

THE STATE OF TEXAS § IN THE 178TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
RICHARD FOSTER § MAY TERM, A. D., 2008

Members of the Jury:

The defendant, Richard Foster, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 4th day of February, 2006, in Harris County, Texas. The defendant has pleaded not guilty.

A person commits the offense of murder if he:

- (1) intentionally or knowingly causes the death of an individual; or
- (2) intends to cause serious bodily injury and intentionally or knowingly commits an act clearly dangerous to human life that causes the death of an individual.

A person commits the offense of capital murder if he intentionally commits murder, as hereinbefore defined in paragraph (1), and the person intentionally commits the murder in the course of committing or attempting to commit the offense of robbery. Robbery is a felony.

A person commits the offense of robbery if, in the course of committing theft, and with intent to obtain or maintain control of property of another he intentionally or knowingly causes bodily injury to another.

A person commits the offense of aggravated robbery if he commits robbery, as hereinbefore defined, and he:

- (1) causes serious bodily injury to another; or
- (2) uses or exhibits a deadly weapon.

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

"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.

"Theft" is the unlawful appropriation of property with intent to deprive the owner of property.

"Appropriation" and "appropriate", as those terms are used herein, means 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" as used herein 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" means assent in fact, whether express or apparent, and includes consent by a person legally authorized to act for the owner. Consent is not effective if induced by force or threat.

"Owner" means a person who has title to the property, possession of property, or a greater right to possession of the property than the actor.

"Possession" means actual care, custody, control, or management of the property.

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

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

"Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

The definition of intentionally relative to the offense of capital murder is as follows:

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.

The definitions of intentionally or knowingly relative to the offense of murder are as follow:

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.

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.

The definitions of intentionally or knowingly relative to the offenses of robbery and aggravated robbery are as follow:

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.

All persons are parties to an offense who are guilty of acting together in the commission of the offense. A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

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. Mere presence alone will not constitute one a party to an offense.

Before you would be warranted in finding the defendant guilty of capital murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant was in the course of committing or attempting to commit the felony offense of robbery of Gregory Sartain, Jr., as alleged in this charge, but also that the defendant specifically intended to cause the death of Gregory Sartain, Jr., by shooting Gregory Sartain, Jr., with a deadly weapon, namely, a firearm; or you must find from the evidence beyond a reasonable doubt that the defendant, Richard Foster, with the intent to promote or assist in the commission of the offense of robbery, if any, solicited, encouraged, directed, aided, or attempted to aid another person or persons in shooting Gregory Sartain, Jr., if he did, with the intention of thereby killing Gregory Sartain, Jr., and unless you so find, then you cannot convict the defendant of the offense of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 4th day of February, 2006, in Harris County, Texas, the defendant, Richard Foster, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Gregory Sartain, Jr., intentionally cause the death of Gregory Sartain, Jr. by shooting Gregory Sartain, Jr. with a deadly weapon, namely, a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 4th day of February, 2006, in Harris County, Texas, another person or persons, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Gregory Sartain, Jr., intentionally cause the death of Gregory Sartain, Jr. by shooting Gregory Sartain, Jr. with a deadly weapon, namely, a firearm, and that the defendant, Richard Foster, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid the other person or persons to commit the offense, if he did, then you will find the defendant guilty of capital murder, as charged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder and next consider whether the defendant is guilty of the lesser offense of murder.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 4th day of February, 2006, in Harris County, Texas, the defendant, Richard Foster, did then and there unlawfully, intentionally or knowingly cause the death of Gregory Sartain, Jr., by shooting Gregory Sartain, Jr. with a deadly weapon, namely, a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 4th day of February, 2006, in Harris County, Texas, another person or persons, did then and there unlawfully, intentionally or knowingly cause the death of Gregory Sartain, Jr., by shooting Gregory Sartain, Jr. with a deadly weapon, namely, a firearm, and that the defendant, Richard Foster, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid the other person or persons to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that on or about the 4th day of February, 2006, in Harris County, Texas, the defendant, Richard Foster, did then and there unlawfully intend to cause serious bodily injury to Gregory Sartain, Jr., and did cause the death of Gregory Sartain, Jr. by intentionally or knowingly committing an act clearly dangerous to human life, namely, by shooting Gregory Sartain, Jr. with a deadly weapon, namely, a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 4th day of February, 2006, in Harris County, Texas, another person or persons, did then and there unlawfully intend to cause serious bodily injury to Gregory Sartain, Jr., and did cause the death of Gregory Sartain, Jr. by intentionally or knowingly committing an act clearly dangerous to human life, namely, by shooting Gregory Sartain, Jr. with a deadly weapon, namely, a firearm, and that the defendant, Richard Foster, with the intent to promote or assist the commission of the offense, if

any, solicited, encouraged, directed, aided or attempted to aid the other person or persons to commit the offense, if he did, then you will find the defendant guilty of murder.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of murder and next consider whether the defendant is guilty of the offense of aggravated robbery.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 4th day of February, 2006, in Harris County, Texas, the defendant, Richard Foster, did then and there unlawfully, while in the course of committing theft of property owned by Gregory Sartain, Jr., and with intent to obtain or maintain control of the property, intentionally or knowingly cause serious bodily injury to Gregory Sartain, Jr. by shooting Gregory Sartain, Jr. with a deadly weapon, namely, a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 4th day of February, 2006, in Harris County, Texas, another person or persons, did then and there unlawfully, while in the course of committing theft of property owned by Gregory Sartain, Jr., and with intent to obtain or maintain control of the property, intentionally or knowingly cause serious bodily injury to Gregory Sartain, Jr. by shooting Gregory Sartain, Jr. with a deadly weapon, namely, a firearm, and that the defendant, Richard Foster, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid the other person or persons to commit the offense, if he did, then you will find the defendant guilty of aggravated robbery.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of aggravated robbery.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder on the one hand or murder or aggravated robbery on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in the defendant's favor

and find him guilty of the lesser offense of either murder or aggravated robbery.

If you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge you will acquit the defendant and say by your verdict "Not Guilty."

Our law provides that a defendant may testify in his own behalf if he elects to do so. 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 to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

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 question 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.

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, 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."

You are the exclusive judges of the facts proved, of the credibility of the witnesses and the weight to be given their testimony, but the law you shall receive in these written instructions, and you must be governed thereby.

After you retire to the jury room, you should select one of your members as your Foreman. 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

using the appropriate form attached hereto and signing the same as Foreman.

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.

No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written, prepared and signed by the Foreman and shall be submitted to the court through this officer. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the Court, or anyone else concerning any questions you may have.

Your sole duty at this time is to determine the guilt or innocence of the defendant under the indictment in this cause and restrict your deliberations solely to the issue of guilt or innocence of the defendant.

Following the arguments of counsel, you will retire to consider your verdict.



Reger Bridgwater, Judge
178th District Court
Harris County, TEXAS



CAUSE NO. 1057395

THE STATE OF TEXAS

§ IN THE 178TH DISTRICT COURT

VS.

§ OF HARRIS COUNTY, TEXAS

RICHARD FOSTER

§ MAY TERM, A. D., 2008

CHOOSE ONE

"We, the Jury, find the defendant, Richard Foster, not guilty."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Richard Foster, guilty of capital murder, as charged in the indictment."

Kenneth L. KocAB
Foreman of the Jury

Kenneth L. KocAB
(Please Print) Foreman

"We, the Jury, find the defendant, Richard Foster, guilty of murder."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Richard Foster, guilty of aggravated robbery."

Foreman of the Jury

(Please Print) Foreman

