

THE STATE OF TEXAS

VS.

JAMES GARFIELD BROADNAX

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, JAMES GARFIELD BROADNAX, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 19th day of June, 2008 in Dallas County, Texas. The defendant has pleaded not guilty.

CAPITAL MURDER/MURDER

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

"Individual" means a human being who is alive.

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

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.

IN THE CRIMINAL
DISTRICT COURT 7
DALLAS COUNTY, TEXAS
2008 AUG 12 PM 12:04
FILED
AMONICA LITTLE

ROBBERY

A person commits a robbery if, in the course of committing theft, as defined in these instructions, and with intent to obtain or maintain control of the property, he intentionally or knowingly or recklessly causes bodily injury to another.

"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.

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

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 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 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.

"Appropriation" and "appropriate", as those terms are used in these instructions, 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 in these instructions 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.

"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.

"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.

"Individual" means a human being who is alive.

A "firearm" means any device designed, made or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

A "firearm" is a deadly weapon.

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.

You are instructed that if there is any testimony before you in this case regarding the defendant having committed offenses other than the offense alleged against him in the indictment in this case, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offenses, if any were committed, and even then you may only consider the same in determining proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident of the defendant, in connection with the offense alleged against him in the indictment and for no other purpose.

You are instructed that under our law a confession of a defendant made while the defendant was in jail or other place of confinement or in the custody of an officer shall be admissible in evidence if it appears that the same was freely and voluntarily made, without compulsion or persuasion. However, before a statement made orally to law enforcement or persons acting as agents of law enforcement may be considered voluntary, it must be shown beyond a reasonable doubt that, prior to making such statement, the accused was warned by the person to whom the statement was made, or by a magistrate, that : 1) he has the right to remain silent and not make any statement, 2) that anything said by the defendant will be used against him at trial or in court, 3) that he has the right to terminate the questioning at any time during the interview or questioning, and 4) that he is entitled to the services of an attorney, his own, or, if he is unable to employ one, a court-appointed attorney, to advise him prior to and during any questioning or interrogation.

So, if you find from the evidence, or if you have a reasonable doubt thereof, that at the time the defendant gave any statement on June 23, 2008, to a reporter, Steve Pickett, Ellen Goldberg, or Shaun Raab, the reporter was acting as an agent of law enforcement and failed to give the defendant the above warning, you shall disregard any such statement and not consider such statement for any purpose nor any evidence obtained as a result thereof.

Moreover, if you find from the evidence, or you have a reasonable doubt thereof, that at the time of the defendant's statement to the reporters on June 23, 2008, the defendant was under the influence of PCP, marijuana, formaldehyde, or any combination thereof to such an extent as to be reduced to a condition of mental impairment such as to render his statement not wholly voluntary, then such statement would not be freely and voluntarily made, and in such case you will wholly disregard the statement referred to and not consider it for any purpose nor any evidence obtained as a result of such statement.

You are instructed that you may only consider evidence of voluntary intoxication or testimony of witnesses Jason Varghese or Dr. Haideh Mirmesdagh to the extent it relates to the voluntariness of the defendant's statements to the various television reporters that previously testified in this case.

To warrant a conviction of the defendant of capital murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant, JAMES GARFIELD BROADNAX, was engaged in the commission or attempted commission of the robbery or attempted commission of the robbery, if any, but also that the defendant, JAMES GARFIELD BROADNAX, shot STEPHEN SWAN with the intention of thereby killing him.

Unless you find from the evidence beyond a reasonable doubt that the defendant, JAMES GARFIELD BROADNAX, on the alleged occasion, specifically intended to kill STEPHEN SWAN when he shot him, if he did shoot him, you cannot convict him of the offense of capital murder.

CAPITAL MURDER

Now, if you find from the evidence beyond a reasonable doubt that on or about the 19th day of June, 2008, in Dallas County, Texas, the defendant, JAMES GARFIELD BROADNAX, did unlawfully then and there intentionally cause the death of STEPHEN SWAN, an individual, by shooting the said STEPHEN SWAN with a firearm, a deadly weapon, and the defendant, JAMES GARFIELD BROADNAX, was then and there in the course of committing or attempting to commit the offense of robbery of the said deceased, then you will find the defendant guilty of capital murder.

If you do not so believe, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether the defendant is guilty of the lesser included offense of murder.

MURDER

If you find from the evidence beyond a reasonable doubt that on or about the 19th day of June, 2008, in Dallas County, Texas, the defendant, JAMES GARFIELD BROADNAX, did intentionally or knowingly cause the death of STEPHEN SWAN, an individual, by shooting STEPHEN SWAN with a firearm, a deadly weapon, but you have a reasonable doubt as to whether the defendant was then and there engaged in the commission of robbery or attempted robbery of STEPHEN SWAN at the time of the said shooting, if any;

OR

If you find from the evidence beyond a reasonable doubt that on or about the 19th day of June, 2008, in Dallas County, Texas, the defendant, JAMES GARFIELD BROADNAX, did knowingly cause the death of STEPHEN SWAN by shooting him with a firearm, a deadly weapon, but you have a reasonable doubt as to whether the defendant, JAMES GARFIELD BROADNAX, intentionally killed STEPHEN SWAN, as the term "intentionally" has been defined herein, then you will find the defendant guilty of murder, but not capital murder, regardless of whether you find from the evidence beyond a reasonable doubt that the defendant, JAMES GARFIELD BROADNAX, was then and there in the course of committing or attempting to commit the offense of robbery of STEPHEN SWAN of his property.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt that the defendant is guilty of murder, as defined in these instructions, or if you have a reasonable doubt, you will acquit the defendant of murder.

If you should find 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 offense he is guilty of, then you should resolve that doubt in the defendant's favor and find the defendant guilty of the lesser included offense of murder.

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."

Voluntary intoxication does not constitute a defense to the commission of crime.

You 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 shooting in question, if any.

In all criminal cases, the burden of proof is on the State. 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 their trial.

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 you are bound to receive the law from the Court, which has been given to you in these instructions.

After you retire to the jury room, you should select one of your members as your Presiding Juror. 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 your verdict by using the appropriate form attached to these instructions and signing the same as Presiding Juror.

No one has any authority to communicate with you except the bailiff who has you in charge. 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 have retired, you may communicate with this Court in writing through the bailiff who has you in charge. Do not attempt to talk to the bailiff, or the attorneys, or the Court, or anyone else concerning any question you may have.

Your verdict must be by a unanimous vote of all members of the jury.

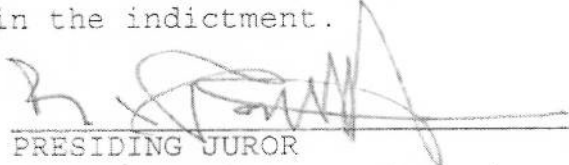
After you have reached a unanimous verdict, the Presiding Juror will certify the verdict by filling in the appropriate form attached to this charge and signing his or her name as Presiding Juror. After arguments, you will retire to consider your verdict.



JUDGE MIKE SNIPES
CRIMINAL DISTRICT COURT 7
DALLAS COUNTY, TEXAS

VERDICT FORMS

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



PRESIDING JUROR

Robert L. Patterson, SA

(Printed Name of Presiding Juror)

-OR-

We, the jury, unanimously find the defendant guilty of murder as included in the indictment.

PRESIDING JUROR

(Printed Name of Presiding Juror)

-OR-

We, the jury, unanimously find the defendant not guilty.

PRESIDING JUROR

(Printed Name of Presiding Juror)