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| **STATE OF LOUISIANA** | **:** | **NUMBER 262,256 SECTION FOUR** |
| **VERSUS** | **:** | **FIRST JUDICIAL DISTRICT COURT** |
| **ERIC DALE MICKELSON** | **:** | **CADDO PARISH, LOUISIANA** |

**CHARGE TO THE JURY**

Ladies and Gentlemen of the Jury:

**DUTY TO FOLLOW THE LAW AS INSTRUCTED**

Having heard the evidence and arguments of counsel, it is now my duty to instruct you on the law applicable to this case. It is your duty to follow these instructions in reaching your verdict. Although you are the sole judges of the law and the facts on the question of guilt, you have the duty to accept and apply the law as given by the court. You must decide the facts from the testimony and other evidence and apply the law to those facts in reaching your verdict.

You must not single out any of these instructions and disregard others. I am prohibited from commenting on the evidence, or from giving any opinion as to what facts have or have not been proven. If I have given you the impression that I have an opinion regarding any fact in this case, you are to disregard that impression. Your determination of the facts must be based on evidence presented in open court. The evidence upon which you can base your determination consists of the testimony of the various witnesses, documents received in evidence and exhibits received in evidence in this case.

It is incumbent on you, the jury, and the jury alone, to determine the weight and credibility of the evidence.

**STATEMENTS AND ARGUMENTS OF THE ATTORNEYS**

The statements of the district attorneys and the defense lawyers are not to be considered by you as evidence. The opposing sides in this matter have argued their interpretation of the law, the facts they think have been proven from the evidence and from inferences based on that evidence, and on their conclusions from their interpretation of the law and the facts. These opposing viewpoints are presented to you in argument to assist you in your deliberations. However, the statements of the lawyers must be separated by you from evidence admitted in this case.

**DUTY NOT TO CONSIDER SYMPATHY, BIAS OR PREJUDICE**

In making your decision, you are not to be influenced by sympathy, passion, prejudice, or public opinion. You are expected to reach a just verdict based solely on the law and the evidence.

**PRESUMPTION OF INNOCENCE; BURDEN OF PROOF**

The fact that an accused stands before you charged with a crime creates no presumption against him. The charge is a mere accusation against him. It is not evidence of a defendant's guilt and you must not be influenced by it in considering the case.

The indictment is nothing more than a written, formal accusation against a defendant charging him with a crime. You are not to consider the indictment as evidence against the defendant. The filing of an indictment creates no inference that the defendant is guilty.

The defendant is presumed to be innocent until each element of the crime necessary to constitute his guilt is proven beyond a reasonable doubt. The defendant is not required to prove that he is innocent; thus, the defendant begins the trial with a clean slate. However, this does not mean that the state must prove beyond a reasonable doubt such facts that may be connected with the crime charged but that are not essential elements thereof. The state is not required to prove motive. The presumption of innocence is another way of saying that a person is not guilty until proven otherwise beyond a reasonable doubt. A legal presumption relieves the person in whose favor it exists from the necessity of any proof whatsoever. Nevertheless, a presumption may be destroyed by evidence to the contrary. It is incumbent on the State to prove his guilt beyond a reasonable doubt; and, until so proven, an accused is presumed to be innocent.

The burden is upon the state to prove the defendant's guilt beyond a reasonable doubt. In considering the evidence, you must give the defendant the benefit of every reasonable doubt arising out of the evidence or out of the lack of evidence. If you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

**REASONABLE DOUBT**

Proof beyond a reasonable doubt is a phrase that is almost self-explanatory. Reasonable doubt is doubt based upon reason and common sense, and is present if after listening to all of the evidence you cannot say you are firmly convinced of the truth of the charge. Reasonable doubt does not mean all possible doubt, but means doubt based upon a reason. If, after you have considered the State's evidence and the law applicable, there is doubt in your mind as to the guilt of the accused, which doubt is based upon reason, then the defendant is not guilty. However, "proof beyond a reasonable doubt" does not mean proof to an absolute certainty and does not mean proof beyond all doubt.

In weighing the evidence, you may determine that two different reasonable conclusions may be drawn from the evidence. Whenever facts, testimony or other evidence are such that two different reasonable conclusions may be drawn therefrom, one conclusion favorable to him and one conclusion not favorable to him, it is your duty to draw the conclusion that is favorable to the defendant.

