

**CAUSE NO. 9525**

**THE STATE OF TEXAS** § **IN THE 411TH DISTRICT COURT**  
**VS.** § **OF**  
**RICHARD LYNN WINFREY SR.** § **SAN JACINTO COUNTY, TEXAS**

**CHARGE OF THE COURT**

**LADIES AND GENTLEMEN OF THE JURY:**

The defendant, RICHARD LYNN WINFREY SR., stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 6th day of August, 2004, in San Jacinto County, Texas. The defendant has pleaded not guilty.

I.

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

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

II.

“Individual” means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

“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” is the unlawful appropriation of the corporeal personal property of another with the intent to deprive such person of said property.

“Appropriation” and “appropriate” 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 represents or embodies anything of value.

“Deprive” as used herein means to withhold property from the owner permanently.

“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 or 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.

“Possession” means actual care, custody, control or management of property.

### III.

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.

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.

#### IV.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 6th day of August, 2004, in San Jacinto County, Texas, the defendant, RICHARD LYNN WINFREY SR., did intentionally cause the death of MURRAY WAYNE BURR by beating him with his hands and fists and by stabbing him with a knife, and the said defendant was then and there in the course of committing or attempting to commit the offense of robbery of MURRAY WAYNE BURR, then you will find the defendant guilty of capital murder. Unless you find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder and next consider whether the Defendant is guilty of the offense of murder.

If you have reasonable doubt as to whether the defendant was then and there engaged in the course of committing or attempting to commit the offense of robbery of MURRAY WAYNE BURR, then you will acquit the defendant of capital murder and next consider whether the defendant is guilty of the offense of murder.

V.

If you find from the evidence beyond a reasonable doubt that on or about the 6th day of August, 2004, in San Jacinto County, Texas, the defendant, RICHARD LYNN WINFREY SR., did intentionally or knowingly cause the death of MURRAY WAYNE BURR by beating him with his hands and fists and by stabbing him with a knife, then you will find the defendant guilty of murder.

Unless you find from the evidence 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 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.

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.

Prior to jury selection in any criminal case, a Defendant must file a written election if he chooses to have the jury assess his punishment in the event he is found guilty. In this case, the Defendant has elected to have the trial court assess his punishment in the event he is found guilty of any offense. During this phase of the trial, you are not to consider or discuss the issue of punishment.

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 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 it fails to do so, you must acquit the defendant.

Occasionally, during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the Court and request that the Court read the portion of disputed testimony to you from the official transcript. If you did take notes, you shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts. The dispute must be settled by the official transcript, for it is the official transcript, rather than any juror's notes, upon which you must base your determination of the facts and, ultimately, your verdict in this case.

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 may have heard evidence regarding extraneous crimes or bad acts alleged to have been committed by the defendant 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, for the purpose of showing the defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake

or accident, if any. You cannot consider the testimony unless you find and believe beyond a reasonable doubt that the defendant committed these acts.

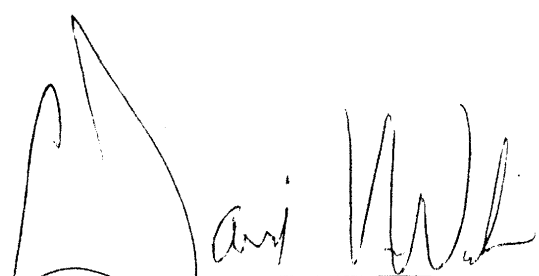
You are the exclusive judges of the facts proved, of the credibility of the witnesses, and the weight to be given their testimony, but you must be governed by the law you shall receive in these written instructions.

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 you 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.

No one has any authority to communicate with you except the officer 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 officer who has you in charge. 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. After you have reached a unanimous verdict, the Foreman will certify thereto by filling in the appropriate form attached to this charge and signing his name as Foreman. You may now retire to consider your verdict.

FILED: \_\_\_\_\_



**FILED** JUDGE PRESIDING  
On <sup>9th</sup> ~~21st~~ Day of Nov. AD 2007  
Time 2:25 PM  
**REBECCA CAPERS**  
Clerk District Court San Jacinto County, Texas  
Rebecca Capers Deputy

