

The following are peace officers;

- (1) sheriffs and their deputies
- (2) constables and their deputies
- (3) marshals or police officers of an incorporated city, town, or village
- (4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety
- (5) law enforcement officers commissioned by the Parks and Wildlife Commission.

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"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.

"Individual" means a human being who is alive.

3.

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.

A person acts recklessly, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

4.

Now, if you find from the evidence beyond a reasonable doubt that in Wharton County, Texas, on or about the 17th day of March, 2007, the defendant James Garrett Freeman, did then and there, intentionally or knowingly cause the death of an individual, namely, Justin Hurst, by shooting him with a firearm, and the said Justin Hurst was then and there a peace officer who was acting in the lawful discharge of an official duty and the defendant knew Justin Hurst was a peace officer, then you will find the defendant 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 find the defendant not guilty of Capital Murder and next consider the lesser included offense of Murder.

5.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 17th day of March, 2007 in Wharton County, Texas, the defendant, James Garrett Freeman, did then and there commit or attempt to commit a felony, to wit: Deadly Conduct, by knowingly discharging a firearm at or in the direction of one or more individuals and while in the course of and in furtherance of the commission of the offense of Deadly Conduct the defendant did commit an act or acts clearly dangerous to human life, to-wit: discharging a firearm at or in the direction of Justin Hurst thereby causing the death of Justin Hurst, then you will find the defendant guilty of Murder.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty of Murder and next consider the lesser included offense of Manslaughter.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either Capital Murder or Murder but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in the defendant's favor and find him guilty of the offense of Murder.

6.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 17th day of March, 2007, in Wharton County, Texas, the defendant, James Garrett Freeman, did recklessly cause the death of an Individual, namely Justin Hurst, by shooting him with a firearm, then you will find the defendant guilty of the offense of Manslaughter.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Manslaughter.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either Capital Murder, Murder, or Manslaughter, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in the defendant's favor and find him guilty of the offense of Manslaughter.

If you have a reasonable doubt as to whether the defendant is guilty of Capital Murder, Murder, or Manslaughter, then you will acquit the defendant and say by your verdict not guilty.

7.

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.

8.

You are instructed that you may consider facts and circumstances surrounding the shooting of the complainant and the relationship existing between the accused and the complainant, 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.

9.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a right 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 to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

10.

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 question 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.

11.

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 he 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 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 Foreman. 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 Foreman.

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.

No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to this cause must be written, prepared and signed by the Foreman and shall be submitted to the court through this officer. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the Court, or anyone else concerning any questions you may have.

Your sole duty at this time is to determine the guilt or innocence of the defendant under the indictment in this cause and restrict your deliberations solely to the issue of guilt or innocence of the defendant.

Following the arguments of counsel, you will retire to consider your verdict.

FILED
at 9:17 o'clock A M.

NOV 03 2008

DENICE KUCERA MALOTA
DISTRICT CLERK, WHARTON CO., TEXAS
By [Signature] Deputy

[Signature]
Randy M. Clapp, Judge
329th District Court
Wharton County, Texas

CAUSE #15987

THE STATE OF TEXAS § IN THE 329TH DISTRICT COURT
VS. § OF
JAMES GARRETT FREEMAN § WHARTON COUNTY, TEXAS

VERDICT FORM

We, the Jury, find the defendant, James Garrett Freeman, GUILTY of the offense of Capital Murder as charged in the indictment.

Foreman [Signature]

Date 11-03-08

- OR -

We, the Jury, find the defendant, James Garrett Freeman, GUILTY of the lesser included offense of Murder.

FILED
at 3:12 o'clock P.M.

Foreman _____

Date NOV 03 2008

DENICE KUCERA MALOTA
DISTRICT CLERK, WHARTON CO., TEXAS
By [Signature] Deputy

- OR -

We, the Jury, find the defendant, James Garrett Freeman, GUILTY of the lesser included offense of Manslaughter.

Foreman _____

Date _____

- OR -

We, the Jury, find the defendant, James Garrett Freeman, NOT GUILTY.

Foreman _____

Date _____

