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JUN 11 2021

CAUSE NO. 18-12-31240-D

STATE OF TEXAS

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IN THE 377TH JUDICIAL

KIM PLUMMER
DISTRICT CLERK
VICTORIA COUNTY, TEXAS

V.

DISTRICT COURT OF

JESUS MARTINEZ, JR.

VICTORIA COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

1.

The defendant, **JESUS MARTINEZ, JR.**, stands charged in Count 1 of the indictment with the offense of "**CAPITAL MURDER**" alleged to have been committed in Victoria County, Texas, on or about the 21ST day of September, 2018. To this charge the defendant has pleaded not guilty.

The defendant, **JESUS MARTINEZ, JR.**, stands charged in Count 3 of the indictment with the offense of "**TAMPERING WITH PHYSICAL EVIDENCE**" alleged to have been committed in Victoria County, Texas, on or about the 21ST day of September, 2018. To this charge the defendant has pleaded not guilty.

2. Definitions Count 1 (Capital Murder).

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

A person commits **Capital Murder** when such person, murders more than one person in the same criminal transaction.

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

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 a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

3. Definitions Count 3 (Tampering With Physical Evidence).

A person commits an offense if the person observes a human corpse under circumstances in which a reasonable person would believe that an offense had been committed; to wit: being present when the victims of a murder were shot, and the defendant did know or reasonably should know that a law enforcement agency was not aware of the existence of or location of the corpse, and the defendant did fail to report the existence of and location of the remains to a law enforcement agency.

“Peace officer” means:

- (1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;
- (2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;
- (3) marshals or police officers of an incorporated city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;
- (4) rangers, officers, and members of the reserve officer corps commissioned by the Public Safety Commission and the Director of the Department of Public Safety; and
- (5) investigators of the district attorneys’, criminal district attorneys’, county attorneys’ offices; even if the person has not yet qualified for office or assumed his duties.

“Law Enforcement Agency” means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

“Official proceeding” means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

“Human corpse” includes: (1) any portion of a human corpse; (2) the cremated remains of a human corpse; (3) any portion of the cremated remains of a human corpse.

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.

4. Application Paragraph Capital Murder Count 1.

Now, if you find from the evidence beyond a reasonable doubt that on or about 21ST day of September, 2018 in Victoria County, Texas, the defendant, **JESUS MARTINEZ, JR.**, did then and there intentionally or knowingly cause the death of an individual namely, **MICHELLE JOHNSON**, by shooting the said **MICHELLE JOHNSON** with a firearm, and did then and there intentionally or knowingly cause of the death of another individual, namely, **DWARD OMAR KITCHENS**, by shooting the said **DWARD OMAR KITCHENS** with a firearm and both murders were committed during the same criminal transaction, then you will find the defendant **“guilty”** of the offense of **Capital Murder**, as charged in Count 1 of the Indictment.

Unless you so find and believe from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of **Capital Murder**, as charged in Count 1 of the Indictment, and say by your verdict **“not guilty”**.

5. Application Paragraph Tampering with Physical Evidence Count 3.

Now, if you find from the evidence beyond a reasonable doubt that on or about 21ST day of September, 2018 in Victoria County, Texas, the defendant, **JESUS MARTINEZ, JR.**, did then and there observe a human corpse under the circumstances in which a reasonable person would have believed that an offense had been committed, to wit: being present when the victims of a murder were shot, and the defendant did know or reasonably should have known that a law enforcement agency was not aware of the existence of or location of the corpse, and the defendant did fail to report the existence of and location of the corpse to a law enforcement agency, then you will find the defendant "**guilty**" of the offense of **Tampering with Physical Evidence** as alleged in Count 3 of the indictment.

Unless you so find and believe from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of **Tampering with Physical Evidence** as alleged in Count 3 of the indictment, and say by your verdict "**not guilty**".

6. Accomplice Witness Instruction.

You are instructed that an "accomplice," as the term is here used, means anyone connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime by unlawful act or omission on their part transpiring either before or during the time of the commission of the offense, and whether or not they were present and participated in the commission of the crime. 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 which he is criminally responsible, or by both. Mere presence alone, however, will not constitute one a party to an offense.

A person is criminally responsible for an offense committed by the conduct on another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, or aids or attempts to aid the other person to commit the offense. The term "conduct" means any act or omission and its accompanying mental state.

You are further instructed that a conviction cannot be had upon the testimony of an accomplice unless the jury first believes that the accomplice's evidence is true and that it shows the defendant is guilty of the offense charged against him, and even then you cannot convict unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must also tend to connect the defendant with its commission.

