

THE STATE OF TEXAS
VS.
DANA FRANCIS WALCOT, JR.

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IN THE 264TH JUDICIAL
DISTRICT COURT OF
BELL COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, Dana Francis Walcott, Jr., stands charged by indictment with the offense of Capital Murder, alleged to have occurred on or about the 17th day of September, 2018, in Bell County, Texas. To this indictment the Defendant has pleaded not guilty. You are instructed the law applicable to this case is as follows:

I.

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

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

A person commits the offense of capital murder if he intentionally commits murder, as defined above, in the course of committing or attempting to commit the offense of Kidnapping.

II.

A person commits the offense of Kidnapping if he intentionally or knowingly abducts another person.

"Abduct" means to restrain a person with intent to prevent his liberation by:

- (A) secreting or holding him in a place where he is not likely to be found; or
- (B) using or threatening to use deadly force.

"Restrain" means to restrict a person's movements without consent, so as to interfere substantially with his liberty, by moving him from one place to another or by confining him. Restraint is "without consent" if it is accomplished by force, intimidation, or deception

The term "deadly force" is force that is intended or known by the person using it to cause, or in the manner of its use or intended use is capable of causing death or serious bodily injury.

By the term "serious bodily injury" is meant 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.

A person attempts to commit an offense 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.

It is no defense that the offense attempted was actually committed.

III.

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.

BY *[Signature]*
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 DISTRICT COURT
 BELL COUNTY, TX
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IV.

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.

A person is criminally responsible for an offense committed by the conduct of another if acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense.

Each party to an offense may be charged with commission of the offense.

All traditional distinctions between accomplices and principals are abolished and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

Mere presence alone will not constitute one as a party to an offense

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

A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated or risked is that a different offense was committed.

V.

In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to its commission.

VI.

If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy. Capital Murder is a felony.

By the term "conspiracy" as used in these instructions, is meant any agreement between two or more persons, with intent that a felony be committed, that they, or one or more of them, engage in conduct that would constitute the offense, and one or more of them performs an overt act in pursuance of the agreement. An agreement constituting a conspiracy may be inferred from acts of the parties.

An "act" means a bodily movement, whether voluntary or involuntary, and includes speech.

An "overt act" is any act knowingly committed by one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It must, however, be an act which follows and tends toward accomplishment of the plan or scheme and must be knowingly done in furtherance of some object or purpose of the conspiracy.

The word "conduct" means an act or omission and its accompanying mental state.

VII.

You are instructed that if there is any testimony or evidence before you in this case regarding the defendant having committed or participated in other acts or transactions or offenses other than the offense alleged against ^{him} her in the indictment in this case, you cannot consider said testimony or evidence, for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other acts or transactions or offenses, if any were committed, and even then you may only consider the same in determining the identity, intent, knowledge, preparation, motive, or plan of the defendant, in connection with the offense, if any, alleged against ~~her~~ ^{him} in the indictment in this case, and for no other purpose.

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VIII.

You are further instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, of Michael Vanlandingham, and the previous relationship existing between the accused and Michael Vanlandingham, 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 alleged in the indictment.

You are instructed that in order to convict the Defendant of the offense of capital murder you must find from the evidence beyond a reasonable doubt that the murder, if any, occurred in the course of committing or attempting to commit the offense of Kidnapping.

IX.

Now bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt that the defendant, Dana Francis Walcott, Jr., on or about the 17th day of September, 2018, in the County of Bell, State of Texas, as alleged in the indictment, did then and there, acting either individually or as a party with Owen Thomas Free III, intentionally cause the death of an individual, namely, Michael Vanlandingham, by shooting Michael Vanlandingham with a firearm, and the defendant, while acting either individually or as a party with Owen Thomas Free III, was then and there in the course of committing or attempting to commit the offense of Kidnapping of Michael Vanlandingham, you will find the defendant GUILTY 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. If you do acquit the defendant of the offense of Capital Murder you will then proceed to consider whether the defendant is guilty of the lesser included offenses of Murder or Kidnapping.

X.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the Defendant, Dana Francis Walcott, Jr., on or about the 17th day of September, 2018 in the County of Bell, State of Texas, as alleged in the indictment, while acting either alone or as a party with Owen Thomas Free III, as that term has been previously defined, intentionally or knowingly ^{p.l.k} caused the death of an individual, namely, Michael Vanlandingham, by shooting Michael Vanlandingham with a firearm, you will find the defendant GUILTY of the offense of Murder. However, if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Murder and you will next consider whether defendant is guilty of the offense of Kidnapping.

