

CAUSE NO. 1042204D

THE STATE OF TEXAS

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§
§

IN THE CRIMINAL DISTRICT COURT

VS.

NUMBER THREE OF

PAUL DAVID STOREY

FILED
TARRANT COUNTY CLERK
TARRANT COUNTY, TEXAS

COURT'S CHARGE

SEP 09 2008

MEMBERS OF THE JURY:

TIME 5:06 PM
BY ES DEPUTY

The Defendant, PAUL DAVID STOREY, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 16th day of October, 2006, in Tarrant County, Texas. To this charge, the Defendant, PAUL DAVID STOREY, has pled not guilty. You are instructed that the law applicable to this case is as follows:

I.

You are instructed that our law provides that 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 commits murder as defined above and he intentionally commits the offense of murder while in the course of committing or attempting to commit the offense of robbery.

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

You are further instructed that in order for a murder to qualify as capital murder, the state must prove beyond a reasonable doubt that the intent to commit robbery was formed prior to or concurrent with the murder.

A person attempts to commit an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

II.

"Deadly weapon" means anything manifestly designed 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. A firearm is a deadly weapon.

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.

"Individual" means a human being who has been born and is alive.

"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.

"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.

"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.

"Theft" as used herein is the unlawful appropriation of the property of another with the intent

to deprive the owner of said property.

“Appropriation” and “appropriate” as those terms are used, means to acquire or otherwise exercise control over personal property. The appropriation of property is unlawful if it is without the owner’s effective consent.

“Property” includes tangible personal property, 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.

II.

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.

III.

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:

- (a) 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; or
- (b) 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.

"Conspiracy" is committed if, with intent that a felony be committed, a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and he or one or more of them performs an overt act in pursuance of the agreement.

An agreement constituting a conspiracy may be inferred from acts of the parties.

You are instructed that capital murder, murder, robbery, and aggravated robbery are felony offenses in the State of Texas.

Each party to an offense may be charged with the commission of the offense.

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

IV.

CAPITAL MURDER

If you find from the evidence beyond a reasonable doubt that on or about the 16th day of October, 2006, in Tarrant County, Texas, the Defendant, PAUL DAVID STOREY, either acting alone or as a party thereto as hereinbefore defined, did then and there intentionally cause the death of an individual, JONAS CHERRY, by shooting him with a deadly weapon, to-wit: a firearm, and the said Defendant was then and there in the course of committing or attempting to commit the offense of robbery of JONAS CHERRY;

-OR-

If you believe from the evidence beyond a reasonable doubt that the Defendant, PAUL DAVID STOREY, acting with intent to promote or assist the commission of the offense, solicited, encouraged, directed, aided, or attempted to aid MARK PORTER to intentionally cause the death of an individual, JONAS CHERRY, by shooting him with a deadly weapon, to-wit: a firearm, and the said MARK PORTER was then and there in the course of committing or attempting to commit the offense of robbery of JONAS CHERRY;

-OR-

If you believe from the evidence beyond a reasonable doubt that the defendant, PAUL DAVID STOREY, entered into a conspiracy with MARK PORTER to commit the felony offense of robbery and that on or about the 16th day of October, 2006 in Tarrant County, Texas, in the attempt to carry out this agreement, if any, one of the said co-conspirators did then and there intentionally cause the death of an individual, JONAS CHERRY, by shooting him with a deadly weapon, to-wit: a firearm, if he did, and that such offense was committed in furtherance of the robbery, and was an offense that should have been anticipated as the result of the carrying out of the agreement, then you will find the defendant, PAUL DAVID STOREY, guilty of the offense of Capital Murder, though he may have had no specific intent to commit the offense of capital murder, and so say by your verdict.

Unless you so find and believe beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will next consider whether he is guilty of the lesser offense of murder.

V.

MURDER

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

Now, bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, PAUL DAVID STOREY, either acting alone or as a party thereto as hereinbefore defined, in Tarrant County, Texas, on or about the 16th day of October, 2006 did then and there intentionally or knowingly cause the death of an individual, JONAS CHERRY, by shooting him with a deadly weapon, to-wit: a firearm, which caused the death of JONAS CHERRY, then you will find the defendant guilty of murder.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "not guilty."

VI.

