

NO. D-1-DC-06-904006

THE STATE OF TEXAS	)	IN THE 331ST DISTRICT
VS.	)	COURT OF
MILTON DWAYNE GOBERT	)	TRAVIS COUNTY, TEXAS

CHARGE OF THE COURT

Ladies and Gentlemen of the Jury:

The defendant, MILTON DWAYNE GOBERT, stands charged by indictment with the offense of capital murder, alleged to have been committed in Travis County, Texas, on or about the 6th day of October, 2003. To this charge the defendant has pleaded not guilty. 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 kidnapping, or robbery.

II.

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

"Individual" means a human being who is alive.

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.

Filed In The District Court  
of Travis County, Texas

MAR 02 2010

at 1:42 p.m.  
Amalia Rodriguez-Mendoza, Clerk

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 the conduct is reasonably certain to cause the result.

## IV.

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

## V.

A person commits the offense of kidnapping if he intentionally or knowingly abducts another person.

"Abduct" means to restrain a person with intent to prevent his liberation by:

- (A) secreting or holding him in a place where he is not likely to be found; or
- (B) using or threatening to use deadly force.

"Restrain" means to restrict a person's movements without consent, so as to interfere substantially with his liberty, by moving him from one place to another or by confining him. Restraint is "without consent" if it is accomplished by:

- (A) force, intimidation, or deception; or
- (B) any means, including acquiescence of the victim, if he is a child less than 14 years of age.

Intentionally and knowingly have been previously defined.

## VI.

A person commits the offense of robbery if in the course of committing theft as hereinafter defined and with intent to obtain or maintain control of the property, he

intentionally or knowingly causes bodily injury to another.

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

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

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

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

"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.

"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.

"Property" means:

(A) tangible or intangible personal property; or

(B) a document, including money, that represents or embodies anything of value.

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

"Consent" means assent in fact, whether express or apparent.

"Effective consent" includes consent by a person legally authorized to act for the owner.

Consent is not effective if induced by deception or coercion.

Intentionally and knowingly have been defined in III above.

VII.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the defendant, MILTON DWAYNE GOBERT, on or about the 6th day of October, 2003, in the County of Travis, and State of Texas, as alleged in the indictment, did then and there in the course of attempting to commit or committing kidnapping of Mel Kernena Cotton did then and there intentionally commit murder by causing the death of an individual, namely, Mel Kernena Cotton by stabbing Mel Kernena Cotton with a knife, a deadly weapon,

OR that MILTON DWAYNE GOBERT, did then and there in the course of attempting to commit or committing robbery of Mel Kernena Cotton, did then and there intentionally commit murder by causing the death of an individual, namely, Mel Kernena Cotton, by stabbing Mel Kernena Cotton with a knife, a deadly weapon.

OR that MILTON DWAYNE GOBERT, did then and there in the course of attempting to commit or committing kidnapping of Demetrius Cotton-McCants, did then and there intentionally commit murder by causing the death of an individual, namely, Mel Kernena Cotton, by stabbing Mel Kernena Cotton with a knife, a deadly weapon, you will find the defendant guilty of the offense 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 of the offense of capital murder and proceed to consider whether the defendant is guilty of the lesser offense of murder.

## VIII.

Now if you believe beyond a reasonable doubt that the defendant MILTON DWAYNE GOBERT killed Mel Kernena Cotton but you have a reasonable doubt as to whether MILTON DWAYNE GOBERT robbed, attempted to rob, kidnapped, and attempted to kidnap Mel Kernena Cotton and you further have a reasonable doubt that MILTON DWAYNE GOBERT kidnapped and attempted to kidnap Demetrius Cotton-McCants,

OR you have a reasonable doubt as to whether the death of Mel Kernena Cotton occurred in the commission or attempted commission or in immediate flight after the attempt or commission of robbery, if any, of Mel Kernena Cotton, and you have a reasonable doubt as to whether the death of Mel Kernena Cotton occurred in the commission or attempted commission or in immediate flight after the attempt or commission of kidnapping, if any, of Mel Kernena Cotton, and you have a reasonable doubt as to whether the death of Mel Kernena Cotton occurred in the commission or attempted commission or in immediate flight after the attempt or commission of kidnapping, if any, of Demetrius Cotton-McCants, then you can not convict the defendant of capital murder, but you will consider whether the defendant is guilty of the lesser included offense of murder.

## IX.

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

## X.

Now bearing in mind the foregoing definitions and instructions, if you believe

from the evidence beyond a reasonable doubt that on or about the 6th day of October, 2003, in the County of Travis and State of Texas, the defendant, MILTON DWAYNE GOBERT, did then and there, without justification, intentionally or knowingly cause the death of an individual, Mel Kernena Cotton, by stabbing her with a knife, a deadly weapon, you will find the defendant guilty of 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."

## XI.

You are further instructed that you may consider all relevant facts and circumstances surrounding the killing of Mel Kernena Cotton and the previous relationship, if any, existing between the accused and Mel Kernena Cotton, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense of murder.

