

<Orange County District Clerk Scanned Janet

NO. D100462-R

THE STATE OF TEXAS § IN THE 260TH DISTRICT COURT
 VS. § OF
 JOSEPH EDWARD ROBERTS, JR. § ORANGE COUNTY, TEXAS

APR 28 2011
 4:09
 BY *[Signature]*
 DEPUTY

FILED
 VICKIE EDGERLY
 DIST. CLERK ORANGE CO. TX

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, JOSEPH EDWARD ROBERTS, JR., stands charged by indictment with the offense of Capital Murder, alleged to have been committed in Orange County, Texas on or about the 21st day of April, 2010. The defendant has entered a plea of Not Guilty to this charge. You are instructed that the law applicable to this case is as follows:

I.

A person commits the offense of capital murder if the person intentionally causes the death of an individual and the person intentionally commits the murder in the course of committing or attempting to commit robbery.

II.

Definitions:

“Attempt” means to commit an act with specific intent to commit an offense where the act committed amounts to more than mere preparation but fails to effect the commission of the offense intended.

“Individual” means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

III.

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.

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.

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 defendant's standpoint.

IV.

A person is criminally responsible if the result would not have occurred but for his conduct

V.

A person commits the offense of Robbery if, in the course of committing theft and with intent to obtain or maintain control of the property, he:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another; or
- (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

VI.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that on or about April 21, 2010, in the County of Orange and the State of Texas,

the defendant, JOSEPH EDWARD ROBERTS, JR., did then and there intentionally cause the death of an individual, Michael McNamara, by hitting the said Michael McNamara on the head with a bat and the said JOSEPH EDWARD ROBERTS, JR. was then and there in the course of committing or attempting to commit the offense of robbery of Joyce Cross, then you shall find the defendant guilty of capital murder and so say by your verdict, but if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

Instructions

1.

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

2.

You are further instructed that an indictment is no evidence of guilt. Therefore, you are instructed in this case that the indictment shall not be considered by the jury as any evidence of guilt.

3.

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested 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.

4.

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.

The burden of proof in all criminal cases rest upon the State throughout the trial and never shifts to the defendant.

5.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, and no juror is permitted to communicate to any other juror anything he may have heard regarding the case from any source other than the witness stand.

In deliberating on this case you are not to refer to or discuss any matter or issue not in evidence before you; nor talk about this case to anyone not of your jury.

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 you, and be governed thereby.

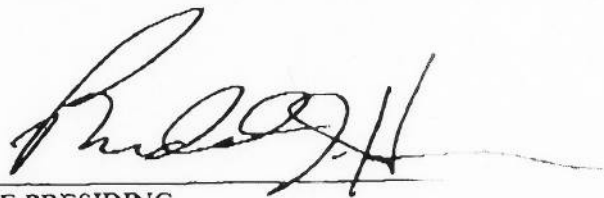
6.

After you have retired to consider your verdict, no one has any authority to communicate with you except the officer who has you in charge. You may communicate with this Court in writing,

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signed by your presiding juror, through the officer who has you in charge. Do not attempt to talk to the officer, the attorneys, or the Court concerning any question you may have.

After argument of Counsel, you will retire and select one of your members as your presiding juror. It is the duty of your presiding juror to preside at your deliberations and to vote with you in arriving at a verdict. Your verdict must be unanimous, and after you have arrived at your verdict, you may use one of the attached forms by having your presiding juror sign the particular form that conforms to your verdict.



JUDGE PRESIDING

VERDICT FORM

We, the jury, find the defendant, JOSEPH EDWARD ROBERTS, JR., guilty of Capital Murder, as charged in the indictment.


PRESIDING JUROR

OR

We, the jury, find the defendant, JOSEPH EDWARD ROBERTS, JR., not guilty

PRESIDING JUROR