



JAN 23 2008

CAUSE NO. 1034539

OFFICE OF
COURT ADMINISTRATION
THE STATE OF TEXAS

VS.	§	IN THE 208TH DISTRICT COURT
HEYWOOD JOSEPH SHOLARS	§	OF HARRIS COUNTY, TEXAS
ALSO KNOWN AS	§	
HEYWARD JOSEPH SHOLARS	§	NOVEMBER TERM, A. D., 2007

Members of the Jury:

The defendant, Heywood Joseph Sholars also known as Heyward Joseph Sholars, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 7th day of April, 2005, in Harris County, Texas. The defendant has pleaded not guilty.

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

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

A person commits the offense of felony 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 or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

A person commits the offense of manslaughter if he recklessly causes the death of an individual.

A person commits the offense of robbery if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain or maintain control of property of another, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

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

A person commits the offense of assault if the person intentionally, knowingly, or recklessly causes bodily injury to another.

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

- (1) causes serious bodily injury to another; or

(2) uses or exhibits a deadly weapon during the commission of the assault.

"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 and 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 definition of recklessly relative to the offense of manslaughter is as follows:

A person acts recklessly, or is reckless, with respect to the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that 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 as viewed from the defendant's standpoint.

The definitions of intentionally, knowingly, and recklessly 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.

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.

The definitions of intentionally, knowingly, and recklessly relative to the offenses of assault and aggravated assault 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 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 the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that 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 as viewed from the defendant's standpoint.

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 Melissa Rivera, as alleged in this charge, but also that the defendant specifically intended to cause the death of Aurelio Losano, by shooting Aurelio Losano, with a deadly weapon, namely, a firearm, and unless you so find, then you cannot convict the defendant of the offense of capital murder.

A person is nevertheless 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 offense was committed or that a different person or property was injured, harmed, or otherwise affected.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 7th day of April, 2005, in Harris County, Texas, the defendant, Heywood Joseph Sholars also known as Heyward Joseph Sholars, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Melissa Rivera, intentionally cause the death of Aurelio Losano by shooting Aurelio Losano with a deadly weapon, namely, a firearm, then you will find the defendant guilty of capital murder, as charged in the indictment.

Or, if you believe from the evidence, beyond a reasonable doubt that the defendant, Heywood Joseph Sholars also known as Heyward Joseph Sholars, in Harris County, Texas, on or about the 7th day of April, 2005, intending to cause the death of Paul Boutte by shooting at Paul Boutte with a deadly weapon, namely a firearm while in the course of committing or attempting to commit a robbery of Melissa Rivera, did then and there cause the death of Aurelio Losano by shooting Aurelio Losano with a deadly

weapon, namely a firearm while in the course of committing or attempting to commit a robbery of Melissa Rivera, 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 felony murder.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 7th day of April, 2005, in Harris County, Texas, the defendant, Heywood Joseph Sholars also known as Heyward Joseph Sholars, did then and there unlawfully, while in the furtherance of the commission or attempted commission of the felony of robbery and/or aggravated assault of Melissa Rivera, or in immediate flight from the commission or attempted commission of the felony of robbery and/or aggravated assault of Melissa Rivera, commit an act clearly dangerous to human life, to-wit: by shooting a firearm, that caused the death of Aurelio Losano, then you will find the defendant guilty of felony 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 felony 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 7th day of April, 2005, in Harris County, Texas, the defendant, Heywood Joseph Sholars also known as Heyward Joseph Sholars, did then and there unlawfully, while in the course of committing theft of property owned by Melissa Rivera, and with intent to obtain or maintain control of the property, intentionally or knowingly threaten or place Melissa Rivera in fear of imminent bodily injury or death, and the defendant did then and there use or exhibit a deadly weapon, namely, a firearm, 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 and next consider whether the defendant is guilty of the lesser offense of manslaughter.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 7th day of April, 2005, in Harris County, Texas, the defendant, Heywood Joseph Sholars also known as Heyward Joseph Sholars, did then and there unlawfully, recklessly cause the death of Aurelio Losano, by shooting a deadly weapon, namely a firearm, then you will find the defendant guilty of manslaughter.

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 manslaughter.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder on the one hand or felony murder or aggravated robbery or manslaughter 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 felony murder or aggravated robbery or manslaughter.

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."

An accomplice, as the term is here used, means anyone connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime 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. 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. Mere presence alone, however, will not constitute one 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. The term "conduct" means any act or omission and its accompanying mental state.

You are instructed that a conviction cannot be had upon the testimony of an accomplice unless the jury first believes that the accomplice's 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's 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, Jesse Davis, is an accomplice, if an offense was committed, and you cannot convict the defendant upon his testimony unless you first believe that the testimony of Jesse Davis is true and that it shows the defendant is guilty as charged in the indictment; and even then you cannot convict the defendant unless you further believe that there is other evidence in the case, outside of the testimony of Jesse Davis tending to connect the defendant 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 the defendant with its commission, and then from all of the evidence you must believe beyond a reasonable doubt that the defendant is guilty of the offense charged against him.

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.



Denise Collins, Judge
208th District Court
Harris County, TEXAS

FILED
Theresa Chang
District Clerk
JAN 16 2008
Time: _____
Harris County, Texas
By _____
Deputy

CAUSE NO. 1034539

THE STATE OF TEXAS § IN THE 208TH DISTRICT COURT
VS. §
HEYWOOD JOSEPH SHOLARS § OF HARRIS COUNTY, TEXAS
ALSO KNOWN AS §
HEYWARD JOSEPH SHOLARS § NOVEMBER TERM, A. D., 2007

CHOOSE ONE

"We, the Jury, find the defendant, Heywood Joseph Sholars also known as Heyward Joseph Sholars, not guilty."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Heywood Joseph Sholars also known as Heyward Joseph Sholars, guilty of capital murder, as charged in the indictment."

Joseph Walker Gourlay

Foreman of the Jury

Joseph Walker Gourlay

(Please Print) Foreman

FILED
Theresa Chang
District Clerk
JAN 16 2008
Time: _____
Harris County, Texas
By: *[Signature]*
Deputy

"We, the Jury, find the defendant, Heywood Joseph Sholars also known as Heyward Joseph Sholars, guilty of felony murder."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Heywood Joseph Sholars also known as Heyward Joseph Sholars, guilty of aggravated robbery."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Heywood Joseph Sholars also known as Heyward Joseph Sholars, guilty of manslaughter."

Foreman of the Jury

(Please Print) Foreman