

CAUSE NO. 29121

JUL 25 2008

THE STATE OF TEXAS

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IN THE DISTRICT COURT OF

JANICE STAPLES
District Clerk, Anderson County, TX
by _____ Dep.

VS.

ANDERSON COUNTY, TEXAS

SAM KILGORE

2nd JUDICIAL DISTRICT

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, SAM KILGORE, stands charged by indictment with the offense of Capital Murder, alleged to have been committed on or about the 28th day of August, 2006, in Anderson County, Texas. The defendant has pleaded not guilty.

I.

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

A person commits capital murder when such person, while incarcerated in a penal institution for the offense of murder, commits the murder, if any.

II.

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

“Penal Institution” as used in this charge, is meant a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

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.

III.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 28th day of August, 2006, in Anderson County, Texas, the defendant, Sam Kilgore, while incarcerated in a

penal institution for the offense of murder, did intentionally or knowingly cause the death of Jerry Sinclair by strangling Jerry Sinclair around the neck area, then you will find the defendant, Sam Kilgore, guilty of capital murder as charged in the indictment.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder and say by your verdict "Not Guilty."

IV.

You are instructed that in considering your verdict you may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the alleged killing, if any.

You are instructed that the testimony of State's Exhibit #1 is being admitted only in connection with one issue in this case: Whether the defendant, Sam Kilgore, was incarcerated on or about August 28, 2006, for a conviction of murder. You may not consider this evidence for any other purpose. You are further instructed that you may not consider this evidence as proof that the defendant committed the present offense.

V

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.

VI

A grand jury indictment is the means whereby a Defendant is brought to trial in a felony case. It is not evidence of guilt nor can it be considered by you in passing upon the question of the 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.

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 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.

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".

You are the exclusive judges of the facts proved, of the credibility of the witnesses and the weight to be given their testimony, but the law you shall receive in these written instructions and you must be governed thereby.

After you retire to the jury room, you should select one of your members as your presiding juror. It is his or her duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form attached hereto, and signing the same as Presiding Juror.

No one has any authority to communicate with you except the officer who has you in charge. During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

After you have retired, you may communicate with this Court in writing through the officer who has you in charge. Do not attempt to talk to the officer, who has you in charge, or the attorneys, or the Court or anyone else concerning any question you may have. After you have reached a unanimous verdict, the Presiding Juror will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as Presiding Juror. You may now retire to consider your verdict after argument of counsel.



JUDGE BASCOM W. BENTLEY
Judge Presiding

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IN THE DISTRICT COURT OF

VS.

ANDERSON COUNTY, TEXAS

SAM KILGORE

2nd JUDICIAL DISTRICT

VERDICT

We, the jury, find the Defendant, **SAM KILGORE**, "Guilty" of the offense of Capital Murder, as alleged in the indictment.

FILED FOR RECORD

At 12:50 o'clock p.m.

JUL 25 2008

JANICE STAPLES
District Clerk, Anderson County, TX
by _____ Dep.

Ed. Helms

Presiding Juror

VERDICT

We, the jury, find the Defendant, **SAM KILGORE**, "Not Guilty" of the offense of Capital Murder.

Presiding Juror