You are instructed that under our law no evidence obtained by an officer in violation of any provisions of the Constitution or laws of the State of Texas or of the Constitution or laws of the United States of America, shall be admitted in evidence against the defendant on the trial of any criminal case.

A statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion.

You are instructed that unless you believe from the evidence beyond a reasonable doubt that each of the alleged statements of the Defendant, which were introduced into evidence as State's

Exhibit 2B, State's Exhibit 4B and State's Exhibit 6B, were freely and voluntarily made by the Defendant without compulsion or persuasion, or if you have a reasonable doubt thereof, you shall not consider such alleged statements for any purpose nor any evidence obtained as a result thereof. The determination of whether each statement is freely and voluntarily given by the Defendant is to be made independently of each other.

VII.

You are instructed that if there is testimony before you regarding the defendant having committed offenses, wrongs, or acts other than the offense charged in the indictment in this case, now on trial before you, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such conduct, if any were committed, and even then you may only consider the same in determining the motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident of this defendant now on trial before you, or rebuttal of a defensive theory, and for no other purpose.

You are further instructed that in regards to State's Exhibit 257B, you are instructed that you may consider it for the purpose of a handwriting sample of the Defendant and only for that purpose.

VIII.

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.

IX.

All persons are presumed 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 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 the Defendant and say by your verdict "not guilty".

X.

The indictment in this case is no evidence whatsoever of the guilt of the Defendant. It is a mere pleading necessary in order to bring this case into court for trial and you will consider it for no purpose at all.

XI.

It is your duty to consult with one another and to deliberate in an effort to reach a verdict based on these instructions if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are the judges of the facts. Your sole duty is to decide whether the State has proved the Defendant guilty beyond a reasonable doubt.

You are instructed that your verdict must be unanimous.

You are the exclusive judges of the facts proven, of the credibility of the witnesses, and of the weight to be given to their testimony, but you are bound to receive the law from the Court, which is given herein, and be governed thereby.

You must decide the issues in the case solely on the testimony and exhibits admitted into evidence before you. You must not consider any fact or evidence learned by you outside the courtroom. You also may not consider any fact or evidence that you were instructed to disregard during trial.

You must not tell other jurors matters of your own personal or professional knowledge or those of other persons, nor relate to them any special knowledge you may have about any facts or person connected with this case that is not a part of the evidence you heard during the trial.

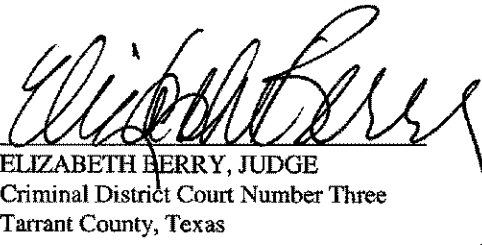
You must not be influenced in any degree by any personal feeling of sympathy for or

prejudgment against the state or the defendant in this case, for each is entitled to the same fair and impartial consideration.

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

It is his or her duty to preside at your deliberations, vote with you, and when you have reached a unanimous verdict, to certify to your verdict by using one of the attached forms and signing the same as your Foreperson.

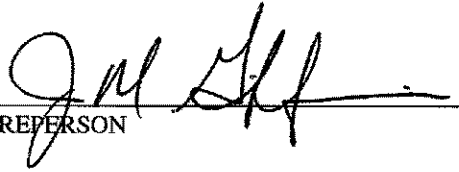
If the jury wishes to communicate with the Court pertaining to this case, such communication must be in writing and signed by the Foreman and handed to the Bailiff. Please ring the buzzer in the jury room and wait for the Bailiff who will be in attendance. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the Court, or anyone else concerning any question you may have.



ELIZABETH BERRY, JUDGE
Criminal District Court Number Three
Tarrant County, Texas

Verdict of the Jury

We, the Jury, find the defendant, PAUL DAVID STOREY, guilty of the offense of capital murder as charged in the indictment.



FOREPERSON

-OR-


We, the Jury, find the defendant, PAUL DAVID STOREY, guilty of the lesser offense of murder.

FOREPERSON

-OR-

We, the jury, find the Defendant, PAUL DAVID STOREY, not guilty.

FOREPERSON

FILED
THOMAS A. WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS
SEP 10 2008
DEPUTY
TIME BY  1:24