

No. CR-11-1222

STATE OF LONE STAR

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IN THE DISTRICT COURT

v.

IN AND FOR

JOHN MARTIN, M.D., Defendant

BEXAR COUNTY, LONE STAR

Prepared by:

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This case file was commissioned by the Texas Young Lawyers Association and was prepared by Marvin W. Jones for the 2013 National Trial Competition

Statement of the Case

This is a criminal action against Dr. John Martin, M.D., personal physician to David Kitner, an entertainer. The State's allegation is that on or about May 9, 2011, Dr. Martin committed manslaughter as defined in Lone Star Penal Code Section 19.04 when he administered certain drugs to Kitner when Kitner was in a condition such that Dr. Martin was aware of but consciously disregarded a substantial and unjustifiable risk that the drugs would have a fatal effect.

Witnesses will include:

1. David Kitner, Jr., aka "Little Kit," the son of the decedent, David Kitner, aka "Special K."
2. Dr. Chris Jensen, M.D., an expert witness who will testify on behalf of the state.
3. Dr. John Martin, the Defendant, who will testify on his own behalf.
4. Leslie Walker, M.D., who will testify as the defense expert.

In addition, there will be deposition testimony from a witness, Bree Trevino, who is unavailable to testify at trial.

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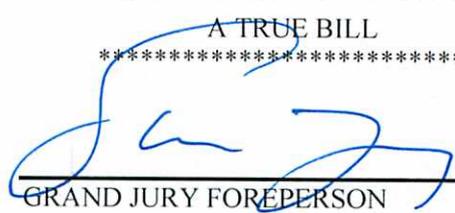
INDICTMENT
June 2011 Term

THE GRAND JURY CHARGES THAT:

COUNT ONE
(Manslaughter)

1. On or about May 9, 2011, in Armadillo, Bexar County, Lone Star, John Martin, M.D., did cause the death of one David Nellie Kitner by engaging in conduct which, under the circumstances and condition, indicated that the said John Martin, M.D. was aware of but consciously disregarded a substantial and unjustifiable risk that such conduct would have a fatal effect, specifically by administering a pharmaceutical drug, to wit, Propofol or adrenaline, to the said David Nellie Kitner when John Martin, M.D. was aware that David Nellie Kitner was in a condition such that the administration of such pharmaceutical drug presented a substantial and unjustifiable risk of causing, and did in fact cause, the death of David Nellie Kitner, a legend, in violation of Lone Star Penal Code, Section 19.04.

A TRUE BILL



GRAND JURY FOREPERSON

TRACY LEDUC
BEXAR COUNTY DISTRICT ATTORNEY

By: Pam Mackey
Pam Mackey, Assistant District Attorney

WITNESS AND EXHIBIT LIST

WITNESSES:

1. David Kitner, Jr. (must be male)
 2. Chris Jensen, M.D. (may be either male or female)
 3. Dr. John Martin (must be male)
 4. Dr. Lesley Walker (may be either male or female)
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EXHIBITS:

1. Photo of Medicine Bottle
2. Codicil to Will
3. Autopsy Report
4. Medical Record
5. Photo of Decedent
6. Physician's Desk Reference
7. Rolling Stone Magazine
8. Toxicology Report
9. Prescription for Hydrocodone
10. Ministry Certificate
11. Finger Paint Art

STIPULATIONS AS TO EVIDENTIARY MATTERS

Procedural Matters

1. Federal Rules of Criminal Procedure and Federal Rules of Evidence apply.
2. All witnesses called to testify who have identified the parties, other individuals, or tangible evidence in depositions or prior testimony and will, if asked, identify the same at trial.
3. Each witness who gave a deposition agreed under oath at the outset of his or her deposition to give a full and complete description of all material events that occurred and to correct the deposition for inaccuracies and completeness before signing the deposition.
4. All depositions were signed under oath.
5. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on a deposition does not comport with signatures or initials located on an exhibit.
6. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
7. This competition does not permit a listed witness, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that "invented" individual.
8. "Beyond the record" shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to National Rules VII(4)(C) and (D) and VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in rule VIII(4).

9. The State and the Defendant must call the two witnesses listed as that party's witnesses on the witness list.

10. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

11. It is stipulated that no one shall attempt to contact the problem drafter about this problem before the conclusion of the 2013 National Trial Competition Final Round. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

12. 2013 is the year in which this case comes to trial.

13. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the State shall have four minutes to present any pretrial motions; (2) the Defendant shall have four minutes to respond to the State's motion(s); (3) the Defendant shall have four minutes to present any pretrial motions; and (4) the State shall have four minutes to respond to the defendant's motion(s).

14. This competition permits teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions or deletions are permitted to the provided jury instructions or to the jury verdict form.

15. Dr. John Martin, M.D., testified at a prior trial, the result of which was a mistrial. The testimony of Dr. John Martin, M.D., shall conform to the testimony given by him at all previous trials.

16. Bree Trevino is unavailable to testify at trial. Her testimony was given at a previous trial where all parties had an opportunity to cross examine the witness. Her testimony may be used at trial as though she were testifying in person.

Substantive Matters

1. Section 19.04, Lone Star Penal Code, provides:

MANSLAUGHTER. (a) A person commits an offense if he recklessly causes the death of an individual.

(b) An offense under this section is a felony of the second degree.

2. Section 6.02, Lone Star Penal Code, provides:

REQUIREMENT OF CULPABILITY. A person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.

3. Section 6.03, Lone Star Penal Code, provides:

DEFINITIONS OF CULPABLE MENTAL STATES. A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. 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.

**DEPOSITION OF DAVID KITNER, JR. A/K/A LITTLE KIT
NOVEMBER 17, 2011**

1 Q: State your name, please?

2 A: My name is David Kitner, Jr.

3 Q: How old are you Mr. Kitner?

4 A: I am now 17 years old, and you can call me Little Kit, like everybody else does.

5 Q: Okay, Little Kit, where are you currently living?

6 A: After my father's untimely homicidal death, I started living with my uncle, Rufus
7 Pennington.

8 Q: And where do you and your Uncle Rufus live?

9 A: Right here in Armadillo.

10 Q: Is that in the State of Lone Star?

11 A: Yes, Armadillo has always been in the State of Lone Star. Also, it's in Bexar County, at
12 least for now.

13 Q: Where were you living at the time of your father's death?

14 A: We were living at his little house here in Armadillo.

15 Q: Just for the record, let me get you to tell us who your father was before his untimely
16 homicidal death?

17 A: My father was David Kitner, also known by his rap name, Special K.

18 Q: What was it that your father did?

19 A: As you know, my father was a well-known popular entertainer.

20 Q: What kind of entertainment did he do?

21 A: He was a musician.

22 Q: What kind of music did Special K specialize in?

23 A: Well, when he started out, he was purely rock and roll. He then went to rap, and then the
24 more recent years he had gone into a sort of progressive/regressive country and western
25 genre.

**DEPOSITION OF DAVID KITNER, JR. A/K/A LITTLE KIT
NOVEMBER 17, 2011**

1 Q: Can you tell us what the name of his last popular recording was?

2 A: Well, that would have been a clever cover of "The Ballad of Pancho and Lefty."

3 Q: I hate to take you back through this, but can you recall the events of the day when your
4 father died?

5 A: Of course. I was at the house in Armadillo on that date, and so was my father and some
6 other folks who seemed to be around a lot.

7 Q: What other folks were around on that date?

8 A: Well, ah, my father's current girlfriend was there. His personal physician was there. The
9 doctor's current girlfriend was there. A couple of house staff persons were there, like a
10 cook and a maid. A security person, a gardener, a fitness trainer, the dog trainer, an
11 audio/visual specialist, and I can't remember anybody else.

12 Q: Just how big a house was this?

13 A: Oh, it's probably 12 bedrooms and maybe 15 baths. There is a cabana out back where
14 the doctor and his girlfriend liked to stay. There was also a guest house on the backside
15 of the property, just beyond the skeet range.

16 Q: There's a skeet range on the property?

17 A: Yes, my dad and an aging rock and roller named Ted Nugget had gotten into shooting in
18 their later years. Guns, that is.

19 Q: So where were you in this house on the day your father died?

20 A: I was in the playroom, which is actually a converted fitness center.

21 Q: What were you doing when you first became aware that anything was wrong?

22 A: I was exercising using my Wii Fit program. Truth be told, I was trying to figure out the
23 cheat codes on it.

24 Q: Cheat codes on an exercise program?

25 A: Yeah well, I was younger then.

**DEPOSITION OF DAVID KITNER, JR. A/K/A LITTLE KIT
NOVEMBER 17, 2011**

1 Q: What came to your attention that caused you to believe that anything was unusual?

2 A: Well, I heard my dad in the hallway ranting about needing some pain medications.

3 Q: What did you do then?

4 A: I paused the program I was using and went to see what the problem was.

5 Q: Was your father still in the hall?

6 A: No, he had gone back into the master bedroom area.

7 Q: What did you do then?

8 A: I went down to the master bedroom and stuck my head in the door. When I did, I saw my
9 father lying on the bed and Dr. Martin hovering over him, injecting something into his
10 arm with a syringe. Then I saw Dr. Martin slip the syringe into his inside jacket pocket
11 real sneaky like.