**EXCLUSIVE JUDGES OF FACT**

You are the exclusive judges of the facts. You are to find from the evidence which facts have been proven and which facts have not been proven. For this purpose, you determine the credibility of the witnesses, accordingly, as you are impressed with their veracity.

It is your duty to determine the weight and credibility of the evidence. You may take into consideration the probability or improbability of the statements of the witnesses, their opportunities for knowledge of the facts to which they testify, their reliability in noting and remembering facts, their demeanor on the stand, the interest or lack of interest they have shown in the case, and every circumstance surrounding the giving of their testimony which may aid you in weighing their statements. If you believe that any witness in the case has willfully and deliberately testified falsely to any material fact for the purpose of deceiving you, then you are justified in disregarding the entire testimony of such witness as proving nothing and as not worthy of belief. You have the right to accept as true or reject as false the testimony of any witness, in whole or in part, as you are impressed with his or her truthfulness.

**IMPEACHMENT**

The testimony of a witness may be discredited by showing that the witness will benefit in some way by the defendant's conviction or acquittal, that the witness is prejudiced or that the witness has any other reason or motive for not telling the truth.

The testimony of a witness may be discredited by showing that the witness has been previously convicted of a crime. The conviction does not necessarily mean that the witness is not telling the truth. It is a circumstance you may consider along with all other evidence in deciding whether you believe any or all of the testimony of the witness.

# **VOLUNTARINESS OF STATEMENTS**

If the state offers evidence of a statement by the defendant, you must first determine whether the statement was in fact made. You must then consider whether the statement, if made, was accurately recorded or repeated.

If you find that the defendant made a statement, you must also determine the weight or value that the statement should be accorded, if any. In determining the weight or value to be accorded a statement made by a defendant, you should consider all the circumstances under which the statement was made. In making that determination, you should consider whether the statement was made freely and voluntarily, without the influence of fear, duress, threats, intimidation, inducement, or promises.

**FIFTH AMENDMENT**

The accused is not required to testify and where the accused does not testify, you shall not consider this fact against him or permit it to raise any inference or presumption of guilt against him. You should consider, in determining guilt or innocence, only those facts testified to and brought out on trial of the case here in court.

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Evidence is either direct or circumstantial. Direct evidence is evidence which, if believed, proves a fact. Circumstantial or indirect evidence is evidence which, if believed, proves a fact and from that fact you may logically and reasonably conclude that another fact exists.

You cannot find a defendant guilty solely on circumstantial evidence unless the facts proved by the evidence exclude every reasonable hypothesis of innocence.

**DUTY NOT TO GO BEYOND THE EVIDENCE TO SEEK DOUBT**

You are prohibited by law and your oath from going beyond the evidence to find reasons to convict or seek doubts upon which to acquit the defendant, but must confine yourselves to a dispassionate consideration of the evidence. You must not resort to extraneous facts or circumstances in reaching your verdict. That is, you must not go beyond the evidence to find facts or circumstances upon which to convict or acquit, but must restrict yourselves to the evidence that you heard on the trial of this case, or lack of evidence. You may not consider evidence which you were instructed to disregard or to which an objection was sustained.

**EXPERT TESTIMONY**

Experts are persons who are learned in a particular science and they are permitted to express their opinion upon scientific matters in issue. But such experts are not called into Court for the purpose of deciding the case. You, the jurors, are the ones who, in law, must bear the responsibility of deciding the case. The experts are merely witnesses and you have the right to either accept or reject their testimony and opinions in the same manner and for the same reasons for which you may accept or reject the testimony of other witnesses in this case.

**STIPULATIONS**

A “stipulated fact” or “stipulation” is a fact that the attorneys agree is accurate. The attorneys may agree to stipulate to certain facts to save time. Unless I instruct you to the contrary, you must accept a stipulated fact as evidence and treat the stipulated fact as having been proven.

**LA. R.S. 14:24 PRINCIPALS**

All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals.

**THE CHARGE AND POSSIBLE VERDICTS**

Ladies and Gentlemen, the defendant, Eric Mickelson, is charged as a principal to the crime of First Degree Murder. The possible verdicts you may render in this case are as follows:

1. Guilty as charged of First Degree Murder; or

2. Guilty of Second Degree Murder; or

3. Guilty of Manslaughter; or

4. Not Guilty.

The statutes applicable to these verdicts are:

**LA. R.S. l4:30 FIRST DEGREE MURDER**

First degree murder is:

1. the killing of a human being when the offender acted with a specific intent to kill or to inflict great bodily harm and the offender was engaged in the perpetration or attempted perpetration of armed robbery, simple robbery, or aggravated burglary;

OR,

2. the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm upon a person sixty-five years of age or older.

