

NO. 2007-CR-8924

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
VS.	§	144TH JUDICIAL DISTRICT
MAURICE MOSES	§	BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, Maurice Moses, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 11th Day of July, 2007, in Bexar County, Texas. The defendant has pleaded not guilty.

I.

Our law provides that a person commits the offense of murder if he intentionally 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.

II.

"Individual" means a human being who is alive.

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

"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.

"Deadly weapon" means a firearm.

"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.

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.

IV.

Our law provides that a person commits the offense of robbery if, in the course of committing theft, as defined hereinafter, and with intent to obtain or maintain control of the property, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

V.

"In the course of committing" as defined in paragraph II applies and has the same meaning here.

"Attempt" as defined in paragraph II applies and has the same meaning here.

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

VI.

A person commits the offense of theft if he unlawfully appropriates property of another with intent to deprive the owner of property.

VII.

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

VIII.

For the offenses of robbery and theft, 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 offenses of robbery and theft, 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. For the offenses of robbery and theft, 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.

Our law provides a person is criminally responsible as a party to an offense if the offense is committed by his own conduct, or by the conduct of another for which he is criminally responsible, or by both. Each party to an offense may be charged with commission of the offense.

Mere presence alone will not make a person a party to an offense. 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.

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. Capital murder and robbery are felony offenses.

The term "conspiracy", as used in these instructions, means an agreement between two or more persons, with intent that a felony be committed, that they, or one or more of them, engage in conduct that would constitute the offense. An agreement constituting a conspiracy may be inferred from acts of the parties.

It is an affirmative defense to the prosecution for capital murder that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another, provided that the actor did not intentionally, knowingly, or recklessly place himself in a situation in which it was probable that he would be subjected to compulsion.

The defendant must prove the affirmative defense by a preponderance of evidence.

"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.

A person acts intentionally, or with intent, with respect to the nature of his conduct when it is his conscious objective or desire to engage in the conduct.

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 recklessly, or is reckless, with respect to circumstances surrounding his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist. 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 these circumstances as viewed from the actor's standpoint.

Compulsion exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure.

Therefore, even if you believe from the evidence beyond a reasonable doubt that on or about the 11th Day of July, 2007, in Bexar County, Texas, the defendant, Maurice Moses, either acting alone or together as a party with "Primo," did intentionally cause the death of an individual, namely: Mariano Sanchez, by shooting Mariano Sanchez with a deadly weapon, namely: a firearm, and Maurice Moses, either acting alone or together as a party with "Primo," was in the course of committing or attempting to commit the offense of robbery of Mariano Sanchez, but you further believe by a preponderance of the evidence, that, at the time he did so, the defendant engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another, and that the defendant did not intentionally, knowingly, or recklessly place himself in a situation in which it was probable that he would be subjected to compulsion, you will find the defendant not guilty of capital murder as charged in the indictment.

IX.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 11th Day of July, 2007, in Bexar County, Texas, "Primo" did intentionally cause the death of an individual, namely: Mariano Sanchez, by shooting Mariano Sanchez with a deadly weapon, namely: a firearm, and "Primo" was in the course of committing or attempting to commit the offense of robbery of Mariano Sanchez, and that the defendant, Maurice Moses, acting with the intent to promote or assist in the commission of the offense of capital murder, did solicit, encourage, direct, aid or attempt to aid "Primo" in the commission of the offense of capital murder;

Or, if you find from the evidence beyond a reasonable doubt that Maurice Moses entered into a conspiracy with "Primo" to commit the felony offense of robbery, and that on or about the 11th Day of July, 2007, in Bexar County, Texas, in an attempt to carry out this agreement, "Primo" did intentionally cause the death of an individual, namely: Mariano Sanchez, by shooting Mariano Sanchez with a deadly weapon, namely: a firearm, and "Primo" was in the course of committing or attempting to commit the offense of robbery of Mariano Sanchez, and that such offense was committed in furtherance of the unlawful purpose to commit robbery and was an offense that should have been anticipated as a result of the carrying out of the conspiracy to commit robbery;

Then, you will find the defendant guilty of capital murder as charged in the indictment.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty of capital murder and next consider whether he is guilty of the lesser included offense of aggravated robbery.

X.

Our law provides that a person commits the offense of robbery if, in the course of committing theft, as defined hereinafter, and with intent to obtain or maintain control of the property, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

A person commits aggravated robbery if the person commits a robbery, as defined above, and uses or exhibits a deadly weapon

XI.

The terms and conditions in paragraphs IV through VIII, apply and have the same meaning here.