12 Q: Did Dr. Martin acknowledge your presence at that point?

13 A: No, I just poked my head in the door and he didn't turn to look at me.

14 Q: What happened then?

15 A: Well, I heard Dr. Martin mutter "You just can't leave this stuff alone, can ya?"

16 Q: What did you observe next?

17 A: Well, I saw my father sprawled across his bed with a horrified look on his face, clutching
18 his arm and saying, "Did you really think I needed a prop up?"

19 Q: What was Dr. Martin doing at that time?

20 A: After my dad said what he said, Dr. Martin just threw up his hands, turned his back on
21 my dad and walked out of the room. I think that's the first time he saw me, because he
22 had kind of a surprised look on his face and asked, "How long have you been there?"

23 Q: What did you then observe?

24 A: Well, I turned back to look at my dad, and he was beginning to convulse and shake. His
25 face was turning white.

**DEPOSITION OF DAVID KITNER, JR. A/K/A LITTLE KIT
NOVEMBER 17, 2011**

1 Q: What did you do then?

2 A: I ran into the hall and called Dr. Martin to come back.

3 Q: Did Dr. Martin come back?

4 A: Yes, but it was several minutes later. I have no idea what he was doing all that time out
5 in the hall. But when he came back in, he looked at my dad and then opened his medical
6 bag and started frantically pawing through it.

7 Q: What happened then?

8 A: Dr. Martin started pulling bottles of things out of his medical bag and injecting them into
9 my dad with a hypodermic needle. He was telling my dad that the medications he was
10 giving would stop the seizures.

11 Q: What happened then?

12 A: I saw my dad's face turn from white to grey, and then he apparently arrested, because he
13 quit shaking, quit convulsing, but he also quit breathing.

14 Q: What did you do then?

15 A: I ran back to the playroom to get my cell phone to call an ambulance.

16 Q: What did Dr. Martin do?

17 A: I have no idea. I didn't see him again until much later that day, after Dad was
18 pronounced dead.

19 Q: Did an ambulance come?

20 A: Yes, an ambulance got there within 3 minutes. Armadillo is a small town.

21 Q: Did you watch what the ambulance folks were doing?

22 A: Yes, I observed them trying to resuscitate him in various ways.

23 Q: Did the EMTs inject anything into your father while you were watching?

24 A: No, they were using what the medical folks call non-invasive procedures.

25 Q: Before the ambulance came, were you alone with your father for a while?

**DEPOSITION OF DAVID KITNER, JR. A/K/A LITTLE KIT
NOVEMBER 17, 2011**

1 A: Yes, between the time I called the ambulance and the time they got there, nobody else
2 was in Dad's bedroom with me.

3 Q: Did he ever regain consciousness during that time?

4 A: Yes, for a brief moment.

5 Q: Did he say anything?

6 A: Yes, he said, "Rock on, Little Kit."

7 Q: What did he mean by that?

8 A: That was an expression that he had always used with me, ever since I can remember. He
9 always said it when he was really happy with something I had done.

10 Q: At some point in time, did you become aware of the disposition your father had made of
11 his estate?

12 A: Yes, a couple of weeks after the funeral, the family lawyer, a guy named C.E. Rhodes,
13 came by, called the family together and told them that Dad had changed his will within a
14 week of his death to name me as the sole beneficiary of his estate.

15 Q: And approximately how much was his estate worth at the time of his untimely passing?

16 A: Oh, \$410,837,406.00 more or less.

17 Q: Can you identify Exhibit 1?

18 A: Yes, Exhibit 1 is a photograph taken by the police at the time of the investigation of my
19 father's death. It truly and accurately shows a medicine bottle that I found on the bed
20 next to where Dr. Martin had set his medical bag.

21 Q: Had you ever seen it before?

22 A: No, I had seen a lot of different types of "medicines" in Dad's bedroom before, but I'd
23 never seen anything like this.

24 Q: Can you identify Exhibit 2?

25 A: Yes, Exhibit 2 is a copy of a codicil to my father's will that was done back in 2008,

**DEPOSITION OF DAVID KITNER, JR. A/K/A LITTLE KIT
NOVEMBER 17, 2011**

1 before he changed it to name me as the sole beneficiary.

2 Q: Are you aware of any other changes to Special K's will between this 2008 codicil and the
3 brand new will he made the week before he died?

4 A: No. The lawyer said there was another will, sometime in 2009, but he couldn't find it
5 anywhere. He said it gave all my dad's estate to a church of some kind called the Church
6 of the Holy Harvest. They'd made his girl friend of the day an ordained minister of some
7 kind. She was a heavy metal rocker they called the Tattoo Woman because she was
8 absolutely covered in gross tattoos.

9 Q: What is Exhibit 10?

10 A: It's a certificate verifying that this Church of the Holy Harvest had ordained Special K's
11 girl friend as a minister.

12 Q: What did the 2008 codicil to Mr. Kitner's will provide?

13 A: Well, this crazy codicil would have given his entire estate to his girlfriend.

14 Q: And what was her real name?

15 A: Bree Trevino.

16 Q: When did you become aware of the newest will?

17 A: I had heard his lawyer, Mr. Rhodes, talk about it maybe 3 days before Special K became
18 especially dead. But I didn't know what was in it until C.E. read it to us.

19 Q: By the way, do you know what C.E. Rhodes' initials stand for?

20 A: Yeah. Charlotte Elizabeth. Apparently his mother wanted a girl. Pretty much what she
21 got, if you ask me.

**DEPOSITION OF DR. CHRIS JENSEN
DECEMBER 22, 2011**

1 Q: Would you state your name for the record?

2 A: My name is Jensen, Chris Jensen. Dr. Chris Jensen, M.D.

3 Q: Let me guess, you're a medical doctor?

4 A: Yes, Dr. Chris Jensen, M.D. Stands for medical doctor.

5 Q: Where do you reside, Dr. Jensen?

6 A: I reside in Cheapside, State of Lone Star.

7 Q: Do you practice medicine up here in Armadillo?

8 A: No, I'm the out of town witness. It is important to be from out of town when you are an
9 expert witness.

10 Q: Where were you raised, Dr. Jensen?

11 A: I was raised in Alpine, Lone Star.

12 Q: Tell us about your educational background.

13 A: Well I went to high school at a high school for the gifted and talented because I was both
14 gifted and talented. Also because I had been booted out of public schools because I could
15 not get along well with others.

16 Q: Where did you go after high school?

17 A: I went to Lone Star Technical Institute where I achieved a degree in microbiology with a
18 minor in obscure English literature.

19 Q: Obscure English literature?

20 A: Yes, where you learn to recognize obscure references like "Mrs. Grundy."

21 Q: Were you then accepted to a medical school?

22 A: Yes, I was accepted to Johns Hopkins Medical School, where I completed a medical
23 degree with honors.

24 Q: What did you do then?

25 A: I then went to a residency in pathology in Tombstone, AZ. After I completed that

**DEPOSITION OF DR. CHRIS JENSEN
DECEMBER 22, 2011**

1 residency, I moved back here to Lone Star, and set up a practice in Cheapside.

2 Q: How long have you been practicing as a pathologist in Cheapside?

3 A: I've been practicing there for 15 years, exercising the rights and privileges that I have
4 because I'm licensed as a medical doctor in the state of Lone Star.

5 Q: I was going to get around to that question sooner or later. However, let me go to the next
6 one: Were you asked to do an autopsy on the body of David Kitner?

7 A: Yes, the State of Lone Star requested that I perform an autopsy. The body was brought to
8 my autopsy suite at Cheapside Hospital in Cheapside.

9 Q: Can you identify Exhibit 3?

10 A: Yes, Exhibit 3 is my official autopsy report, certified by me as the doctor who actually
11 performed the autopsy, and this is a true and correct copy of the autopsy, another
12 question I'm sure you would have gotten around to sooner or later.

13 Q: What did you observe when you began the autopsy on Mr. Kitner?

14 A: Well, as reflected in my autopsy report, the body was that of a well nourished, somewhat
15 obese white male person who appeared to be much older than his stated age of 65 years.
16 I attributed his overall appearance to his rock and roll lifestyle.

17 Q: Are you able, based upon your autopsy and the reports of any toxicology tests, to
18 determine the cause of death of legendary rocker David Kitner?

19 A: Yes, in my professional opinion, based on my autopsy examination, the toxicology
20 reports and the professional resources I consulted, the cause of death of Mr. Kitner was a
21 massive coronary event.

22 Q: Were you able to determine the cause of this massive coronary event?

23 A: Yes, in my opinion, the massive coronary event was caused by an injection into his
24 system of a drug known as Propofol, followed closely in time by the injection of
25 adrenalin.

**DEPOSITION OF DR. CHRIS JENSEN
DECEMBER 22, 2011**

1 Q: Was Propofol a drug that was prescribed for any known condition that Mr. Kitner had?

2 A: No, I've done an extensive review of the medical records of Mr. Kitner, and I do not find
3 any indication either that he had a condition for which Propofol would have been
4 indicated or that any physician had ever prescribed Propofol for Mr. Kitner.

5 Q: Could you tell what amount of Propofol had been injected into Mr. Kitner's system?

6 A: Yes, the toxicology report indicated an amount of Propofol which would have been three
7 times the indicated amount for any known condition for which it would have been
8 prescribed.

9 Q: In your professional opinion, what would the injection of that amount of Propofol into his
10 blood stream do to a normal person?