## XII.

Upon the law of self defense you are instructed that a person is justified in using force against others when and to the degree he reasonably believes the force is immediately necessary to protect himself against the others' use or attempted use of unlawful force.

The use of force against others is not justified in response to verbal provocation alone.

A person is justified in using deadly force against others:

- (1) if he would be justified in using force against the other; and
  - (2) if a reasonable person in the defendant's situation would not have retreated;
- and

(3) when and to the degree he reasonably believes the deadly force is immediately necessary:

(a) to protect himself against the others' use or attempted use of unlawful deadly force; or

(b) to prevent the others' imminent commission of murder.

"Reasonable belief " means a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

"Deadly force" means force that is intended or known by the person using it to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

The requirement to retreat does not apply to a defendant who uses force against a person who is committing an offense of unlawful entry into the habitation of the defendant.

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.

You are further instructed that it is your duty to consider all relevant facts and circumstances surrounding the alleged killing and the previous relationship, if any, existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the alleged offense.

Now, therefore, bearing in mind the foregoing definitions and instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, MILTON

DWAYNE GOBERT, in the County of Travis, the State of Texas, on or about the 6<sup>th</sup> day of October, 2003, did then and there commit capital murder by intentionally causing the death of Mel Kernena Cotton by stabbing Mel Kernena Cotton with a knife, a deadly weapon, as alleged in the indictment or that he did commit a lesser included offense of murder of Mel Kernena Cotton by stabbing her with a knife, a deadly weapon; but you further find from the evidence, or have a reasonable doubt thereof, that the defendant reasonably believed as viewed from his standpoint alone that deadly force when and to the degree used, if it was, was immediately necessary to protect himself against the use or attempted use of unlawful deadly force by the said Mel Kernena Cotton or to prevent the imminent commission by the said Mel Kernena Cotton of murder, and that at such time a reasonable person in the defendant's situation would not have retreated, you will acquit the defendant and say by your verdict "not guilty."

XIII.

You are instructed in relation to the allegations concerning kidnapping and attempted kidnapping of Mel Kernena Cotton and Demetrius Cotton-McCants that conduct is justified under the law of necessity if:

- (1) the defendant reasonably believes the conduct is immediately necessary to avoid imminent harm; and
- (2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct.

"Ordinary standards of reasonableness" means the standards that would be applied by an ordinarily prudent person under the same or similar circumstances as the defendant.



Now, therefore, if you believe from the evidence beyond a reasonable doubt that the defendant MILTON DWAYNE GOBERT, on or about the 6<sup>th</sup> day of October, 2003, in the County of Travis, and State of Texas, did then and there kidnap or attempt to kidnap Mel Kernena Cotton and kidnap or attempt to kidnap Demetrius Cotton-McCants, but you further believe from the evidence or have a reasonable doubt thereof that at the time the defendant did the act aforesaid, if any, the defendant reasonably believed that such act was immediately necessary to avoid imminent harm, to wit: the shooting of MILTON DWAYNE GOBERT with a firearm, and you further find, or have a reasonable doubt thereof that the desirability and urgency of avoiding the harm clearly outweighed according to ordinary standards of reasonableness, the harm sought to be prevented by the law denouncing the conduct of the said MILTON DWAYNE GOBERT, you will acquit the defendant of the first and third paragraphs of the indictment.

#### XIV.

A defendant may not be convicted of an offense on the testimony of a person to whom the defendant made a statement against the defendant's interest during a time when the person was imprisoned or confined in the same correctional facility as the defendant unless the testimony is corroborated by other evidence tending to connect the defendant with the offense committed. Corroboration is not sufficient if the corroboration only shows that the offense was committed.

You are instructed that you cannot find the defendant guilty upon the testimony of Homero Carrillo unless you first believe that the testimony of the said Homero Carrillo is true and that it shows the defendant is guilty as charged in the indictment; and even then you cannot convict the defendant, MILTON DWAYNE GOBERT, unless you further

believe that there is other evidence in this case, outside the evidence of said Homero Carrillo, tending to connect the defendant with the commission of the offense charged in the indictment and then from all the evidence you must believe beyond a reasonable doubt that the defendant is guilty.

XV.

"Deadly Weapon" means anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

"Serious bodily injury" means 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.

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

As to the lesser included offense of murder, if you have found the defendant guilty and you further find beyond a reasonable doubt that the defendant used or exhibited a deadly weapon during the commission of the offense or during immediate flight therefrom, you will so state in your verdict, but if you do not so find or if you have a reasonable doubt thereof you will state that the defendant did not use or exhibit a deadly weapon during the commission of murder or during immediate flight therefrom.

XVI.