Thus, in order to convict the defendant of first degree murder, you must find beyond a reasonable doubt:

(1) that the defendant was a principal to the killing of Charles Martin, and

1. that the defendant acted with a specific intent to kill or inflict great bodily harm; and
2. that the defendant was engaged in the perpetration or attempted perpetration of armed robbery, simple robbery, or aggravated burglary,

OR,

1. that the defendant was a principal to the killing of Charles Martin, and
2. that the defendant has a specific intent to kill or inflict great bodily harm upon a person sixty-five years of age or older.

Whoever commits the crime of first degree murder shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence in accordance with the determination of the jury.

**LA. R.S. 14:64 ARMED ROBBERY**

Armed robbery is the taking of anything of value belonging to another from the person of another or which is in the immediate control of another, by use of force or intimidation, while the offender is armed with a dangerous weapon.

**LA. R.S. 14:2(3) DANGEROUS WEAPON**

Dangerous weapon includes any gas, liquid or other substance or instrumentality, which, in the manner used, is calculated or likely to produce death or great bodily harm.

**LA. R.S. 14:65 SIMPLE ROBBERY**

Simple robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, but not armed with a dangerous weapon.

**LA. R.S. 14:60 AGGRAVATED BURGLARY**

Aggravated is the unauthorized entry of any inhabited dwelling, or of any structure, water craft, or movable where a person is present, with the intent to commit a felony or theft therein, if the offender,

(1) Is armed with a dangerous weapon; or

(2) After entering arms himself with a dangerous weapon; or

(3) Commits a battery upon any person while in such place, or in entering or leaving such place.

**LA. R.S. 14:27 ATTEMPT**

Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

If you are not convinced that the defendant is guilty of the offense charged, you may find the defendant guilty of a lesser offense, if you are convinced beyond a reasonable doubt that the defendant is guilty of a lesser offense.

The following offenses are responsive lesser verdicts:

**LA. R.S. 14:30.1 SECOND DEGREE MURDER**

Second degree murder is the killing of a human being:

(l) When the offender has a specific intent to kill or to inflict great bodily harm; or

(2) When the offender is engaged in the perpetration or attempted perpetration of armed robbery, simple robbery, or aggravated burglary even though he has no intent to kill or to inflict great bodily harm.

Thus, under paragraph 1 of the second degree murder statute, in order to convict the defendant of second degree murder, you must find beyond a reasonable doubt:

(1) that the defendant was a principal to the killing of Charles Martin; and

(2) that the defendant acted with a specific intent to kill or to inflict great bodily harm.

In order to convict the defendant of second degree murder, under paragraph 2 of the second degree murder statute you must find beyond a reasonable doubt:

(1) that the defendant was a principal to the killing of Charles Martin, whether or not he had an intent to kill; and

(2) that the killing occurred while the defendant was engaged in the perpetration or

attempted perpetration of armed robbery, simple robbery, or aggravated burglary;

Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

**LA. R.S. 14:31 MANSLAUGHTER**

Manslaughter is:

1. A homicide which would be murder under either Article 30 (first degree murder) or Article 30.l (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed.
2. A homicide committed, without any intent to cause death or great bodily harm when the offender is engaged in the perpetration or attempted perpetration of any felony not enumerated in Article 30 (first degree murder ) or 30.1 (second degree murder), or of any intentional misdemeanor directly affecting the person.

Thus, in order to convict the defendant of manslaughter, you must find beyond a reasonable doubt:

(1) that the defendant was a principal to the homicide of Charles Martin which would be murder under the first degree murder statute or the second degree murder statute; but,

(2) that the killing was committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection.

OR

1. that the defendant was a principal to the homicide of Charles Martin; and
2. that the defendant did not have the specific intent to kill or inflict great bodily harm; and
3. that the killing occurred while the defendant was engaged in a felony other than those enumerated in the first degree murder statute or the second degree murder statute or while the defendant was engaged in an intentional misdemeanor directly affecting the person.