11 A: It would tend to produce a remarkable hallucinogenic effect, assuming there were no
12 other drugs in the bloodstream at the time.

13 Q: Would this amount of Propofol, by itself, have caused a massive coronary event?

14 A: No, in these amounts, Propofol is not known to cause coronary issues, but there were
15 complicating factors in this case.

16 Q: What were the complicating factors?

17 A: As reflected in the toxicology report, there was also the presence of other narcotic
18 substances in Mr. Kitner's blood, including specifically hydrocodone.

19 Q: In your professional opinion, what reaction would be produced if Propofol was
20 introduced into a person's bloodstream in the presence of hydrocodone?

21 A: In my professional opinion, injecting Propofol into a person who was using hydrocodone
22 would tend to cause a massive coronary event, precisely like the one we see in David
23 Kitner.

24 Q: Can you identify Exhibit 4?

25 A: Yes, Exhibit 4 is a medical record from a California medical clinic. This medical record,

**DEPOSITION OF DR. CHRIS JENSEN
DECEMBER 22, 2011**

1 which I obtained a certified copy of, relates to the decedent, David Kitner, and is dated
2 within the last 18 days before his death, as you can see.

3 Q: Was there anything in this medical record of significance in connection with your
4 opinions in this matter?

5 A: Yes, this medical record clearly indicates that as of 18 days prior to his death, Mr. Kitner
6 reported that he was taking no prescription drugs of any kind. Except Viagra.

7 Q: In your professional opinion, would a reasonably prudent medical doctor inject Propofol
8 into a patient who had been using hydrocodone?

9 A: Absolutely not. Injecting Propofol into a patient who is using hydrocodone is reasonably
10 calculated to, and did here, cause a fatal cardiac event.

11 Q: Do you have an opinion, based on your education, background and experience, as to
12 whether Dr. Martin was negligent in injecting Propofol into Mr. Kitner at the time and
13 under the circumstances in question?

14 A: In my opinion, Dr. Martin was clearly negligent and reckless in injecting Propofol into
15 Mr. Kitner. Mr. Kitner was a known drug user. He had a reputation in the community
16 for abuse of drugs. Dr. Martin was a constant companion of Mr. Kitner, and knew or
17 absolutely should have known that Mr. Kitner was using drugs, including pain
18 medications like hydrocodone.

19 Q: Can you identify Exhibit 8?

20 A: Yes, that's the tox report. The toxicology report on the blood and other tissue samples
21 taken from Kitner's lifeless body. After he died, of course.

22 Q: I note in the toxicology report the presence of adrenalin. What is that used for?

23 A: That particular drug is used to resuscitate patients who are having a cardiac arrest. I
24 believe it was the drug that Dr. Martin was seen administering in an effort to resuscitate
25 Mr. Kitner.

**DEPOSITION OF DR. CHRIS JENSEN
DECEMBER 22, 2011**

1 Q: Do you have an opinion as to whether Dr. Martin should have attempted to use adrenalin
2 to resuscitate Mr. Kitner?

3 A: Again, in my opinion Dr. Martin was negligent and reckless in attempting to resuscitate
4 Mr. Kitner using that particular medication.

5 Q: And what is that opinion based on?

6 A: It is based on the fact that that particular medication is absolutely contraindicated for any
7 patient who is known to be on Propofol and hydrocodone. The combination of those
8 things will just absolutely explode the heart. In fact, given the hydrocodone, Propofol
9 and adrenalin, I'm surprised I could even find a heart during the autopsy.

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**DEPOSITION OF DR. JOHN MARTIN
AUGUST 18, 2011**

1 Q: Would you please identify yourself?

2 A: My name is Dr. John Martin.

3 Q: What is your occupation?

4 A: I am a medical doctor.

5 Q: Where do you reside?

6 A: I am currently residing in Paris.

7 Q: Paris, France?

8 A: No, Paris, Lone Star.

9 Q: Can you tell us about your education background?

10 A: Yes, I went to a private high school in an exclusive subdivision of Bootleg. The place
11 was named Dry Gulch Academy. I then went to college at Lone Star University in San
12 Antonio, where I earned a degree in chemistry with a minor in biometrics. I was then
13 accepted into Lone Star A&M Medical School, where I graduated in my class.

14 Q: What did you do after medical school?

15 A: I originally set up a practice in Turkey, Lone Star, which is the home of the Bob Wills
16 Music Festival.

17 Q: When did you first meet David Kitner?

18 A: I got to know David, or Special K as we knew him, through a fellow named Ted Nugget.
19 As I said, Turkey is the home of the Bob Wills Music Festival. That means lots of local
20 country and western folks are there. Over time, we started seeing some country and
21 western/rock and roll crossover singers coming through, including Ted Nugget. Nugget
22 introduced me to Kitner, who at the time was pretty young, just crossing over from rock
23 and roll into rap, and before he crossed further over into progressive/regressive country.

24 Q: So how did you get to be Kitner's personal physician?

25 A: Well, Special K and I hit it off right away. We have similar personality types. He started

**DEPOSITION OF DR. JOHN MARTIN
AUGUST 18, 2011**

1 staying at my place whenever he was in Turkey, then he invited me to go on the road
2 with him and serve as his personal physician. Ultimately, I quit my practice in Turkey
3 and traveled with Special K everywhere he went.

4 Q: When Mr. Kitner was not on the road, where would you live?

5 A: Well, his place in Armadillo had a cabana out back. I lived in the cabana when we
6 weren't on the road. It was a pretty nice cabana, three bedrooms, four baths, right next to
7 the pool.

8 Q: Where were you on the day Kitner died?

9 A: We were off the road. We were in Armadillo. I was in the cabana out by the pool
10 watching "Dances with Stars" with my girlfriend, Bree Trevino.

11 Q: Did you become aware of some problem with Kitner?

12 A: Yes, I got a call on my cell phone from Special K, demanding that I come to the master
13 suite. He was complaining that he was having shortness of breath.

14 Q: Did you go to the master suite?

15 A: No, first I asked him what he had been doing. He said he had been exercising
16 strenuously in the gym.

17 Q: Did you have further conversation with him at that time?

18 A: Yeah, I told him that my question was really aimed at what drugs he was doing at the
19 time. He swore he hadn't fallen off the wagon, so to speak.

20 Q: Did you have any further discussion with him at that time?

21 A: Yes, when he told me he'd been exercising strenuously in the gym, I told him to quit that.
22 I attributed his symptoms to engaging in strenuous exercise for someone who was old, fat
23 and unaccustomed to doing much more than picking a guitar.

24 Q: What did you do then?

25 A: Well, he kept demanding that I come to the master suite, so I went there. He asked me

**DEPOSITION OF DR. JOHN MARTIN
AUGUST 18, 2011**

1 for some Propofol to relieve his symptoms.

2 Q: At that time, did you administer any Propofol at all?

3 A: Absolutely not. There was no need to give him a strong sedative like that if his
4 symptoms were coming from exercise.

5 Q: After you refused to give him Propofol, what did he do next?

6 A: Well, he then began complaining of extreme sluggishness and a certain pain in his chest.
7 I figured he was still having some shortness of breath from the over exertion, so I told
8 him to take it easy.

9 Q: Did you do any physical exam at that time?

10 A: Yes, I took his temperature by placing my hand on his forehead. He was kind of clammy
11 and his skin was a little cold and looked a little blue. His pupils were somewhat narrow
12 and constricted. I didn't see anything that set off any alarms.

13 Q: At that point in time, were you aware that Mr. Kitner had been ingesting any kind of
14 medications or drugs?

15 A: No, I was totally unaware at that time that he had taken any form of recreational drugs in
16 the past several days. He'd had that bad cocaine habit that you read about everywhere,
17 but he told me he was going to clean up and go straight, and from my information he had
18 been clean and straight for several days. He wasn't acting weird, he appeared to be
19 sleeping well, he wasn't writing any music. I thought he was finally off the stuff.

20 Q: What information did you have about Kitner quitting the cocaine?

21 A: Just seeing him around the house, for one thing. For another, I read tabloids like any
22 other competent medical doctor who treats stars, and I read that Kitner had quit using
23 cocaine, so I believed it.

24 Q: After Mr. Kitner described his additional symptoms, what did you do?

25 A: As I said, I told him to relax and take deep breaths.

**DEPOSITION OF DR. JOHN MARTIN
AUGUST 18, 2011**

1 Q: At sometime did Mr. Kitner's son come into the master suite?

2 A: Yes, I saw him poke his head in the door real quiet like, trying to be sneaky. He then
3 came on into the room when he realized that I had seen him. He immediately began
4 swearing at me, saying, "What do you think you're doing to my dad?" I didn't have to put
5 up with that from Little Kit, so I left the room.

6 Q: Did you take your medical bag with you when you left the room?

7 A: No, I was pretty upset about Little Kit swearing at me, and I forgot to take my medical
8 bag with me.

9 Q: What was in the medical bag that you left behind?

10 A: Well the bag contained all of my medical stuff including the medication Propofol, which
11 would have been absolutely contraindicated for any condition that Kitner was
12 complaining of.

13 Q: You agree it would have been a bad choice of medications for a person with a history of
14 drug use that Kitner had?

15 A: Well, if he was actively using something like an opiate or codeine or some derivative like
16 Vicodin, it would have been absolutely contraindicated. Like I said, he'd been off of
17 everything for several days, therefore it would have been just questionable, but not totally
18 contraindicated.