In all criminal cases, the burden of proof is on the State. All persons are presumed innocent and no person may be convicted unless each element of the offense is proved beyond a reasonable doubt. The fact that the defendant has been arrested, confined, or indicted for, or otherwise charged with an offense gives rise to no inference of guilt at his

trial. The law does not require the 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 a 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 prosecutor'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 the defendant and say by your verdict "Not Guilty. "

In a criminal case the law permits a defendant to testify in his own behalf but he is not compelled to do so, and the same law provides that the fact that a defendant does not testify shall not be considered as a circumstance against him. You will, therefore, not consider the fact that the defendant did not testify as a circumstance against him; and you will not in your retirement to consider your verdict allude to, comment on, or in any manner refer to the fact that the defendant has not testified.

You are further instructed as a part of the law in this case that the indictment against the defendant is not evidence in the case, and that the true and sole use of the indictment is to charge the offense, and to inform the defendant of the offense alleged against him. The reading of the indictment to the jury in the statement of the case of the

state against the defendant cannot be considered as a fact or circumstance against the defendant in your deliberations.

In deliberating on the cause you are not to refer to or discuss any matter or issue not in evidence before you; and in determining the guilt or innocence of the defendant, you shall not discuss or consider the punishment, if any, which may be assessed against the defendant in the event he is found guilty beyond a reasonable doubt.

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

You are instructed that your verdict must be unanimous and it must reflect the individual verdict of each individual juror, and not a mere acquiescence in the conclusion of the other jurors.

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.

A juror may believe any, all, none or part of any evidence given by any witness. You are instructed that upon your request to the bailiff you shall be furnished any exhibits admitted as evidence in the case.

After the reading of this charge, you shall not be permitted to separate from each other nor shall you talk to anyone not of your jury. After argument of counsel, you will retire and select one of your members as your foreperson. It is his or her duty to preside at your deliberations and to vote with you in arriving at a unanimous verdict. After you

have arrived at your verdict, you may use the forms attached hereto by having your foreperson sign the form that conforms to your verdict, but in no event shall he or she sign more than one of such forms.

A handwritten signature in black ink, appearing to read "Bob Perkins", written in a cursive style. The signature is positioned above a horizontal line.

BOB PERKINS  
Presiding Judge  
331<sup>st</sup> District Court of Travis County, Texas

NO. D-1-DC-06-904006

THE STATE OF TEXAS	)	IN THE 331ST DISTRICT
VS.	)	COURT OF
MILTON DWAYNE GOBERT	)	TRAVIS COUNTY, TEXAS

VERDICT OF THE JURY

We, the jury, find the defendant, MILTON DWAYNE GOBERT, guilty of the offense of Capital Murder as alleged in the indictment.

*Brad Howes*  
 \_\_\_\_\_  
 FOREPERSON OF THE JURY  
 BRAD HOWES

Filed In The District Court  
of Travis County, Texas

MAR 02 2010

at 5:28 M.  
Amalia Rodriguez-Mendoza, Clerk *VP*

NO. D-1-DC-06-904006

THE STATE OF TEXAS	)	IN THE 331ST DISTRICT
VS.	)	COURT OF
MILTON DWAYNE GOBERT	)	TRAVIS COUNTY, TEXAS

VERDICT OF THE JURY

We, the jury, find the defendant, MILTON DWAYNE GOBERT, guilty of the lesser included offense of Murder.

We further (find or do not find) \_\_\_\_\_ that the defendant used a deadly weapon, to wit: a knife in the commission of this murder.

FOREPERSON OF THE JURY

NO. D-1-DC-06-904006

THE STATE OF TEXAS	)	IN THE 331ST DISTRICT
VS.	)	COURT OF
MILTON DWAYNE GOBERT	)	TRAVIS COUNTY, TEXAS

VERDICT OF THE JURY

We, the jury find the defendant, MILTON DWAYNE GOBERT, not guilty.

FOREPERSON OF THE JURY



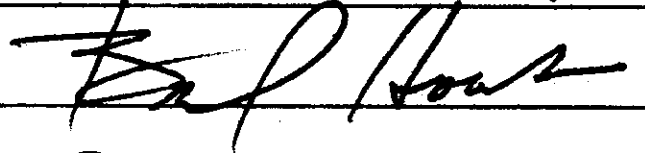
All transcripts of the calls in Jail.

Phone transcripts that were passed to the jury while Milton in Jail.

Right glove (white)

3-2-10

3:20pm



BRAD HOWES

Filed In The District  
of Travis County, Texas  
on 3-2-10  
3:20pm  
Analía Rodriguez-Mendoza, Clerk

Clarification of Capital murder. ARE THESE CAPITAL MURDER.

IF he comes to rob her and kills her & takes purse?  
~~is it~~

IF he comes over for any other reason then kills her and takes purse?

He comes over for any other reason and in the course of killing her he decides to rob her. Kills her and takes the purse.

4:15pm 3-2-10 ~~Brad Howes~~  
BRAD Howes

You have the charge and I ~~cannot~~ cannot tell you anymore than that.

Bol Perkins

Filed in The District  
of Travis County, Texas  
on 3-2-10  
at 4:20 P.M.  
Amalia Rodriguez-Mendoza, Clerk