XI.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, Dana Francis Walcott Jr, on or about the 17th day of September, 2018, in County of Bell, State of Texas, as alleged in the indictment, while acting either alone or as a party with Owen Thomas Free III, as that term has been previously defined, did then and there intentionally or knowingly abduct Michael Vanlandingham by restricting the movements of said Michael Vanlandingham without his consent, so as to interfere substantially with his liberty, by moving him from one place to another, with the intent to prevent his liberation by secreting or holding him in a place where he was not likely to be found , you will find the defendant GUILTY of the offense of Kidnapping. However, if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Kidnapping, and say by your verdict "NOT GUILTY".

XII.

It is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another.

Compulsion within the meaning of this section exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure. The burden of proof for the affirmative defense of duress rests upon the defendant; to establish such defense the defendant must prove it by a preponderance of the evidence. By the term 'preponderance of the evidence' is meant the greater weight and degree of credible evidence in the case.

This affirmative defense is unavailable if the actor intentionally, or knowingly or recklessly placed himself in a situation in which it was probable that he would be subjected to compulsion.

Now if you find from the evidence beyond a reasonable doubt that the defendant, Dana Francis Walcott Jr, did commit the offense of Capital Murder, or Murder or Kidnapping, but you further find from the evidence, by a preponderance of the evidence that Owen Thomas Free III had threatened to kill or cause serious bodily injury to the defendant if he did not participate in said Capital Murder, or Murder or Kidnapping, and that his threats were such threats of force as would render a person of reasonable firmness incapable of resisting pressure, and the defendant was in fear of imminent loss of his life or serious bodily injury at the hands of Owen ^{Thomas} Free III if he did not participate in the Capital Murder, or Murder or Kidnapping, and that, so believing, he did participate therein, then you should acquit the defendant on the grounds of duress; or if you have a reasonable doubt thereof, then you should give the defendant the benefit of that doubt and say by your verdict "Not Guilty."

XIII.

If you find from the evidence beyond a reasonable doubt that the defendant had not been threatened by Owen Thomas Free III with death or serious bodily injury with such force as to render a person of reasonable firmness incapable of resisting the pressure then you will find against the defendant on the issue of duress.

XIV.

You have a right to consider all of the facts that are shown by the evidence, and to draw natural and reasonable inferences from such facts. You alone have the authority and the duty to determine what the facts are in this case. In evaluating the evidence, you must totally disregard what you believe is my opinion about any factual matter.

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, an 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 this 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.

You must not consider facts that have not been introduced into evidence or legal principles not contained in this charge. It is improper for a juror to discuss or consider anything which they know or have learned outside of the testimony presented to you, and the law contained in this charge. If a juror should discover that they have any outside information, they must not mention this information to any other juror, nor consider it themselves in arriving at a verdict.

You shall not discuss or consider the punishment, if any, which may be assessed against the defendant in the event he is found guilty.

Questions and comments of the attorneys do not constitute testimony and must not be considered as evidence. You must also disregard any statement of the attorneys that is inconsistent with the law contained in this charge.

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.

After the reading of this Charge, you shall not be permitted to separate from each other, nor shall you talk with anyone not of your jury. After argument of counsel, you will retire and select one of your members as your foreperson. It is his or her 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 one of the blanks attached hereto by having your foreperson sign his or her name to the particular blank that conforms to your verdict, but in no event shall he or she sign more than one of such blanks.



JUDGE PRESIDING

10:24 FILED
.....a.m.pm o'clock

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VS.
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IN THE 264TH JUDICIAL DISTRICT COURT OF BELL COUNTY, TEXAS

JUDICIAL DISTRICT COURT OF BELL COUNTY, TEXAS
[Signature]

VERDICT OF THE JURY

We, the Jury, find beyond a reasonable doubt, the Defendant, Dana Francis Walcott, Jr. is GUILTY of the offense of **Capital Murder** as alleged in the indictment.

Do Not Disclose Per Article 35.29 CCP
Foreman of the Jury

We, the Jury, find beyond a reasonable doubt, the Defendant, Dana Francis Walcott, Jr. is GUILTY of the lesser included offense of **Murder**.

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We, the Jury, find beyond a reasonable doubt, the Defendant, Dana Francis Walcott, Jr. is GUILTY of the lesser included offense of **Kidnapping**.

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We, the Jury, find the Defendant, Dana Francis Walcott, Jr., NOT GUILTY.

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