19 Q: Did you at some point go back into the master suite?

20 A: Yes, when I realized I forgot my medical bag, I decided I better go back in and get it
21 before Little Kit pilfered all the good stuff from it. When I walked back into the master
22 suite, I saw Little Kit standing right next to his dad's bed.

23 Q: Did you observe the Junior Kitner doing anything?

24 A: Yes, he was furtively slipping a hypodermic syringe into the top of his custom-made
25 Lucchese boots. He also had something palmed in his left hand, which he immediately

**DEPOSITION OF DR. JOHN MARTIN
AUGUST 18, 2011**

1 put behind his back.

2 Q: What did you do then?

3 A: I asked him what he was doing. I asked why he was standing there. I asked him what he
4 had in his hand. I asked him what he had put in his boot.

5 Q: Did he respond to any of these questions?

6 A: No, he just said, "Get out of here, you creepy old man!"

7 Q: And what did you do then?

8 A: I left. I had a hot date with a cold drink at the cabana.

9 Q: I apologize, but I have to ask this question: were you at any time that day under the
10 influence of any drugs?

11 A: Other than alcohol? Absolutely not.

12 Q: Did you subsequently hear an ambulance come to the mansion?

13 A: No, we had the music turned up pretty loud in the cabana, I didn't hear another thing.
14 Next thing I knew about any problem was a police officer knocking on the door asking
15 me to come to the master suite because there had been a death.

16 Q: Can you identify Exhibit 5?

17 A: Yes, Exhibit 5 is a photograph of Mr. Kitner, sitting in the same chair that I found him in
18 when I entered the master suite in the first place. Except now he's dead.

19 Q: Is this the chair he was sitting in when you first observed him?

20 A: Yes, it is the red chair right next to his bed. One of his favorite places to sit.

21 Q: When you were last in the master suite, was Mr. Kitner sitting in this chair?

22 A: No, he was not sitting in that chair. He was in his bed.

23 Q: Was he wearing a suit when you last saw him?

24 A: No, he was wearing gym shorts and a ratty old t-shirt that said, "Keep Austin Weird."

25 Q: To your knowledge, was anyone in the master suite after you left other than Little Kit?

**DEPOSITION OF DR. JOHN MARTIN
AUGUST 18, 2011**

1 A: No, he was the only one in that end of the house, which is a pretty far piece from
2 anywhere else in the house.

3 Q: As you were leaving the master suite, did you hear Little Kit saying anything to his
4 father?

5 A: Yes, I heard Little Kit say, "Dad, we gotta go to the bank and transfer that money to my
6 account. Get your sorry, fat butt up and get a suit on."

7 Q: Can you identify Exhibit 6?

8 A: Yes, this is information from the PDR, or Physician's Desk Reference, a common
9 resource used by doctors to research drugs and their uses and interactions.

10 Q: Do you recognize this material as authoritative?

11 A: Yes, all doctors recognize the PDR as the bible on drugs. Heavy stuff.

12 Q: Do you recognize Exhibit 9?

13 A: Yes, that's a prescription for a Dr. Rodney Acker for hydrocodone, dated about 4 weeks
14 before Special K died.

15 Q: Were you aware of this prescription before Mr. Kitner's death?

16 A: No, never saw it, never heard about it. If Special K was doing this stuff, I never saw any
17 indication of it.

18 Q: After you learned Kitner Sr. was dead, did you have occasion to check your medical bag?

19 A: Yes, and I discovered that the syringe I usually kept in there pre-loaded with Propofol
20 was missing.

21 Q: Any idea what happened to it?

22 A: I could speculate, but my lawyer wouldn't like it. But the syringe was in the bag earlier
23 that day, before I ran into Kitner the Junior.

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**DEPOSITION OF DR. LESLEY WALKER
FEBRUARY 4, 2012**

1 Q: What is your name?

2 A: My name is Dr. Lesley Walker.

3 Q: What is your occupation or profession?

4 A: I'm a medical doctor here in the state of Lone Star.

5 Q: Where do you live?

6 A: I live here in Armadillo with my spouse and three adopted children.

7 Q: What is your educational background?

8 A: Well after I got out of high school, I went to Yale University, majoring in biology and
9 physics. After I got out of there, I went to Lone Star A&M Medical School.

10 Q: Why did you choose that particular medical school?

11 A: After being in Yale for a while, I wanted to be in a school where I wouldn't run into any
12 drug loving, liberal, hippie, radical, freaky people who just wanted to use their medical
13 degrees to get rich or get high.

14 Q: What did you do after graduating from medical school?

15 A: I went into a volunteer program called Doctors Without Borders and traveled across the
16 world treating malnourished and underprivileged people. When I finished doing that, I
17 was offered and accepted a position at the Mayo Clinic, but donated my salary entirely
18 charitable causes.

19 Q: What brought you back to Armadillo?

20 A: Well, Daddy's trust fund ran out, and I had to get a real job. So I took a job at a clinic
21 here in Armadillo where I have a bunch of partners who want to use their medical
22 degrees to get rich or get high.

23 Q: Have we asked you to look at the facts and circumstances surrounding the unfortunate
24 death of David Kitner and to render opinions regarding the conduct of Dr. John Martin?

25 A: Yes, and I have done just that.

TESTIMONY OF DR. LESLIE WALKER - 1

**DEPOSITION OF DR. LESLEY WALKER
FEBRUARY 4, 2012**

1 Q: What did you review in reaching your opinions?

2 A: I reviewed the autopsy report, the toxicology report, the prior medical records on Mr.
3 Kitner, and the depositions of all of the other witnesses in this case. It is my
4 understanding that I am the last person to be deposed in this case.

5 Q: Based on your review of the autopsy, the toxicology report, the medical records and the
6 depositions taken in this matter, have you formed an opinion as to whether or not Dr.
7 Martin's conduct in connection with the treatment of his patient, David Kitner,
8 constituted a gross deviation from the standard of care that an ordinary person would
9 exercise under all the circumstances as viewed from the actor's standpoint?

10 A: Yes, I have formed the opinion that Dr. Martin's conduct did not constitute a gross
11 deviation from the standard of care an ordinary person would exercise under all the
12 circumstances as viewed from the actor's standpoint, and did not cause the death of
13 David Kitner, a music legend.

14 Q: What is that opinion based on, Doctor?

15 A: It is based on a plethora of things. Start with the undisputed fact that Kitner, while a rock
16 and roll legend, had very notoriously quit using cocaine well before his death.

17 Q: Were you aware that Dr. Martin testified that Mr. Kitner was off of cocaine at the time of
18 his death?

19 A: Yes, I was aware of that testimony, and it is in accord with my personal observations.

20 Q: What personal observations did you make of Mr. Kitner?

21 A: I personally was at a concert where Kitner was playing about 4 days before his death.
22 Based on my experience observing people who have been using cocaine, Mr. Kitner was
23 as sober as a nun. There's no way he could've played songs like "Layla" on stage while
24 stoned. No way. Believe me, I've tried it.

25 Q: If you had a patient who told you he had quit drugs completely, would you be entitled to

**DEPOSITION OF DR. LESLEY WALKER
FEBRUARY 4, 2012**

1 rely upon his statements?

2 A: Typically you would, particularly if you are in close proximity to him constantly to
3 observe anything that might contradict that statement. Dr. Martin was in close proximity
4 to Kitner constantly, and was entitled to rely upon the statements of his close friend,
5 Kitner, that Kitner had quit using cocaine once and for all. More than just the statements,
6 Dr. Martin was entitled to rely upon his personal observation of the patient over the
7 ensuing days. When a person is on cocaine, it's obvious. If Dr. Martin was observing
8 Kitner on a daily basis and did not see any of the classic signs of cocaine use, he was
9 entitled to believe that Kitner had kicked the coke. Turns out, of course, that Kitner had
10 substituted hydrocodone for the cocaine, but Dr. Martin would have to be pretty
11 observant to spot that.

12 Q: But hydrocodone use is something that a trained physician such as Dr. Martin could spot
13 if he was looking for signs of drug use, isn't it?

14 A: Anything is possible. Except Texas A&M surviving in the SEC. That's not possible.

15 Q: What in your opinion caused the death of Mr. Kitner?

16 A: Well, start with the idea that Kitner was grossly overweight, apparently had high blood
17 pressure, apparently never exercised, ate poorly and led a rock and roll lifestyle. You add
18 all these things up, you get a person who's classically at risk for a massive coronary event
19 from just lifting a fork. Which he did way too much. Add to that the stress of his personal
20 life, putting up with a thankless child and all the tabloid relationships, and you get stress
21 that just takes fat old guys like him out. This is really very common, if you just look at
22 the stats.

23 Q: Can you say to a reasonable degree of medical certainty that Kitner's death was the result
24 of taking Propofol and hydrocodone together?

25 A: Because we aren't allowed to experiment around with a human subject, we will never

**DEPOSITION OF DR. LESLEY WALKER
FEBRUARY 4, 2012**

1 really know whether Mr. Kitner would have had the same massive coronary episode
2 absent the administration of Propofol. It is not possible to say, based on reasonable
3 medical certainty, that the heart attack would not have occurred but for the Propofol.

