

NO. 2006-CR-10950B

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 227TH JUDICIAL DISTRICT
JONATHAN DEPUE § BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, Jonathan Depue, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 29th Day of September, 2006, in Bexar County, Texas. The defendant has pleaded not guilty.

I.

Our law provides that a person commits the offense of murder if he intentionally or knowingly causes the death of an individual.

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

II.

"Individual" means a human being who has been born and is alive.

"Deadly weapon" means a firearm.

"Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy

generated by an explosion or burning substance or any device readily convertible to that use.

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

"Attempt" to commit an offense occurs if, with specific intent to commit an offense, a person does an act amounting to more than mere preparation that tends, but fails, to effect the commission of the offense intended.

III.

For the offenses of murder and capital murder, a person acts intentionally, or with intent, with respect to a result of his conduct when it is his conscious objective or desire to cause the result.

For the offense of murder, 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.

IV.

A person commits the offense of burglary if, without the effective consent of the owner, the person enters a habitation and commits or attempts to commit theft.

V.

"Attempt" as defined in paragraph II applies and has the same meaning here.

"Effective consent" means assent in fact, whether express or apparent, and includes consent by a person legally authorized to act for the owner.

"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 defendant.

By the term "enter," as used above, is meant to intrude any part of the body or any physical object connected with the body into the habitation.

A "habitation" means a structure that is adapted for the overnight accommodation of persons, and includes each separately secured or occupied portion of the structure, and each structure appurtenant to or connected with the structure.

VI.

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

VII.

"Appropriation" and "appropriate" mean to acquire or otherwise exercise control over property other than real

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

"Property" means tangible or intangible personal property or documents, including money, that represents or embodies anything of value.

"Deprive" means 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.

"Effective consent" as defined in paragraph V applies and has the same meaning here.

"Owner" as defined in paragraph V applies and has the same meaning here.

VIII.

For the offenses of burglary and theft, 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.

For the offenses of burglary and theft, 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. For the offenses of burglary and theft, 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.

You are instructed that an accomplice witness, as the term is hereinafter used, means any person connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime, as such parties, by unlawful act or omission on their part transpiring either before or during the time of the commission of the offense, and whether or not they were present and participated in the commission of the crime.

You are instructed that a conviction cannot be had upon the testimony of an accomplice witness unless the jury first believes that the accomplice witness' testimony is true and that it shows the defendant is guilty of the offense charged against him, and even then you cannot convict unless the accomplice witness' testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

The witness, Eric Depue, is an accomplice, if an offense was committed, and you cannot convict the defendant upon his testimony unless you first believe that the portion of his testimony that ascribes guilt to Jonathan Depue is true and shows that Jonathan Depue is guilty as charged, and then you cannot convict Jonathan Depue upon said testimony unless you further believe that there is other testimony in the case, outside of the evidence of the said accomplice tending to

connect Jonathan Depue with the offense committed, if you find that an offense was committed, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect Jonathan Depue with its commission, and then from all of the evidence you must believe beyond a reasonable doubt that Jonathan Depue is guilty of the offense charged against him.

Our law provides a person is criminally responsible as a party to an offense if the offense is committed by his own conduct, or by the conduct of another for which he is criminally responsible, or by both. Each party to an offense may be charged with commission of the offense.

Mere presence alone will not make a person a party to an offense. A person is criminally responsible for an offense committed by the conduct of another if acting with intent to promote or assist the commission of the offense he solicits, encourages, directs, aids or attempts to aid the other person to commit the offense.

If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

Burglary and capital murder are felony offenses.

The term "conspiracy", as used in these instructions, means an agreement between two or more persons, with intent that a felony be committed, that they, or one or more of them, engage in conduct that would constitute the offense. An agreement constituting a conspiracy may be inferred from acts of the parties.

IX.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 29th Day of September, 2006, in Bexar County, Texas, the defendant, Jonathan Depue, either acting alone or together with Eric Depue, Joseph Montoya, Jesse Martinez, Jr., and/or Ruben Montoya as a party, did intentionally cause the death of an individual, namely: Aleta Rhodes, by shooting Aleta Rhodes with a deadly weapon, namely: a firearm, and Jonathan Depue, either acting alone or together with Eric Depue, Joseph Montoya, Jesse Martinez, Jr., and/or Ruben Montoya as a party, was in the course of committing or attempting to commit the offense of burglary of a habitation upon Aleta Rhodes;

Or, if you find from the evidence beyond a reasonable doubt that Jonathan Depue entered into a conspiracy with Eric Depue, Joseph Montoya, Jesse Martinez, Jr., and/or Ruben Montoya to commit the felony offense of burglary and that on or about the 29th Day of September, 2006, in Bexar County, Texas, in an attempt to carry out this conspiracy to commit burglary, Jonathan Depue intentionally caused the death of an individual, namely: Aleta Rhodes, by shooting Aleta Rhodes with a deadly weapon, namely: a firearm, and Jonathan Depue was in the course of committing or attempting to commit the offense of burglary of a habitation upon Aleta Rhodes, and that such offense was committed in furtherance of the unlawful purpose to commit

burglary and was an offense that should have been anticipated as a result of the carrying out of the conspiracy to commit burglary;

Then you will find the defendant guilty of capital murder as charged in the indictment.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty of capital murder and next consider whether he is guilty of the lesser included offense of murder.

X.

