

CAUSE NO. 241-1251-08

THE STATE OF TEXAS

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IN THE DISTRICT COURT OF SMITH COUNTY, TEXAS
CLERK OF THE DISTRICT COURT OF SMITH COUNTY, TEXAS
BY

VS.

SMITH COUNTY, TEXAS

DEMONTRELL MILLER

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, DEMONTRELL MILLER, stands charged by indictment with the offense of Capital Murder, alleged to have been committed in Smith County, Texas, on or about the 1st day of June, 2008. To this charge the defendant has pleaded not guilty.

1.

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

Our law provides that a person commits the offense of capital murder when such person commits murder, that is, he intentionally or knowingly causes the death of an individual, under six years of age.

2.

“Individual” means a human being who has born and is alive, including an unborn child at every state of gestation from fertilization until birth.

3.

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or 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.

4.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 1st day of June, 2008, in Smith County, Texas, the defendant, DEMONTRELL MILLER, did then and there intentionally or knowingly cause the death of an individual, namely, Kelynn Pinson, by striking with his hand or by striking with his foot or by striking with a hard object unknown to the grand jury or by striking with a blunt object unknown to the grand jury or by striking Kelynn Pinson against a hard object unknown to the grand jury or by striking Kelynn Pinson against a blunt object unknown to the grand jury, and the said Kelynn Pinson was then and there an individual younger than six years of age, then you will find the defendant, DEMONTRELL MILLER, guilty of Capital Murder, as alleged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt as to whether the defendant, DEMONTRELL MILLER, is guilty of Capital Murder, under the instructions given you in this charge, then you will say by your verdict "Not Guilty."

5.

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

6.

At times throughout the trial the Court has been called upon to pass on the question of whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inference from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence, nor does it pass on the credibility of the witness. As to the offer of evidence that has been rejected by the Court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

You are instructed that you are not to allow yourselves to be influenced by any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion upon any matter of fact in this case, and if you have observed anything which you may interpret or have interpreted as the Court's opinion upon any matter of fact in this case, you must wholly disregard it.

7.

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, nor will you refer to or discuss any matter not before you in evidence.

8.

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 motive, opportunity, intent, preparation, plan, knowledge, identity of the defendant or absence of mistake or accident, if any, in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

9.

You are instructed that any statements of counsel, made during the course of the trial or during argument, not supported by the evidence, or statements of law made by counsel not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

10.

You are further instructed that an indictment is no evidence of guilt. Therefore, you are instructed in this cause that the indictment herein shall not be considered by the Jury as evidence of guilt, if any.

11.

All persons, including the Defendant, 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 charged 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.

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".

12.

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

In deliberating on this case you are not to refer to or discuss any matter not in evidence before you nor talk about this case to anyone not of your Jury.

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 be influenced in any degree whatsoever by any personal feelings of sympathy for, or prejudice against, the State or the Defendant in this case, for each is entitled to the same fair and impartial consideration.

13.

The issue of punishment is not before you, and you should now confine your deliberations to the innocence or guilt of the Defendant.

14.

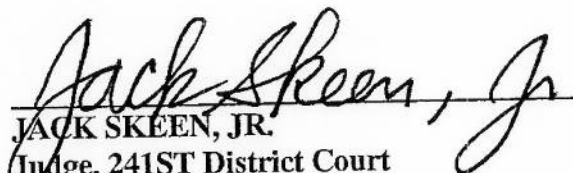
After you have retired to consider your verdict, no one has any authority to communicate with you except the officer who has you in charge. You may communicate with this Court in writing, signed by your Presiding Juror, through the officer who has you in charge. Do not attempt to talk to the officer,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

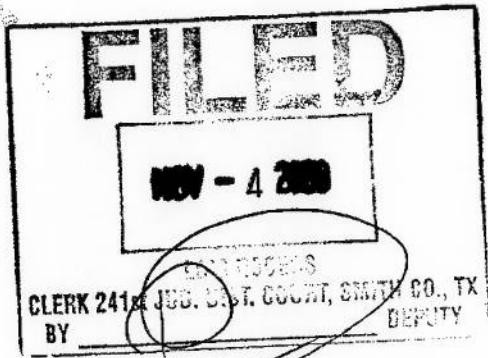
15.

After argument of counsel, you will retire and select one of your members as your Presiding Juror. It is the duty of your Presiding Juror to preside at your deliberations and to vote with you in arriving at a verdict. Your verdict must be UNANIMOUS, and after you have arrived at your

verdict, you may use one of the forms attached hereto by having your Presiding Juror sign the particular form that conforms to your verdict.

SIGNED this the 4th day of November, 2009.


JACK SKEEN, JR.
Judge, 241ST District Court
Smith County, Texas



CAUSE NO. 241-1251-08

THE STATE OF TEXAS

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IN THE 241ST JUDICIAL

VS.

DISTRICT COURT OF

DEMONTRELL MILLER

SMITH COUNTY, TEXAS

INDICATE YOUR VERDICT BY SIGNING ONLY ONE OF THE VERDICT FORMS BELOW:

VERDICT FORM

WE, THE JURY, find the Defendant, DEMONTRELL MILLER, NOT GUILTY.

PRESIDING JUROR

VERDICT FORM

WE, THE JURY, find the Defendant, DEMONTRELL MILLER, GUILTY of the offense of CAPITAL MURDER as charged in the indictment.



PRESIDING JUROR