4 Q: Was it appropriate to administer Propofol in order to combat shortness of breath, if that's
5 what happened here?

6 A: The shortness of breath was a sign of anxiety. Combating anxiety with Propofol is
7 absolutely acceptable medical practice. It is one of the things that the drug is frequently
8 used for. It has a strong sedative effect.

9 Q: Can you identify Exhibit 6?

10 A: Yes, this is a few pages from the Physician's Desk Reference regarding Propofol and its
11 uses.

12 Q: If Mr. Kitner had not been secretly using hydrocodone, would the administration of
13 Propofol be fatal?

14 A: Absolutely not.

15 Q: Once Dr. Martin was called back into Kitner's room and observed Kitner in a seizure, did
16 he meet the standard of care of a physician by administering adrenaline?

17 A: Yes, the doctor's conduct in administering adrenaline to try to bring Kitner out of a
18 seizure and a cardiac event was exactly what he should have done. Again, if it hadn't
19 been for the hydrocodone and Propofol in Kitner's system, his life would have been
20 saved, not lost.

21 Q: Are you familiar with Dr. Martin's testimony that he did not personally inject the
22 medication Propofol into Kitner?

23 A: Yes, I am familiar with that testimony and I find it to be credible.

24 Q: If Dr. Martin did not inject the Propofol, how did it get into Kitner's system?

25 A: There are two possibilities. First, given Kitner's long history of drug abuse, Kitner may

**DEPOSITION OF DR. LESLEY WALKER
FEBRUARY 4, 2012**

1 have injected it into himself, thinking it was some kind of hallucinogen. That's a
2 common abuse of the drug in the rock and roll world. Second, he could have been
3 injected by another party, someone who was neither Dr. Martin nor Kitner.

4 Q: Are you aware of any other parties who were present in the master suite on that date?

5 A: Well, Little Kitner was there.

6 Q: Can you identify Exhibit 7?

7 A: Yes, that's a copy of Rolling Stone magazine.

8 Q: Do you find Rolling Stone magazine to be a reliable source of information as it relates to
9 the activities of rock and roll stars such as David Kitner?

10 A: Yes, unlike supermarket tabloids, Rolling Stone has real reports and they do a real fine
11 job of getting to the truth. I have found their articles to be extremely accurate. Doctors
12 who treat celebrities use Rolling Stone all the time to keep up with the habits of their
13 famous patients. It's easier than trying to listen to the lyrics and discern what drugs were
14 involved when they were written.

15 Q: Was there anything in this particular issue that you relied upon in reaching your opinions
16 in this case?

17 A: Yes, this particular issue had a feature story on David Kitner. In that feature story, it
18 quotes Kitner as saying that he was particularly fond of hallucinogenic drugs, and loved
19 to experiment with different drugs and different combinations of drugs. He even
20 admitted to trying to inject Drano once to see if it would give him a sufficient high.
21 Apparently somebody talked him out of it because he was still talking when he gave the
22 interview.

23 Q: How did that information in this learned treatise influence your opinion?

24 A: It tells me that Kitner was the type who would inject himself with Propofol just to see if
25 he could trip out on it.

**DEPOSITION OF DR. LESLEY WALKER
FEBRUARY 4, 2012**

1 Q: Trip out?

2 A: You know, experience an altered state of consciousness. Become detached from reality.
3 You weren't raised in the '60s, were you?

4 Q: No. But that's not important now. Can you identify Exhibit 9?

5 A: That's a prescription form for hydrocodone, signed by Dr. Rodney Acker, prescribing
6 hydrocodone for Mr. Kitner, to be taken as needed for pain.

7 Q: Do you know why Dr. Acker prescribed this instead of Dr. Martin, who was Kitner's
8 personal and ever present physician?

9 A: Dr. Acker is a well known sports doctor who has a reputation for giving out certain
10 medications rather freely. Probably why he's referred to as Roofie Rod. Anyway,
11 apparently Kitner sought him out and got the medication about 4 weeks before his death.

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**DEPOSITION OF BREE TREVINO
OCTOBER 3, 2011**

1 Q: Would you state your name for the record?

2 A: My name is Bree Trevino.

3 Q: Where do you currently reside?

4 A: Muleshoe, Lone Star.

5 Q: How long have you lived there?

6 A: Since Special K bit the big dust.

7 Q: And before that?

8 A: At the Kitner mansion in Armadillo.

9 Q: How long did you live there?

10 A: Which time? I mean, I was there some years ago when I was dating David, and then I
11 came back and was living there when he met his unfortunate death.

12 Q: As his girlfriend?

13 A: No, that was then, but it's all over now. He had hired me to be in charge of maintaining
14 equipment in his private recording studio and maintaining the other audio equipment
15 around the mansion.

16 Q: How long had you been doing that?

17 A: Approximately 7 months.

18 Q: So you knew Mr. Kitner pretty well?

19 A: Well, duh.

20 Q: Did you also know his son, David Kitner, Jr.?

21 A: Yes, I knew Little Kit. I practically raised him back when Special K and I were special.
22 The big Kitner was gone most of the time touring and chasing groupies and doing things
23 with that Ted Nugget character, so I spent more time with David Junior than David did
24 for several years.

25 Q: In your role maintaining the recording studio and other audio equipment, did you have an

**DEPOSITION OF BREE TREVINO
OCTOBER 3, 2011**

1 opportunity to observe David Senior's behavior, demeanor and habits in the last few
2 weeks of his life?

3 A: Yes, even though I was relegated to living in the cabana out by the pool, my job duties
4 required me to be in the big house a lot. I saw David the Elder pretty often every day, if
5 he was actually in town.

6 Q: Did you ever observe Kitner to be intoxicated in the last six weeks of his life?

7 A: Kitner intoxicated? What a surprise that would be. Yes, I saw him wandering around the
8 big house holding bottles of vodka or bourbon or wine just about every day, just about
9 every time of day.

10 Q: Did you actually observe him drinking any alcohol in the last six weeks of his life?

11 A: No, I never actually saw him swigging the stuff.

12 Q: Did you ever observe Kitner taking what you knew to be drugs during the last six weeks
13 of his life?

14 A: I saw him in his master bedroom on a couple of occasions during that time when he had a
15 white powdery substance in a baggie in his hand, smiling that dopey smile he got when
16 he was high.

17 Q: When was the last time you saw David Kitner wandering around with a white powdery
18 substance in his hands?

19 A: The day before he died.

20 Q: What was the occasion?

21 A: I was fixing a speaker in his bedroom. It had blown out because he had turned the
22 volume up too high. I went into the bedroom and he was sitting in his favorite red chair,
23 grinning ear to ear, white stuff in a baggy on the bed.

24 Q: Did you actually see Mr. Kitner take or consume cocaine at any time during the last six
25 weeks of his life?

**DEPOSITION OF BREE TREVINO
OCTOBER 3, 2011**

1 A: No, I never actually saw him ingest any cocaine during the last six weeks of his life.

2 Q: Did you see David Kitner take any other medications in the six weeks before his death?

3 A: I didn't actually observe Special K taking any of this, but I did hear a conversation
4 between Dr. John and David about needing some pain medication to help with some
5 chronic pain caused by an old injury.

6 Q: What kind of old injury?

7 A: It was a guitar string injury, as I recall.

8 Q: Can you identify Exhibit 7?

9 A: Yes, that's a copy of the Rolling Stone magazine where they interviewed David about
10 two months before he died. I was there at the mansion when the reporter came to do the
11 interview. All short skirt and low top and everything. Really disgraceful. I thought I
12 should keep an eye on David during the interview, if you know what I mean, so I stuck
13 around and listened.

14 Q: Is the information in the article accurate in terms of what David told the reporter?

15 A: How do I say this? Yes, it is accurate in terms of what David told that gold digging
16 reporter.

17 Q: Were you at the mansion on the day Mr. Kitner died?

18 A: Yes. I was out at the cabana on the far side of the estate.

19 Q: What were you doing?

20 A: I was hanging out with Dr. Martin. Dr. John, as he liked to be called. We were sharing a
21 few laughs and a joint.

22 Q: Did anything unusual happen that day?

23 A: You mean other than Kitner croaking? Yes, Dr. John got a call from David. David was
24 shouting and I could hear his voice even though I was sitting a few inches away. David
25 demanded that Dr. John come over to the mansion immediately. David said he was in

**DEPOSITION OF BREE TREVINO
OCTOBER 3, 2011**

1 some sort of pain or distress or something. He said something about not being able to
2 breath, which is what he said when he kicked me out of the mansion that first time, so I
3 did not take it any too seriously, but Dr. John did.

4 Q: What happened then?

5 A: Dr. John hung up and started gathering up his medical bag. He turned to me and said
6 “I’m gonna go fix him once and for all,” and then he ran out of the cabana.

7 Q: What was the next thing you saw or heard?

8 A: Dr. John came back to the cabana about 15 minutes later. He told me he had fixed the
9 problem.

10 Q: Then what?

11 A: Well, that joint wasn’t quite gone yet, so... And to tell you the truth, we’d been
12 celebrating our engagement that day, so the dead guy thing was kind of a downer.

13 Q: Over the years you were around David and Little Kit, did you observe any unusual
14 behavior in Little Kit?

15 A: Well, as Little Kit grew from being just a little dopey kid to being a doper young
16 teenager, he started getting hostile, withdrawn and angry.

17 Q: Did he say what he was hostile, withdrawn and angry about?

18 A: Started out as just prepubescent angst, but he then started making references to his dad.
19 A couple days before David died, Little Kit started telling me how good life would be if
20 the “old bastard” would “go on his final tour.”

