

FILED FOR RECORD
at _____ M

DEC 13 2008

Jane Jones, District Clerk
DELTA COUNTY, TEXAS

CAUSE NO. 6884

THE STATE OF TEXAS * IN THE DISTRICT
VS. * 8TH JUDICIAL DISTRICT
RICKY ALLEN BARNETT * DELTA COUNTY, TEXAS

COURT'S CHARGE

LADIES AND GENTLEMEN OF THE JURY:

The defendant, Ricky Allen Barnett, stands charged by indictment with the offense of Capital Murder, alleged to have been committed on or about the 24th day of June, 2007, in Delta County, Texas. The defendant has pleaded not guilty.

1.

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

A person commits the offense of capital murder if the person intentionally commits the murder in the course of committing or attempting to commit burglary.

2.

"In the course of committing" means conduct occurring in an attempt to commit, during the commission, or in the immediate flight after the attempt or commission of the offense.

A person commits a criminal attempt if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

A person commits the offense of burglary if, without the effective consent of the owner, the person enters a habitation with intent to commit an assault or theft, or enters a habitation

and commits or attempts to commit an assault or theft.

“Consent” means assent in fact, whether express or apparent.

For purposes of the offense of burglary, “effective consent” includes consent by a person legally authorized to act for the owner. Consent is not effective:

- (A) induced by force, threat, or fraud;
- (B) given by a person the actor knows is not legally authorized to act for the owner;
- (C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions;
- (D) given solely to detect the commission of an offense.

“Habitation” means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes:

- (A) each separately secured or occupied portion of the structure or vehicle; and
- (B) each structure appurtenant to or connected with the structure or vehicle.

“Vehicle” includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation, except such devices as are classified as “habitation.”

“Building” means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

“Owner” means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor.

“Enter” means to intrude any part of the body or any physical object connected with the body.

A person commits the offense of assault if the person intentionally, knowingly, or

recklessly causes bodily injury to another, including the person's spouse, or intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse.

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

A person commits the offense of theft if the person unlawfully appropriates property with intent to deprive the owner of the property.

"Appropriate" means to acquire or otherwise exercise control over property.

Appropriation of property is unlawful if it is without the owner's effective consent.

For purposes of the offense of theft, "effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

- (A) induced by deception or coercion;
- (B) given by a person the actor knows is not legally authorized to act for the owner;
- (C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property disposition;
- (D) given solely to detect the commission of an offense; or
- (E) given by a person who by reason of advanced age is known by the actor to have a diminished capacity to make informed and rational decisions about the reasonable disposition of property.

"Property" means tangible or intangible personal property including anything severed from land.

"Deprive" means:

- (A) to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner; or

(B) to dispose of property in a manner that makes recovery of the property by the owner unlikely.

“Actor” means a person whose criminal responsibility is in issue in a criminal action.

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

With regard to the offense of burglary, a person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

3.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 24th day of June, 2007, in Delta County, Texas, the defendant, Ricky Allen Barnett, did intentionally cause the death of Cynthia Ann Barnett, by shooting the victim with a firearm, and the defendant was then and there in the course of committing or attempting to commit the offense of burglary, then you will find the defendant guilty of the offense of Capital Murder.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty.

Further, a person is criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated, or risked is that a different person was injured, harmed, or otherwise affected.

Now bearing in mind the foregoing instructions, if you believe from the evidence

beyond a reasonable doubt that on or about the 24th day of June, 2007, in Delta County, Texas, the defendant, Ricky Allen Barnett, while desiring, contemplating, or risking causing the death of Darius Crawford by shooting him with a firearm, did actually cause the death of Cynthia Ann Barnett, by shooting the victim with a firearm, and the defendant was then and there in the course of committing or attempting to commit the offense of burglary, then you will find the defendant guilty of the offense of Capital Murder.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty.

4.

You are instructed that voluntary intoxication does not constitute a defense to the commission of crime.

"Intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a privilege accorded a defendant, and in the event he elects not to testify, that fact cannot be taken as a circumstance against him. In this case, the defendant has elected not to testify, and you are instructed that you cannot and must not refer or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against the defendant.

The prosecution has the burden of proving the defendant guilty, and it must do so by proving each and every element of the offense charged beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant.

It is not required that the prosecution prove guilt beyond all possible doubt; it is

required that the prosecution's proof excludes all "reasonable doubt" concerning the defendant's guilt.

You are instructed that if there is any evidence before you in this case tending to show that the defendant committed acts other than the offense alleged against him in the indictment, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt from such testimony that other acts were committed, you may then consider the same in determining the state of mind of the defendant and the previous relationship between the defendant and the victim, and/or the motive, opportunity, intent, preparation, plan, knowledge, or identity of the defendant and/or the absence of mistake or accident on the part of the defendant, if any, in connection with the offense alleged against him in the indictment in this case, if it does, and for no other purpose.

A grand jury indictment is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence of guilt nor can it be considered by you in passing upon the issue of guilt of the defendant. The burden of proof in all criminal cases rests upon the State throughout the trial, and never shifts to the defendant.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand you might make a mistake in

recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during trial.

Occasionally, during jury deliberations, a dispute arises as to the evidence presented. If this should occur in this case, you shall inform the Court and request that portion of disputed testimony to be read to you from the official transcript. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts. The dispute must be settled by the official transcript, for it is the official transcript rather than any juror's notes upon which you must base your determination of the facts and ultimately your verdict.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and the weight to be given their testimony, but you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

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

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

After you have retired, you may communicate with this court in writing through the officer who has you in charge. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the court, or anyone else concerning any question you may have. After you

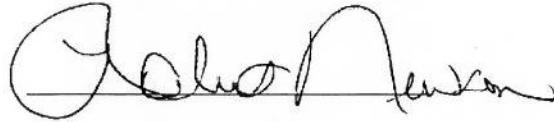
have reached a unanimous verdict, the Foreman will certify thereto by filling in the appropriate form attached to this charge and signing his name as Foreman. After argument from counsel, you may retire to consider your verdict.

FILED:

12-12-08

(Date and Time)

9:33 P.M.

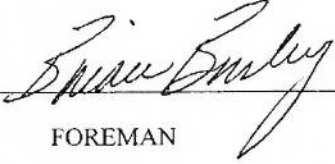
A handwritten signature in black ink, appearing to read "Robert Newton", written over a horizontal line.

JUDGE PRESIDING

VERDICT FORMS

(Choose one; Foreman sign only one)

We, the jury, find the defendant guilty of Capital Murder.


FOREMAN

We, the jury find the defendant not guilty.

FOREMAN