

CAUSE NO. 1128288

THE STATE OF TEXAS                   §    IN THE 184TH DISTRICT COURT  
VS.                                       §    OF HARRIS COUNTY, TEXAS  
APOLINAR LIBERATO                   §    AUGUST TERM, A. D., 2009

Members of the Jury:

The defendant, Apolinar Liberato, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 6th day of August, 2007, in Harris County, Texas. The defendant has pleaded not guilty.

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 intentionally commits murder, as hereinbefore defined, in the course of committing or attempting to commit the offense of robbery. Robbery is a felony.

A person commits the offense of felony murder if he commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

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 or maintain control of property of another, he:

(1) intentionally or knowingly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

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

"Theft" is the unlawful appropriation of property with intent to deprive the owner of property.

"Appropriation" and "appropriate", as those terms are used herein, 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 herein 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 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.

"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 property, or a greater right to possession of the property than the actor.

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

"Deadly weapon" means a firearm or anything manifestly designed, made, 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.

"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.

The definition of intentionally relative to the offense of capital murder is as follows:

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.

The definitions of intentionally or knowingly relative to the offense of murder are as follow:

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.

The definitions of intentionally and knowingly relative to the offense of robbery are as follow:

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 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.

All persons are parties to an offense who are guilty of acting together in the commission of the offense. 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, 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. Mere presence alone will not constitute one a party to an offense.

Before you would be warranted in finding the defendant guilty of capital murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant was in the course of committing or attempting to commit the felony offense of robbery of Alejandro Cruz, as alleged in this charge, but also that the defendant specifically intended to cause the death of Alejandro Cruz, by shooting Alejandro Cruz, with a deadly weapon, namely, a firearm; or you must find from the evidence beyond a reasonable doubt that the defendant, Apolinar Liberato, with the intent to promote or assist in the commission of the offense of robbery, if any, solicited, encouraged, directed, aided, or attempted to aid Jaime McCall in shooting Alejandro Cruz, if he did, with the intention of thereby killing Alejandro Cruz, and unless you so find, then you cannot convict the defendant of the offense of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 6th day of August, 2007, in Harris County, Texas, the defendant, Apolinar Liberato, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Alejandro Cruz, intentionally cause the death of Alejandro Cruz by shooting Alejandro Cruz with a deadly weapon, namely, a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 6th day of August, 2007, in Harris County, Texas, Jaime McCall, did then and there unlawfully, while in the course

of committing or attempting to commit the robbery of Alejandro Cruz, intentionally cause the death of Alejandro Cruz by shooting Alejandro Cruz with a deadly weapon, namely, a firearm, and that the defendant, Apolinar Liberato, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Jaime McCall to commit the offense, if he did, then you will find the defendant guilty of capital murder, as charged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, 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 offense of felony murder.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 6th day of August, 2007, in Harris County, Texas, the defendant, Apolinar Liberato, did then and there unlawfully, while in the furtherance of the commission or attempted commission of the felony of robbery of Alejandro Cruz, or in immediate flight from the commission or attempted commission of the felony of robbery of Alejandro Cruz, commit an act clearly dangerous to human life, to-wit: by shooting Alejandro Cruz with a deadly weapon, namely, a firearm, that caused the death of Alejandro Cruz; or

If you find from the evidence beyond a reasonable doubt that on or about the 6th day of August, 2007, in Harris County, Texas, Jaime McCall, did then and there unlawfully, while in the furtherance of the commission or attempted commission of the felony of robbery of Alejandro Cruz, or in immediate flight from

the commission or attempted commission of the felony of robbery of Alejandro Cruz, commit an act clearly dangerous to human life, to-wit: by shooting Alejandro Cruz with a deadly weapon, namely, a firearm, that caused the death of Alejandro Cruz, and that the defendant, Apolinar Liberato, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Jaime McCall to commit the offense, if he did, then you will find the defendant guilty of felony murder.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of felony murder.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder on the one hand or felony murder on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in the defendant's favor and find him guilty of the lesser offense of felony 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 a crime. "Intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.



You are further instructed that if there is any evidence before you in this case regarding the defendant's committing an alleged offense or offenses other than the offense alleged against him in the indictment in this case, you cannot consider such evidence for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offense or offenses, if any, 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 the defendant, if any, in connection with the offense, if any, alleged against him in the indictment and for no other purpose.

A defendant in a criminal case is not bound by law to testify in his own behalf therein and the failure of any defendant to so testify shall not be taken as a circumstance against him nor shall the same be alluded to nor commented upon by the jury, and you must not refer to, mention, comment upon or discuss the failure of the defendant to testify in this case. If any juror starts to mention the defendant's failure to testify in this case then it is the duty of the other jurors to stop him or her at once.

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 question 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 he 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 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 the law you shall receive in these written instructions, and you must be governed thereby.

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 unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form attached hereto and signing the same as Foreperson.

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.

No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written, prepared and signed by the Foreperson and shall be submitted to the court through this officer. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the Court, or anyone else concerning any questions you may have.

Your sole duty at this time is to determine the guilt or innocence of the defendant under the indictment in this cause and



restrict your deliberations solely to the issue of guilt or innocence of the defendant.

Following the arguments of counsel, you will retire to consider your verdict.

  
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Jan Krocker, Judge  
184th District Court  
Harris County, TEXAS

**FILED**  
Loren Jackson  
District Clerk

AUG 17 2009

Time: 9:30 AM  
Harris County, Texas  
By [Signature]  
Deputy

CAUSE NO. 1128288

THE STATE OF TEXAS

§ IN THE 184TH DISTRICT COURT

VS.

§ OF HARRIS COUNTY, TEXAS

APOLINAR LIBERATO

§ AUGUST TERM, A. D., 2009

CHOOSE ONE

"We, the Jury, find the defendant, Apolinar Liberato, not guilty."

\_\_\_\_\_  
Foreperson of the Jury

\_\_\_\_\_  
(Please Print) Foreperson

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

**FILED**

Loren Jackson  
District Clerk

AUG 17 2009

Time: 10:35 AM  
Harris County, Texas

By: [Signature]  
Deputy

[Signature]

\_\_\_\_\_  
Foreperson of the Jury

MIKE RAWSE

\_\_\_\_\_  
(Please Print) Foreperson

"We, the Jury, find the defendant, Apolinar Liberato, guilty of felony murder."

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Foreperson of the Jury

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(Please Print) Foreperson

CLERK OF DISTRICT COURT  
HARRIS COUNTY TEXAS

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