21 Q: What were the circumstances under which he told you this information?

22 A: Well, you might not know it, but I am an ordained minister, and Little Kit frequently
23 came to me as his spiritual advisor, like his priest or preacher or the like.

24 Q: And was it in that context that he told you these things?

25 A: I think so. I am pretty serious about my duties as a minister of my church, so I have a

**DEPOSITION OF BREE TREVINO
OCTOBER 3, 2011**

1 little trouble with short term memory sometimes, but I sure believe he was talking to me
2 as a penitent would talk to a priest.

3 Q: Can you identify Exhibit 11?

4 A: Yes, that's a finger painting that Little Kit did.

5 Q: When he was a child?

6 A: No, more like three weeks before David died.

7 Q: When did you learn that Mr. Kitner had changed his will to leave his entire estate to Little
8 Kit?

9 A: When the lawyer read it to the family right after Special K became Dead K.

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Armadillo Rx Pros
701 S. Taylor, Armadillo, LS
903-757-6400

DAVID KITNER, JR.

TAKE BY MOUTH
AS NEEDED FOR PAIN

Vicodin ES
7.5 mg Tab
QTY: 30 Exp: 11/17/11

Dr. John Martin

11/17/10

No: 0060023-08291

NO REFILLS
DOCTOR
AUTHORIZATION
REQUIRED



01.0000A89.00016F.49502.3685.24

EXHIBIT 1

**FIRST CODICIL TO WILL
OF
DAVID NELLIE KITNER, SR.**

I, DAVID NELLIE KITNER, SR., a resident of Bexar County, Lone Star, make, publish, and declare this to be the First Codicil to my Will dated March 12, 2007.

I.

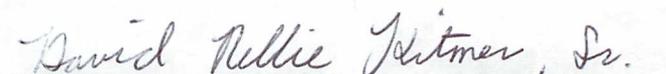
Paragraph A.1 of Section VIII of the aforesaid Will is hereby revoked and the following is substituted in its place:

1. I give, devise and bequeath the entirety of my estate, real, personal or mixed, to the love of my life, Bree Trevino, a/k/a Tattoo Woman. I sure as hell don't want anything to go to my worthless offspring David Nellie Kitner, Jr. Ever.

II.

In every other respect, I hereby confirm and republish my Will dated March 12, 2007.

I sign my name to this a Codicil to my Last Will and Testament of March 12, 2007, in the presence of the attesting witnesses who sign their names as attesting witnesses at my request, in my presence, and in the presence of each other this 16th day of June, 2008.



David Nellie Kitner, Sr., Testator

The foregoing instrument was in our presence signed by DAVID NELLIE KITNER, SR. and declared by him to be the First Codicil to his Will dated March 12, 2007. We, at his request and in his presence and in the presence of each other, have subscribed our names as witnesses on this 16th day of June, 2008.

Witnesses



Bree Trevino



Thea Whalen

EXHIBIT 2

THE STATE OF LONE STAR)
)
COUNTY OF BEXAR)

BEFORE ME, the undersigned authority, on this day personally appeared DAVID NELLIE KITNER, SR., BREE TREVINO, and THEA WHALEN, known to me to be the Testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said DAVID NELLIE KITNER, SR., Testator, declared to me and to the said witnesses in my presence that said instrument is the First Codicil to his Will dated March 12, 2007, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said Testator, that the said Testator had declared to them that said instrument is the First Codicil to his Will dated March 12, 2007, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testator and at his request; that he was at that time eighteen (18) years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen (14) years of age.

David Nellie Kitner, Sr.

David Nellie Kitner, Sr., Testator

Bree Trevino

Bree Trevino

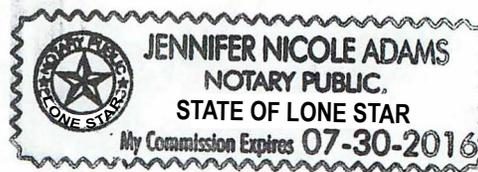
Thea Whalen

Thea Whalen

SUBSCRIBED and SWORN TO before me by the said DAVID NELLIE KITNER, SR., Testator, and by the said Bree Trevino and Thea Whalen, witnesses, this 16th day of June, 2008.

Jennifer Nicole Adams

Notary Public in and for the State of Lone Star



AUTOPSY REPORT

07-05135

I performed an autopsy on the body of David Nellie Kitner, Sr. at the DEPARTMENT OF PATHOLOGY, CHEAPSIDE HOSPITAL, CHEAPSIDE, LONE STAR on May 11, 2011.

From the anatomic and laboratory findings and pertinent history, I ascribe the death to: MASSIVE CARIAC ARREST SECONDARY TO DRUG INTERACTION(S).

EXTERNAL EXAMINATION:

The body of DAVID NELLIE KITNER, SR. is that of a well-developed, somewhat obese Caucasian male stated to be 65 years old. The body weighs 224 pounds, measuring 69 inches from crown to sole. The remaining hair on the scalp is salt and pepper in color and straight. The irides appear hazel with the pupils fixed and dilated. The body bears several identifying tattoos, including a tattoo depicting the Battle of Waterloo across the buttocks.

The head is normocephalic, and there is no evidence of external traumatic injury.

CARDIOVASCULAR SYSTEM:

The heart weighs 290 grams, and has a normal size and configuration. Dissection reveals evidence of a severe myocardial episode.

TOXICOLOGY:

A sample of right pleural blood as well as bile are submitted for toxicologic analysis. Findings included levels of Propofol, adrenalin and hydrocodone. Trace analysis performed independently from toxicology laboratory reveals slight residual levels of cocaine, THC, ketamine, and a chemical mixture of sodium hydroxide and aluminum powder. None of the trace drugs or chemicals was contributory to death.

OPINION:

The decedent apparently injected propofol in the presence of hydrocodone. The resulting symptoms were treated by injection of adrenalin, which produced a massive cardiac arrest episode leading to death.

The remainder of the autopsy revealed a normal, healthy adult male with no congenital anomalies.

/s/ DR. CHRIS JENSEN, M.D.
CHIEF MEDICAL EXAMINER
May 12, 2011

EXHIBIT 3

GOLDEN DOC HEALTH CLINIC, INC.

Dr. Fraser Murphy, MD, FACS, GOLD
333 Inyo Avenue, Wimp, CA 93274

PATIENT NAME: David Kitner DATE: April 21, 2011

DOB: 2/4/46 AGE: 65 REFERRING PHYSICIAN: Martin

PRESENT COMPLAINT: Difficulty breathing

DATE PROBLEM BEGAN: 2 nights ago

PROBLEM WORK RELATED? YES NO ACCIDENT RELATED? YES NO

DESCRIBE HOW PROBLEM BEGAN: Having a beer with some friends, started having trouble breathing

HAVE YOU HAD PRIOR TREATMENT FOR THIS PROBLEM? YES NO ?

DESCRIBE PRIOR TREATMENT: _____

PLEASE LIST ALL MEDICATIONS YOU ARE CURRENTLY TAKING:

MEDICATION	DOSAGE	FREQUENCY
<u>Viagra</u>	<u>dk</u>	<u>dk</u>

DO YOU SMOKE? No Cigarettes YES NO DO YOU USE RECREATIONAL DRUGS? YES NO !!

DO YOU SUFFER FROM OR IS THERE ANY FAMILY HISTORY OF:

ILLNESS	Y/N	ILLNESS	Y/N
AIDS/HIV	<u>N</u>	DIZZINESS	<u>N</u>
ANEMIA	<u>N</u>	ULCERS	<u>N</u>
ALCOHOLISM	<u>?</u>	HYPOMANIA	<u>?</u>
CANCER	<u>N</u>	CHEST PAINS	<u>N</u>
DIABETES	<u>N</u>	NEUROLOGICAL DISEASE	<u>N</u>
EMPHYSEMA	<u>N</u>	KIDNEY DISEASE	<u>N</u>
HEART DISEASE	<u>N</u>	LIVER DISEASE	<u>N</u>
HIGH BLOOD PRESSURE	<u>N</u>	FAINING SPELLS	<u>N</u>
LOW BLOOD PRESSURE	<u>N</u>	SEIZURES	<u>N</u>
RENAL FAILURE	<u>N</u>	HIVES	<u>N</u>

EXHIBIT 4

EXHIBIT 5



PROPOFOL X Injectable ***propofol***

DESCRIPTION Propofol X is a sterile, nonpyrogenic emulsion containing 10 mg/mL of propofol suitable for intravenous administration. Propofol is chemically described as 2,6-diisopropylphenol and has a molecular weight of 178.27.

CLINICAL PHARMACOLOGY

General: PROPOFOL X is an intravenous sedative-hypnotic agent for use in the induction and maintenance of anesthesia or sedation. Intravenous injection of a therapeutic dose of propofol produces hypnosis rapidly with minimal excitation, usually within 40 seconds from the start of an injection (the time for one arm-brain circulation). As with other rapidly acting intravenous anesthetic agents, the half-time of the blood-brain equilibration is approximately 1 to 3 minutes, and this accounts for the rapid induction of anesthesia.

Pharmacodynamics:

Pharmacodynamic properties of propofol are dependent upon the therapeutic blood propofol concentrations.