**LA. R.S. 14:l0 CRIMINAL INTENT**

Criminal intent has been referred to in this case. The law of Louisiana provides:

Criminal intent may be specific or general:

1. Specific criminal intent is that state of mind which exists when the circumstances

indicate that the offender actively desired the prescribed criminal consequences to

follow his act or failure to act.

2. General criminal intent is present whenever there is specific intent, and also, when

the circumstances indicate that the offender in the ordinary course of human

experience, must have adverted to the prescribed criminal consequences as reasonably

certain to result from his act or failure to act.

Although intent is a question of fact, it need not be proven as a fact, and may be inferred from the circumstances of the case. Intent need not be proven by direct evidence. It is not possible to look into a person's mind and discover his intention. It may be inferred from the circumstances.

The intent need not have existed for any material length of time. It is sufficient if it was in the mind of the accused at the time of the commission of the act. You may consider all of the evidence in the case which you believe bears on the question of intent of the defendant in order to reach a conclusion as to any criminal intent. Specific criminal intent is an essential element of the crime of first degree murder.

1. Specific criminal intent is a required element for first degree murder and aggravated burglary;
2. General criminal intent is a required element for armed robbery and simple robbery;
3. Specific criminal intent is a required element of attempted armed robbery, attempted simple robbery and attempted aggravated burglary.

**INTOXICATION**

The issue of Intoxication is a question of fact to be decided by the jury. The assertion that the defendant was in an intoxicated condition at the time of the commission of the crime is usually not a defense. However, where the circumstances indicate that the defendant voluntarily became intoxicated and that his intoxicated condition precluded or prevented the presence of a specific intent or special knowledge required in a particular crime this fact constitutes a defense to a prosecution for that crime.

**DUTY TO DELIBERATE WITH VIEW TOWARD REACHING A VERDICT**

Each juror, having in view the oath he has taken, and his duty and responsibility thereunder, should have his own mind convinced beyond a reasonable doubt, upon all the evidence, before he can conscientiously consent to a verdict of guilty or not guilty.

However, this does not preclude the jurors from discussing the evidence in the case so as to assist each other in arriving at the true facts in the case.

When you enter the jury room, it is your duty to consult with one another, to consider each other's views, and to discuss the evidence with the objective of reaching a just verdict, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but only after discussion and impartial consideration of the case with your fellow jurors.

I will hand you a typewritten list of the forms of the possible verdicts you may render in this case. You will select your own foreman, whose duty it will be to conduct your deliberations, write and sign the verdict on the back of the list of responsive verdicts, and speak for you when you return into court.

You must be unanimous in your verdict. Twelve of twelve jurors must agree on any verdict you render in this case.

When you have reached a verdict, the foreman should write it on the back of the list of responsive verdicts handed you, date it, sign it and return it into open court.

The case is now yours to decide.

August 3, 2011 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCOTT CRICHTON

DISTRICT JUDGE

ATTORNEYS AND REPRESENTATIVES:

Lea R. Hall, Jr., Assistant District Attorney

William J. Edwards, Assistant District Attorney

Hugo A. Holland, Jr., Assistant District Attorney

David Price, Counsel for Eric Mickelson

Mario Guadamud, Counsel for Eric Mickelson

Kathryn Sheely, Counsel for Eric Mickelson

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| **STATE OF LOUISIANA** | **:** | **NUMBER 262,256 SECTION FOUR** |
| **VERSUS** | **:** | **FIRST JUDICIAL DISTRICT COURT** |
| **ERIC DALE MICKELSON** | **:** | **CADDO PARISH, LOUISIANA** |

**VERDICT FORM**

**Charge: First Degree Murder**

The possible verdicts in this case are listed below. Once a verdict has been reached, the jury foreman should write out the appropriate verdict in the space provided exactly as it appears in the examples below. After the foreman writes the verdict he shall affix his signature and the date hereon:

1. We, the jury, find the defendant, Eric Mickelson guilty as charged of first degree murder;

2. We, the jury, find the defendant, Eric Mickelson guilty of second degree murder;

3. We, the jury, find the defendant, Eric Mickelson guilty of manslaughter;

4. We, the jury, find the defendant, Eric Mickelson not guilty.

We, the jury, find the defendant, Eric Mickelson \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

August \_\_\_\_\_\_, 2011 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JURY FOREMAN