

*In The 366th Judicial District Court,
Collin County, Texas
Honorable Ray Wheless, Presiding*

Cause No. 366-82182-10

STATE OF TEXAS

VS.

THOMAS GRADY LAYTON

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, **THOMAS GRADY LAYTON**, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 30th day of May, 2010, in Collin County, Texas. To this charge the defendant has pleaded not guilty.

Definitions

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

“Individual” means a person who has been born and is alive.

A person commits capital murder when he intentionally commits murder in the course of committing or attempting to commit robbery.

Our law provides that 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 and maintain control of property of another, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death, or if he intentionally, knowingly, or recklessly causes bodily injury to another.

The term “deadly weapon,” as used here, means:

1. a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or
2. 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.

The term "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 means the unlawful appropriation of the personal property of another, with the intent to deprive such person of said property.

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

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

"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, coercion, force or threats.

"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.

"Property" as used herein means tangible or intangible personal property or documents, including money, that represents or embodies anything of value.

For the purpose of the offense of capital murder and murder, a person acts intentionally, or with intent, with respect to the result of his conduct when it is his conscious objective or desire to cause the result.

For the purpose of the offense of murder, 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.

For the purpose of the offense of robbery, 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.

For the purpose of the offense of robbery, 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.

For the purpose of the offense of robbery, 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 actor's standpoint.

The State has introduced evidence of extraneous crimes or bad acts other than the one charged in the indictment in this case. This evidence was admitted only for the purpose of assisting you, if it does, in determining credibility, motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or to rebut a defensive theory. You cannot consider the testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other acts, if any were committed.

Capital Murder

Now, if you find from the evidence beyond a reasonable doubt that on or about the 30th day of May, 2010, in Collin County, Texas, that **THOMAS GRADY LAYTON**, did then and there, intentionally cause the death of Grada Layton, an individual, hereinafter called deceased, by shooting deceased with a firearm, a deadly weapon, while the defendant was in the course of committing or attempting to commit the offense of robbery of deceased, then you will find him guilty as charged.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof that the defendant is guilty of capital murder as charged, or if you cannot agree, you will next consider whether he is guilty of the the lesser-included-offense of murder as instructed below.

Murder

Now, if you find from the evidence beyond a reasonable doubt that on or about the 30th day of May, 2010, in Collin County, Texas, that **THOMAS GRADY LAYTON**, did then and there, intentionally or knowingly cause the death of Grada Layton, an individual, hereinafter called deceased, by shooting deceased with a firearm, then you will find him guilty of the lesser included offense of murder.

If you believe from the evidence beyond a reasonable doubt that the defendant is either guilty of capital murder or murder, but you have a reasonable doubt as to which the defendant is guilty, then you will resolve that doubt in the defendant's favor and, in such event, find him guilty of the lesser included offense of murder.

A conviction cannot be had upon the testimony of an accomplice unless the jury first believe that the accomplice's evidence 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.

Now, if you believe from the evidence beyond a reasonable doubt that an offense was committed and you further believe from the evidence that witness Matthew Kubasta was an accomplice, or you have a reasonable doubt as to whether he was or not, as that term is defined in the foregoing instructions, then you cannot convict the defendant upon the testimony of Matthew Kubasta unless you first believe that the testimony of the accomplice is true and that it shows the defendant is guilty as charged in the indictment; even then you cannot convict the defendant unless you further believe that there is other evidence in the case, outside of the evidence of any accomplice, 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 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 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.

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 charged with an 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 of 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 they fail to do so, you must acquit the defendant.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion upon any matter of fact in this case, and if you have observed anything which you have or may interpret as the Court's opinion upon any matter of fact in this case, you must wholly disregard it.

You are instructed that any statements of counsel made during the course of the trial or during argument not supported by the evidence, or statements of law made by counsel not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

You are further instructed that you should not question the Bailiff concerning the testimony or the law of the case, nor should you discuss the case in his presence. If you have any questions, you should reduce them to writing, to be signed by the presiding juror, and present them to the Court.

If the Jurors disagree as to the statement of any witness, they may, upon applying to the Court, have read to them from the Court Reporter's notes that portion of such witness' testimony, and only that portion, on the point in dispute.

You are instructed that the indictment is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence, nor can it be considered as such when passing upon whether the defendant is guilty or not guilty.

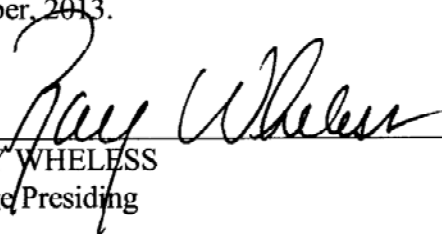
During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

After you retire to the jury room, you should select one of your members as your presiding juror. It is their duty to preside at your deliberations and vote with you. Your verdict must be unanimous and signed by the presiding juror.

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

Suitable forms for your verdict are attached hereto. Your verdict must be in writing and signed by your presiding juror. Your sole duty at this time is to determine whether the defendant is guilty or not guilty under the indictment in this cause and you are to restrict your deliberations to that issue.

Signed this the 10 day of October, 2013.



RAY WHELESS
Judge Presiding

VERDICT

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

(signature) Ronnie Teer

(printed name) Ronnie Teer
PRESIDING JUROR

OR,

We, the Jury, find the defendant guilty of the lesser included offense of murder.

(signature) _____

(printed name) _____
PRESIDING JUROR

OR,

We, the Jury, find the defendant not guilty.

(signature) _____

(printed name) _____
PRESIDING JUROR