Steady state propofol blood concentrations are generally proportional to infusion rates, especially within an individual patient. Undesirable side effects such as cardiorespiratory depression or arrest are likely to occur at higher blood concentrations which result from intravenous injection or rapid

increase in infusion rate. An adequate interval (3 to 5 minutes) must be allowed between clinical dosage adjustments in order to assess drug effects.

The hemodynamic effects of PROPOFOL X Injectable during induction of anesthesia vary. If injected intravenously, the major cardiovascular effects are increased blood pressure (sometimes greater than a 30% increase) with rapid change in heart rate and rapid and appreciable decrease in cardiac output. If ventilation is assisted or controlled (positive pressure ventilation), the degree and incidence of decrease in cardiac output are attenuated. Addition of hydrocodone decreases cardiac output and respiratory drive, elevating the risk of cardiac arrest and shortness of breath.

WARNINGS

For general anesthesia or monitored anesthesia care (MAC) sedation, PROPOFOL X Injectable should be administered only by persons trained in the administration of general anesthesia and not involved in the conduct of the surgical/diagnostic procedure. Patients should be continuously monitored, and facilities for maintenance of a patent airway, artificial ventilation, and oxygen enrichment, cardiac and circulatory resuscitation must be immediately available.

Patients should be monitored for early signs of significant hypotension and/or

cardiovascular depression, which may be profound. These effects are responsive to discontinuation of PROPOFOL X Injectable, IV fluid administration, and/or vasopressor therapy.

Drug Interactions: The induction dose requirements of PROPOFOL X Injectable must be reduced in patients with oral or intravenous premedication, particularly with narcotics (eg, morphine, meperidine, and fentanyl, etc.) and combinations of opiates and sedatives (eg, benzodiazepines, barbiturates, chloral hydrate, droperidol, hydrocodones such as Vicodin, etc.). These agents may increase the anesthetic or sedative effects of PROPOFOL X Injectable and may also result in more pronounced increases in systolic, diastolic, and mean arterial pressures, with resulting cardiac stress.

During maintenance of anesthesia or sedation, the rate of PROPOFOL X Injectable administration should be adjusted according to the desired level of anesthesia or sedation and may be reduced in the presence of supplemental analgesic agents (eg, nitrous oxide or opiates).

KITNER KICKS THE KOKE
Rolling Stone

APRIL 2011



Special K Clean for 6 months

EXHIBIT 7



Flanked by his long-time personal trainer, rock legend David Kitner emerges from his stretch Hummer with a vigor rarely seen since his early days in rap. "I feel great," he exudes while pulling his pit bull from the massive machine. "I haven't felt this good since Teddy here was just a pup." Never mind that Teddy *is* still a pup. The enthusiasm is catching. Fans and former fans want to believe the unbelievable--that Kitner has finally kicked his cocaine habit.

□□□ In many ways, Kitner--who prefers the rap name "Special K," is a new man. His eyes are clear for the first time in a decade, his speech is not slurred, his hair is combed (more or less) and his clothing is, well, on. Even his former girlfriend Bree "Tattoo Woman" Trevino finds room for praise. "Like, really, I just can't (expletive deleted) believe that Special K is off the coke. It's like a fairy tale come true. I mean, like, who'da (expletive deleted) believed that the one man coke machine could, like, go so totally to zero and all. Now I call him Coke Zero!"

□□□ The transformation is undeniable and remarkable. Two years ago, Toro considered hiring Kitner as the pitchman for its popular line of snowblowers, but reconsidered when its legal department cautioned against using the "Special K" logo on the bright red machines. "It looked like a sure-fire trademark lawsuit, and one that would not be very pretty, given the implications," explained Toro's general counsel T. John Ward, a former federal judge legendary in his own right. "It was still tempting," says Ward. His vision: a commercial focused on a Norman Rockwell house in the midst of a heavy winter snow storm, with the type of hushed silence you get with that sort of snow. Suddenly the silence is blasted into tomorrow by the sound of a mighty Toro snowblower, overlaid with Kitner's latest hit "Snowcaine" and black words emerging from the utterly white snow background saying "Blows More Snow than Kitner."

□□□ Now, Ward says, Kitner's lost his opportunity with Toro, but has found his career again. "Not a bad trade," muses Ward.

Tom Tongue, Kitner's guitar coach, credits Kitner's recovery on hard work, lots of exercise, lots of sunshine and substitute medications. "He's made a nearly miraculous recovery, given where he was and how badly

he had slipped from his last major miraculous recovery," notes Tongue. "As we all know, Special K has been on and off the wagon so often that the step's worn out."

Those who are familiar with Kitner are familiar with his storied past. Raised the son of a catfish farmer in the tiny Lone Star town of Concrete, he describes his early years as hard. "There was nothing but fish," he once famously said about Concrete. "Fish for breakfast, fish for lunch, fish popsicles in the afternoon, fish for supper." But the hard times in Concrete served as a jumping off point for Kitner's career. His hard driven musical style and poetic lyrics were often on display at the local high school, where he regularly entertained the student body before Friday night football games. "There was only 12 people in my whole class, so it wasn't hard to be the star," he recollects.

But the star he was. Those Friday night concerts began to be more popular than the 6 man football being played on the field, so much so that the school officials reversed the order of things. "They started playing the game first, then letting me play my music. It was like the football game was an opening act or something." Graduating from dusty high school football field to bars along the I-35

"I'm clean for good this time. No doubt. No temptation. No going back this time. Like that other time. Or the other one before that."

corridor, Kitner began to attract a following. "Mostly red-necks, so I played pure old country for quite a time," he reflects. "Those bars lead me to Ted Nugget, the cultural icon of Lone Star, who took me under his wing and taught me the fine art of heavy metal, head-banging, loose-jawed, raw-boned, hyphen-strewn rock, which lead naturally to rap." Kitner made a mark in the rap world before giving it up for progressive/regressive country rock. "My vocabulary increased from 30 words to 300, so I had to give up the rap," he laments.

Increasing popularity, however, lead to an increasingly drug-fueled lifestyle. "He was

staying up all night drinking and all day doing drugs," recalls his one-time manager, Gary Winters. "It got so bad that he couldn't keep his attention for more than a chord at a time, so his music was pretty limited." The rock and roll pressure soon lead to hallucinogens. Kitner admits a fondness for mixing various drugs in order to experiment. "Once, I even tried to inject Drano," Kitner admits. According to his publicist, Joe Redden, the supermarket tabloids exploded with tales of Kitner's antics. "You could follow his whole life just by dropping by the local Safeway for a box of wine."

John Martin, Kitner's long-time personal doctor, quit touring with Kitner because the excesses became too often and too outrageous. "Yeah, I could see what the coke was doing to Special K. I could see it in the photos in National Enquirer and in your righteous rag, Rolling Stone. I just couldn't face up to being with him during that dark time."

The big turnaround happened as suddenly as the big fall. "I was in the Big Easy, doing coke and local attractions, when I saw a sign from Heaven itself that put me on the track back to being sober," recalls Kitner. What he saw is not entirely clear, but by all descriptions was a Kips Big Boy Hamburger franchise. Whatever it was, Kitner stopped using cocaine the next day, and claims to have been off the white poison since.

Asked about his famous patient's turnaround, Dr. Martin shrugs and says the jury is still out. "You can't just base your entire opinion about a dramatic event like that on what you see in the newspapers. You need to examine the patient and make sure there's nothing else going on, make sure that one drug has not been substituted for another." Dr. Martin notes that many famous drug users have been on and off of drugs, but only a few have a sustained track record of success. "Don't get me wrong," says Martin, "I'd love to see Mr. Kitner return to his former rock glory as much as the next guy, but we've been down this road before, if you catch my drift." Martin admits he has not seen Kitner for more than a few minutes in the past 2 months, but has scheduled a complete physical for early June. In the meantime? "Hope springs eternal," shrugs the good doctor. "May he live to rock another day."



Rodney Acker, M.D.

333 Third Street

Armadillo, Lone Star 76704

(512) 978.7413

NAME: *David Kitner*

DATE: *March 12, 2011*

A generically equivalent drug product may be dispensed unless the physician specifically writes the words "Brand Necessary" or "Brand Medically Necessary" on the face of this form.

MEDICATION: *Vicodin (hydrocodone) 5.0 mg PRN*

REFILL: *4 X*

/s/ R. Acker, M.D.

