including the foreperson. The foreperson must supervise the voting, vote with other members on the verdict, and sign the verdict sheet.

While deliberating, and until excused by the court, all jurors must follow these rules:

1. You must not discuss this case with any court officer, or the attorneys, or anyone not on the jury.
2. You must not discuss this case unless all of you are present in the jury room. If anyone leaves the room, then you must stop your discussions about the case until all of you are present again.
3. You must communicate with the judge only in writing, signed by the foreperson and given to the judge through the bailiff.
4. You must not conduct any independent investigations, research, or experiments.
5. You must tell the judge if anyone attempts to contact you about the case before you reach your verdict.

Your sole duty at this point is to determine whether the defendant has been proved guilty. You must restrict your deliberations to this matter.

After you have arrived at your verdict, you are to use one of the forms attached to these instructions. You should have your foreperson sign his or her name to the particular form that conforms to your verdict.

After the closing arguments by the attorneys, you will begin your deliberations to decide your verdict.

SIGNED on this 12th day of December, 2016.



J. ALLAN GARRETT
JUDGE PRESIDING

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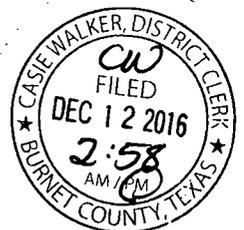
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VERDICT OF THE JURY

GUILTY OF CAPITAL MURDER OF
TRAVIS FOX AND ELIJAH BENSON

We, the jury, find beyond a reasonable doubt that the Defendant, GARRETT JAMES BALLARD, is guilty of the offense of CAPITAL MURDER as charged in the indictment.


PRESIDING JUROR



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VERDICT OF THE JURY

NOT GUILTY

We, the jury, find the Defendant, GARRETT JAMES BALLARD, not guilty.

PRESIDING JUROR