Our law provides that a person commits the offense of murder if he commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits an act clearly dangerous to human life that causes the death of an individual.

Burglary is a felony offense.

XI.

"Individual" and "attempts" as defined in Paragraph II applies and has the same meaning here.

XII.

"Burglary" as defined in Paragraph IV applies and has the same meaning here.

The terms and definitions in Paragraphs V through VIII apply and have the same meaning here.

XIII.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 29th Day of September, 2006, in Bexar County, Texas, the defendant, Jonathan Depue, either acting alone or together with Eric Depue, Joseph Montoya, Jesse Martinez, Jr., and/or Ruben Montoya as a party, did intentionally or knowingly commit or attempt to commit a felony, to wit: burglary, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt to commit burglary, Jonathan Depue, either acting alone or together with Eric Depue, Joseph Montoya, Jesse Martinez, Jr., and/or Ruben Montoya as a party, did commit an act clearly dangerous to human life, to wit: shooting Aleta Rhodes with a deadly weapon, namely: a firearm, thereby causing the death of Aleta Rhodes, then you will find the defendant guilty of murder.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty of murder and next consider whether he is guilty of the lesser included offense of burglary.

XIV.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 29th Day of September 2006, in Bexar County, Texas, the defendant, Jonathan Depue, either acting alone or together with Eric Depue, Joseph Montoya, Jesse Martinez, Jr., and/or Ruben Montoya as a party, did intentionally or knowingly enter a habitation and therein attempted to commit or committed theft, without the effective consent of Aleta Rhodes, the owner of said habitation, then you will find the defendant guilty of burglary.

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

You are instructed that during the videotape, there is questioning by police officers. The questions that the officers ask are not offered as, nor admitted for, the truth of the matter asserted. That means that what the officers say or ask is admitted for the purpose of assisting you, if it does, to put the matters in context. When the officers are asking questions that assume facts, you are not to consider those questions as truth, but only as part of the interrogation and in the context of the interrogation.

Our law provides a defendant may testify in his own behalf if he elects so to do. This, however, is a right accorded a defendant; and, in the event he elects not to testify, that fact cannot be taken as a circumstance against him.

In this case, the defendant has elected not to testify; and you are instructed that you cannot and must not refer or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

Written statements made by a witness to investigators or other officers or police reports made by officers and tendered by the prosecution to the defense for purposes of cross-examination are not part of the evidence unless introduced in evidence. Many times statements and reports may be marked with an exhibit number but are neither offered nor received in evidence. I can send only statements and reports received in evidence to the jury room.

You are instructed that the Grand Jury indictment is not evidence of guilt. It is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence, nor can it be considered by you in determining whether the defendant is guilty or not guilty.

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 to your jury room, you should select one of your members as your "presiding juror." It is his or her duty to preside at your deliberations, vote with you and, when you have unanimously agreed upon a verdict, to certify to your verdict by signing the same as "presiding juror."

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

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor whether the Defendant is guilty or not guilty. The Court has not intended to express

any such opinion, and if you have observed anything which you have interpreted or may interpret as the Court's opinion upon any matter of fact in this case or of whether the Defendant is guilty or not guilty, you must wholly disregard it.

You are instructed that the statements of counsel made during the course of the trial or during the argument, if not supported by evidence, or statements of law made by counsel, if not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that a person has been arrested, confined, or indicted for, or otherwise charged with the offense gives rise to no inference of guilt at his trial. The law does not require a defendant to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

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

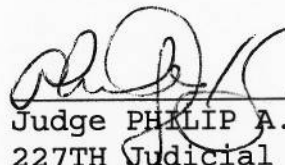
It is not required that the prosecution prove guilt beyond

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

In the event you have a reasonable doubt as to the defendant's guilt after considering all the evidence before you, and these instructions, you will acquit him and say by your verdict "Not Guilty."

Suitable forms for your verdict are hereto attached for your convenience if you desire to use the same, but such forms are not intended to suggest to you in any way what your verdict should be, and you may or may not, as you see fit, make use of the same. However, your verdict must be unanimous, in writing, and signed by your presiding juror. Your sole duty at this time is to determine whether the defendant is guilty or not guilty under the indictment in this cause and you must restrict your deliberations to the issue of whether the defendant is guilty or not guilty, and nothing else. After you have retired, no one has any authority to communicate with you except the officer who has you in charge. Do not attempt to talk to the officer, or anyone else concerning any question you may have; instead address your inquiry to the Court in writing. If the jury wishes to communicate with the Court, they shall notify the bailiff; any communication relative to the case must be written, prepared by the presiding juror, and shall be submitted to the Court through the bailiff.

Respectfully submitted,



Judge PHILIP A. KAZEN, Jr.
227TH Judicial District
Bexar County, Texas

NO. 2006-CR-10950B

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 227TH JUDICIAL DISTRICT
JONATHAN DEPUE § BEXAR COUNTY, TEXAS

VERDICT FORM

We, the Jury, find the defendant, Jonathon Depue, not guilty.

PRESIDING JUROR

VERDICT FORM

We, the Jury, find the defendant, Jonathon Depue, guilty of capital murder as charged in the indictment.

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PRESIDING JUROR

VERDICT FORM

We, the Jury, find the defendant, Jonathon Depue, guilty of murder.

PRESIDING JUROR

VERDICT FORM

We, the Jury, find the defendant, Jonathon Depue, guilty of burglary.

PRESIDING JUROR