EXHIBIT 9

HOLY HARVEST MINISTRY

BY THIS CERTIFICATE THE HOLY HARVEST MINISTRY HEREBY
CERTIFIES AND ATTESTS THAT

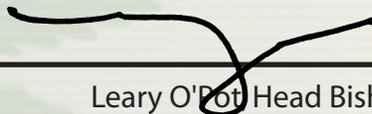
BREE "TATS" TREVINO

HAS MET THE REQUIREMENTS AND TAKEN THE OATH NECESSARY TO BE
ORDAINED

MINISTER OF THE HOLY HARVEST

WITH ALL THE RIGHTS AND HEREDITAMENTS APPERTAINING THERETO

Date: May 13, 2005



Leary O'Pot Head Bishop

AS MINISTERS OF THE HOLY HARVEST WE USE CANNIBUS AS PART OF OUR DAILY WORSHIP BECAUSE IT:

- | | |
|--|---|
| 1. HELPS CULTIVATE PERSONAL EXPERIENCE WITH RELIGION | 4. INCREASES SPIRITUAL ELEVATION |
| 2. CREATES PEACE | 5. IS A GOOD MEMORY STIMULATING NEURO-HORMONE |
| 3. HELPS CONQUER ADDICTION TO TOBACCO AND ALCOHOL | 6. CREATES PEACE |

EXHIBIT 10

DADDY

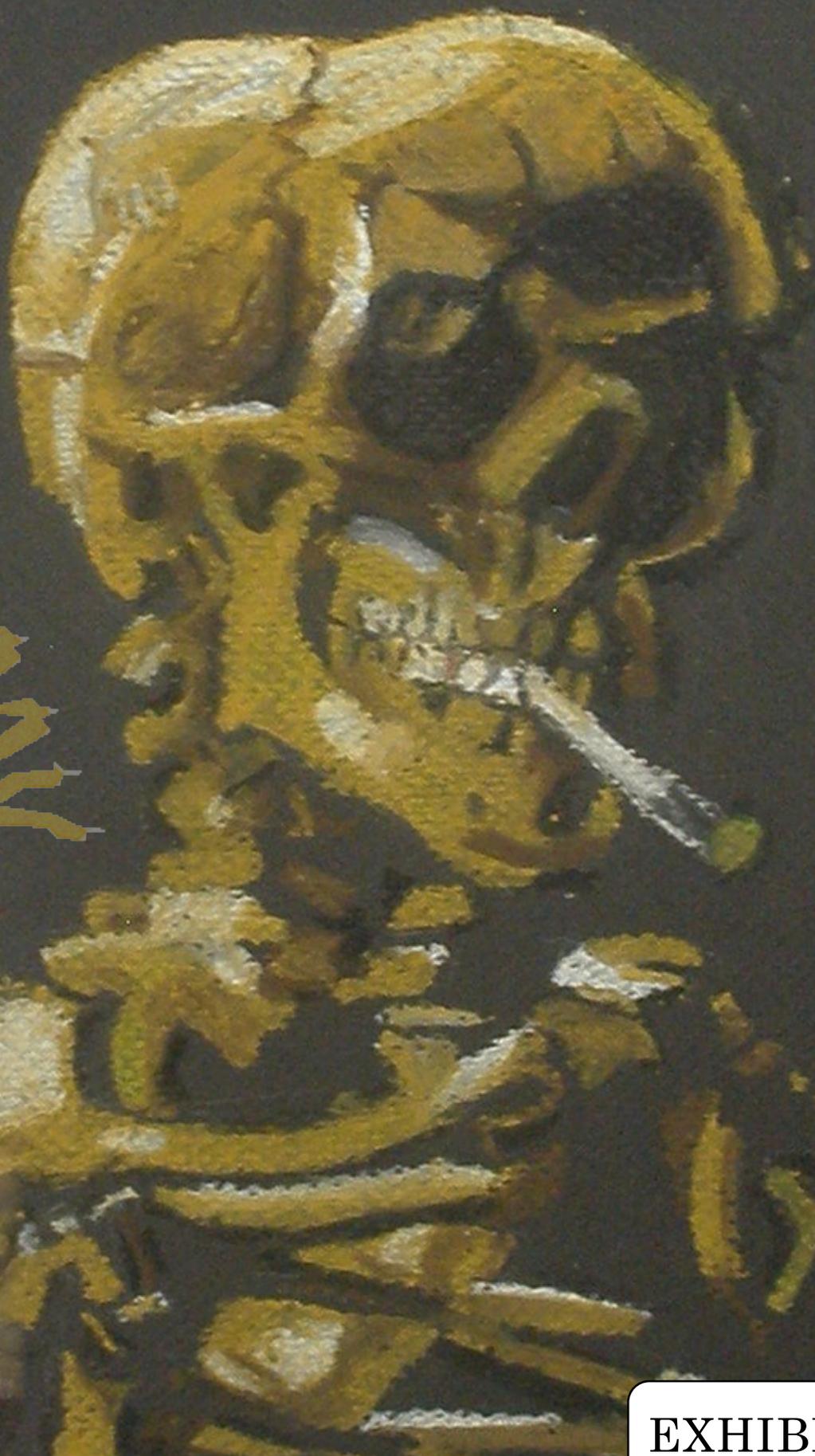


EXHIBIT 11

STATE OF LONE STAR	§	IN THE DISTRICT COURT
	§	
v.	§	IN AND FOR
	§	
JOHN MARTIN, M.D., Defendant	§	BEXAR COUNTY, LONE STAR

FINAL JURY INSTRUCTIONS

Members of the Jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

In this case, John Martin, M.D. is charged with one count of manslaughter.

To prove the crime of manslaughter, the State must prove beyond a reasonable doubt that John Martin, M.D. recklessly caused the death of an individual, to wit: David Kitner.

Under the laws of Lone Star, a person acts “recklessly,” or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. 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.

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

John Martin, M.D. has entered a plea of not guilty. This means you must presume or believe that John Martin, M.D. is innocent. This presumption stays with John Martin, M.D. as to each material allegation in the indictment through each stage of the trial until it has been overcome by the evidence to the exclusion of any beyond a reasonable doubt.

To overcome the defendant’s presumption of innocence, the State has the burden of proving the following elements:

1. The crime with which the defendant is charged was committed; and
2. The defendant is the person who committed the crime.

The defendant is not required to prove anything.

Whenever the words “reasonable doubt” are used, you must consider the following:

A reasonable doubt is not a possible doubt, a speculative, imaginary, or forced doubt. Such a doubt must not influence you to return your verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if after carefully considering, comparing, and weighing all the evidence, there is not an abiding conviction of guilt or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proven beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced during this trial, and to it alone, that you are to look for that proof. A reasonable doubt as to the guilt of the defendant may arise from the evidence, a conflict in the evidence, or a lack of evidence. If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable or less reliable than other evidence. In doing so, you should consider how the witness acted as well as what he or she said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?
3. Was the witness honest and straightforward in answering the attorneys’ questions?
4. Did the witness have some interest in how the case should be decided?
5. Does the witness’s testimony agree with the other testimony and the other evidence in this case?
6. Has the witness been offered or received any money, preferred treatment, or other benefit in order to get the witness to testify?
7. Had any pressure or threat been used against the witness that affected the truth of the witness’s testimony?
8. Did the witness at some other time make a statement that is inconsistent with the testimony he or she gave the court?
9. Was it proved that the witness had been convicted of a crime?

10. Was it proved that the general reputation of the witness for telling the truth and being honest was bad?

You may rely upon your own conclusions about the witnesses. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

The defendant in this case has become a witness. You should apply the same rules to consideration of his testimony that you apply to the testimony of the other witnesses.

There are some general rules that apply to your deliberations. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending on you to make a wise and legal decision in this matter.
2. This case must be decided only upon the evidence that you have heard from the answers of the witnesses and have seen in the form of exhibits and these instructions.
3. This case must not be decided for or against anyone because you feel sorry for anyone or are angry at anyone.
4. Remember the lawyers are not on trial. Your feeling about them should not influence your decision in this case.
5. Your duty is to determine if the defendant has been proven guilty or not guilty in accordance with the law. It is the judge's job to determine the proper sentence if the defendant is found guilty.
6. Whatever verdict you render must be unanimous; that is each juror must agree to the same verdict.
7. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited for talking to a lawyer about his or her testimony.
8. Your verdict should not be influenced by feelings of prejudice, bias, or sympathy. Your verdict must be based on the evidence and on the law contained in these instructions.

Deciding a proper verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

Only one verdict may be returned as to the crime charged. If you find and believe beyond a reasonable doubt that on or about May 9, 2011, in Armadillo, Bexar County, Lone Star, John Martin, M.D., did cause the death of one David Nellie Kitner by engaging in conduct which, under the circumstances and condition, indicated that the said John Martin, M.D. was aware of but consciously disregarded a substantial and unjustifiable risk that such conduct would have a fatal effect, specifically by administering a pharmaceutical drug, to wit, Propofol or adrenaline, to the said David Nellie Kitner when John Martin, M.D. was aware that David Nellie Kitner was in a condition such that the administration of such pharmaceutical drug presented a substantial and unjustifiable risk of causing, and did in fact cause, the death of David Nellie Kitner, a legend, in violation of Lone Star Penal Code, Section 19.04, then you will find the Defendant guilty.

Your verdict must be unanimous, that is, all of you must agree to the same verdict. The verdict must be in writing and, for your convenience; the necessary forms of verdict have been prepared for you. They are as follows:

[READ VERDICT FORM]

In just a few moments, you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreperson who will preside over your deliberations like a chairperson of a meeting. It is the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict in this case and to bring the verdict back to the courtroom when you return. Either a man or a woman may be the foreperson of the jury.

Your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror as well as of the jury as a whole.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdicts. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries, we have agreed to a constitution and to live by the law. No one of us has the right to violate the rules we all share.

No. CR-11-1222

STATE OF LONE STAR

§
§
§
§
§
§
§

IN THE DISTRICT COURT

v.

IN AND FOR

JOHN MARTIN, M.D., Defendant

BEXAR COUNTY, LONE STAR

VERDICT OF THE JURY

We the jury find as to the crimes alleged against JOHN MARTIN, M.D. as follows:

As to the crime of manslaughter:

_____ GUILTY

_____ NOT GUILTY

Date _____

Jury Foreperson