

THE STATE OF TEXAS
VS
BRYANT DWAN RILEY

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§

IN THE 332ND DISTRICT COURT
OF
HIDALGO COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, BRYANT DWAN RILEY, stands charged by indictment with the offense of Capital Murder alleged to have been committed in Hidalgo County, Texas, on or about MARCH 9, 2009, and to this charge the Defendant has pleaded not guilty.

1.

A person commits the offense of Capital Murder when such person intentionally commits the murder in the course of committing or attempting to commit the offense of Robbery.

Our law provides that a person commits the offense of Murder when the person intentionally or knowingly causes the death of an individual.

A person commits the offense of Robbery if during the course of committing a theft and with intent to obtain property an individual intentionally or knowingly causes bodily injury to another.

2.

"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.

"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.

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

"Theft" as used herein is the unlawful appropriation of the corporeal personal property of another, with the intent to deprive such other person of said property.

"Appropriation" and **"appropriate,"** as those terms are used herein, 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" as used herein means tangible or intangible personal property or documents, including money that represent or embody anything of value.

"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 deception or coercion.

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

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

3.

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 when he is aware of the nature of his conduct. 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.

4.

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.

A person is criminally responsible for an offense committed by the conduct of another 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.

By the term "conspiracy", as used in these instructions, is meant 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. You are instructed that the offenses of capital murder, murder, aggravated robbery, and robbery are all felony offenses.

The mere presence, if any, of the Defendant, BRYANT DWAN RILEY, at the scene of the alleged offense, alone by itself, would not constitute him a party to the offense.

You are instructed that it is a defense to prosecution that a person through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense.

A reasonable belief means a belief that would be held by an ordinary and prudent man in the same circumstances as the defendant.

So, if you find from the evidence in this case that at that time the defendant traveled to the Rio Grande Valley with John William Rogers and George Frederick Sweeney, that he acted under the mistake of fact that the property sought to be recovered belonged to John William Rogers; that John William Rogers had a right to said property; that no robbery or burglary was to take place, or if you have a reasonable doubt thereof, you will find the defendant not guilty.

5.

Now, if you find from the evidence beyond a reasonable doubt that on or about MARCH 9, 2009, in Hidalgo County, Texas, the Defendant, BRYANT DWAN RILEY, did then and there intentionally cause the death of an individual, namely, JOHN FRANCIS ROGERS, by shooting him with a firearm, and the defendant was then and there in the course of committing or attempting to commit the offense of robbery of JOHN FRANCIS ROGERS, then you will find the Defendant guilty of the offense of CAPITAL MURDER, as charged in the indictment,

OR

If you find from the evidence beyond a reasonable doubt that on or about MARCH 9, 2009, in Hidalgo County, Texas, GEORGE FREDERICK SWEENEY OR JOHN WILLIAM ROGERS, did then and there intentionally cause the death of an individual, namely, JOHN FRANCIS ROGERS, by shooting him with a firearm, and GEORGE FREDERICK SWEENEY OR JOHN WILLIAM ROGERS was then and there in the course of committing or attempting to commit the offense of robbery of JOHN FRANCIS ROGERS; and that the Defendant, BRYANT DWAN RILEY, then and there knew of the intent, if any, of GEORGE FREDERICK SWEENEY OR JOHN WILLIAM ROGERS to cause the death of JOHN FRANCIS ROGERS by shooting him with a firearm while committing or attempting to commit the offense of robbery of JOHN FRANCIS ROGERS; and that with intent to promote or assist the commission of the offense of Capital Murder by GEORGE FREDERICK SWEENEY or JOHN WILLIAM ROGERS, the Defendant, BRYANT DWAN RILEY encouraged, directed, aided or attempted to aid GEORGE FREDERICK SWEENEY OR JOHN WILLIAM ROGERS to commit said offense of Capital Murder, then you will find the Defendant guilty of the offense of CAPITAL MURDER,

OR

If you find from the evidence beyond a reasonable doubt that the Defendant, BRYANT DWAN

RILEY, GEORGE FREDERICK SWEENEY and JOHN WILLIAM ROGERS, entered into an agreement to commit the felony offense of robbery of JOHN FRANCIS ROGERS, and pursuant to that agreement, if any, they did carry out such conspiracy to commit robbery on or about MARCH 9, 2009, in Hidalgo County, Texas, and while in the course of committing such robbery of JOHN FRANCIS ROGERS, GEORGE FREDERICK SWEENEY OR JOHN WILLIAM ROGERS intentionally caused the death of JOHN FRANCIS ROGERS by shooting him with a firearm, and such murder of JOHN FRANCIS ROGERS was committed in furtherance of the conspiracy to commit robbery, if any, and was an offense that should have been anticipated by BRYANT DWAN RILEY as a result of carrying out the conspiracy, then you will find the defendant guilty of CAPITAL MURDER,

Unless you unanimously so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of CAPITAL MURDER and find the Defendant NOT GUILTY.

6.

Your are instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship existing between the accused and the deceased, if any, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the killing in question, if any.

7.

Our law provides that a Defendant may testify in his own behalf if he elects to do so. This, however, is a privilege 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 the Defendant.

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 issue 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 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 proves 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 Defendant 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. You will be governed by the law you shall receive in these written instructions.

When you retire to the jury room, you should first select one of your members as Presiding Juror. It is the Presiding Juror's 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 thereto, and signing the same as Presiding Juror.

In order to return a verdict, each juror must agree thereto, but jurors have a duty to consult with each other and to deliberate with a view of reaching an agreement, if it can be done without violence to individual judgment.

Each juror must decide the case for himself or herself, but only after an impartial consideration of the evidence with his or her fellow jurors.

In the course of deliberations, a juror should not hesitate to re-examine his or her own views and change his or her opinion if convinced it is erroneous. However, no juror should surrender his or her honest conviction as to the weight or effect of the evidence solely because of the opinion of his or her fellow jurors, or for the mere purpose of returning a verdict.

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.

You should not discuss or consider punishment for the offense charged for any purpose. You must concern yourselves solely with the question of guilt or innocence of the Defendant under these written instructions without regard to any possible punishment imposed by law for the offense charged.

During your deliberations, you are instructed that you should not consider the remarks, rulings or actions of the presiding judge during this trial as any indication of the Court's opinion as to the guilt or innocence of the Defendant. The remarks, rulings and actions of the presiding judge were upon matters of the law only and were not upon the facts which you, and you alone, must determine.

While you are deliberating, no one has authority to communicate with you except the officer who has you in charge being the Bailiff. However, after you have retired, you may communicate with the Court as to any questions you may have, but that communication must be in writing through the officer of the Court.

When you have reached a verdict you will notify the bailiff in writing, as to reaching a verdict, but not what the verdict is.

Do not let bias, prejudice, or sympathy play any part in your deliberations.

Your verdict must be unanimous, and after you have reached a unanimous verdict, the Presiding Juror will certify thereto by signing the appropriate form attached to this charge.

Filed on this the 7 day of March, 2011, at 11:30 o'clock A.m.


MARIO E. RAMIREZ, JR.
JUDGE PRESIDING
332ND DISTRICT COURT
HIDALGO COUNTY, TEXAS

FILED
AT 9:00 O'CLOCK A M

MAR 07 2011

LOUISA HINOJOSA, CLERK
District Courts, Hidalgo County
By [Signature] Deputy