Mere presence of the defendant with an accomplice shortly before or shortly after the commission of a crime is not sufficient corroboration of an accomplice witness' testimony to convict the defendant.

Now, if you believe from the evidence beyond a reasonable doubt that an offense was committed and you further believe from the evidence that the witness **Kimberly Hoff** was an accomplice, or you have a reasonable doubt as to whether she was or not, as that term is defined in the foregoing instructions, then you cannot convict the **Defendant Jesus Martinez, Jr.** upon **Kimberly Hoff's** testimony, unless you first believe that her testimony is true and shows the guilt of the **Defendant Jesus Martinez, Jr.** as charged in the indictment, and then you cannot convict the **Defendant Jesus Martinez, Jr.** unless **Kimberly Hoff's** testimony is corroborated by other evidence tending to connect the **Defendant Jesus Martinez, Jr.** with the offense charged. The corroboration is not sufficient if it merely shows the commission of an offense, but it must tend to connect the **Defendant Jesus Martinez, Jr.** with its commission, and then from all the evidence, you must believe beyond a reasonable doubt that the **Defendant Jesus Martinez, Jr.** is guilty of the offense(s) charged against him, or if you have a reasonable doubt thereof, you will acquit the **Defendant Jesus Martinez, Jr.** of the offense(s) charged in the indictment.

Upon the law of accomplice witness testimony, you are instructed that a person who has participated with someone else before, during or after the commission of a crime, is an accomplice witness. In such a case, there must be some evidence of an affirmative act on the witness' part to assist in commission of the offense. If the witness cannot be prosecuted for the offense with which the accused is charged, then the witness is not an accomplice witness as a matter of law. A witness is not an accomplice witness merely because he or she knew of the offense and did not disclose it, or even concealed it. The witness's presence at the scene of the crime does not render that witness an accomplice witness.

7. Indictment.

A grand jury indictment is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence of guilt nor can it be considered by you in passing upon the issue of guilt of the defendant. The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant.

8. Right Against Self Incrimination.

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

9. Extraneous Crimes.

The State has introduced evidence of extraneous crimes or bad acts other than the one charged in the indictment in this case. This evidence was admitted only for the purpose of assisting you, if it does, for the purpose of showing the defendant's motive, intent, plan, knowledge, common scheme or plan or absence of mistake, if any. You cannot consider the testimony unless you find and believe beyond a reasonable doubt that the defendant committed these acts, if any, were committed.

10. Voluntary Intoxication.

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.

11. Relevant Facts and Circumstances.

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 offense, if any.

12. Concluding Instructions.

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 of 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 charged beyond a reasonable doubt, and, if it fails to do so, you must acquit the defendant.

It is not required that the prosecution proves guilt beyond all possible doubt; it is required that the prosecution's proof excludes all "reasonable doubt" concerning the defendant's guilt.

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges of the facts. Your sole duty is to decide whether the State has proved the Defendant guilty beyond a reasonable doubt.

When you go to the jury room, the first thing that you should do is select one of your number as your presiding juror, who will help to guide your deliberations and will speak for you here in the courtroom.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry, or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict, if any.

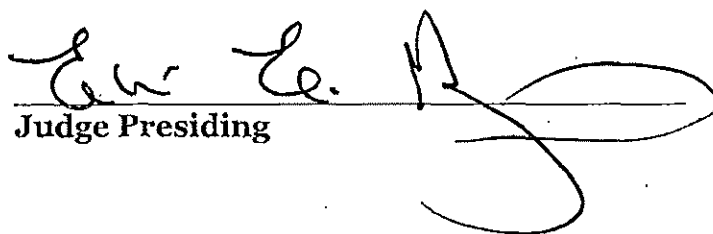
Any verdict you render must be unanimous.

At the conclusion of your deliberations, the presiding juror should sign the appropriate verdict form, if any.

If you need to communicate with me during your deliberations, the presiding juror should write the message (date and signed), knock on the door, and give it to the bailiff. I will either reply in writing or bring you back into the court to answer your message.

You are the exclusive judges of the facts proved, 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.

SIGNED THIS THE 11 DAY OF June, 2021.



Judge Presiding

VERDICT OF THE JURY

Count 1 Capital Murder

We, the Jury, find the defendant, **JESUS MARTINEZ, JR., NOT GUILTY**, of the offense of **CAPITAL MURDER**, as alleged in Count 1 of the Indictment.

PRESIDING JUROR

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We, the Jury, find the defendant, **JESUS MARTINEZ, JR., GUILTY**, of the offense of **CAPITAL MURDER**, as alleged in Count 1 of the Indictment.

Stephann Mueller

PRESIDING JUROR