It is an affirmative defense to the prosecution for aggravated robbery that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another, provided that the actor did not intentionally, knowingly, or recklessly place himself in a situation in which it was probable that he would be subjected to compulsion.

The defendant must prove the affirmative defense by a preponderance of evidence.

"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.

A person acts intentionally, or with intent, with respect to the nature of his conduct when it is his conscious objective or desire to engage in the conduct.

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 recklessly, or is reckless, with respect to circumstances surrounding his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist. 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 these circumstances as viewed from the actor's standpoint.

Compulsion exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure.

Therefore, even if you believe from the evidence beyond a reasonable doubt that on or about the 11th Day of July, 2007, in Bexar County, Texas, the defendant, Maurice Moses, either acting alone or together as a party with "Primo," while in the course of committing theft of property and with intent to obtain or maintain control of said property, did intentionally or knowingly threaten or place Mariano Sanchez in fear of imminent bodily injury or death, and Maurice Moses, either acting alone or together as a party with "Primo," did use or exhibit a deadly weapon, to-wit: a firearm, but you further believe by a preponderance of the evidence, that, at the time he did so, the defendant engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another, and that the defendant did not intentionally, knowingly, or recklessly place himself in a situation in which it was probable that he would be subjected to compulsion, you will find the defendant not guilty of aggravated robbery.

XII.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 11th Day of July, 2007, in Bexar County, Texas, the defendant, Maurice Moses, either acting alone or together as a party with "Primo," while in the course of committing theft of property and with intent to obtain or maintain control of said property, did intentionally or knowingly threaten or place Mariano Sanchez in fear of imminent bodily injury or death, and Maurice Moses, either acting alone or together as a party with "Primo," did use or exhibit a deadly weapon, to-wit: a firearm, then you will find the defendant guilty of aggravated robbery.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty.

You are instructed that under our law a statement of a Defendant made while under arrest or in custody, may not be used in evidence against the defendant unless it appears that the statement was freely and voluntarily made without compulsion or persuasion.

Now, therefore, if you find from the evidence, or if you have a reasonable doubt thereof, that at the time of the making of the statement, if any, to Detective Willingham, the Defendant was under the influence of drugs such that he was reduced to a condition of mental impairment, and/or under such duress that he was reduced to a condition of mental impairment, such as to render his statement, if any, not voluntary, then you will completely disregard such statement as evidence for any purpose nor will you consider any evidence obtained as a result thereof.

In this case evidence has been introduced to the effect that the defendant may have previously been convicted of an offense or offenses other than that for which he is now on trial. In this connection, you are charged that the court permitted this evidence to be introduced for the purpose of aiding you, if it does aid you, in passing on the credibility of the defendant as a witness in his own behalf and the weight to be given his testimony, and you are charged that you may consider such evidence for that purpose and no other.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed acts of misconduct 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 acts of misconduct, if any were committed, and even then you may only consider the same in determining the context in which the criminal act occurred, if any, and for no other purpose.

You are instructed that under our law, voluntary intoxication does not constitute a defense to the commission of a crime. For the purpose of this law intoxication means a disturbance of mental or physical capacity resulting from the voluntary introduction of any substance into the body.

Written statements made by a witness to investigators or other officers or police reports made by officers and tendered by the prosecution to the defense for purposes of cross-examination are not part of the evidence unless introduced in evidence. Many times statements and reports may be marked with an exhibit number but are neither offered nor received in evidence. I can send only statements and reports received in evidence to the jury room.

You are instructed that the Grand Jury indictment is not evidence of guilt. It is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence, nor can it be considered by you in determining 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 have retired to your 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 to your verdict by signing the same as "presiding juror."

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

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 whether the Defendant is guilty or not guilty. The Court has not intended to express any such

opinion, and if you have observed anything which you have interpreted or may interpret as the Court's opinion upon any matter of fact in this case or of whether the Defendant is guilty or not guilty, you must wholly disregard it.

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

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 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.

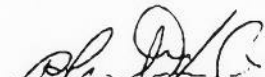
It is not required that the prosecution prove guilt beyond all possible doubt; it is required that the prosecution's proof excludes all "reasonable doubt" concerning the defendant's guilt.

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."

Suitable forms for your verdict are hereto attached for your convenience if you desire to use the same, but such forms are not intended to suggest to you in any way what your verdict should be, and you may or may not, as you see fit, make use of the same. However, your verdict must be unanimous, 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 must restrict your deliberations to the issue of whether the defendant is guilty or not guilty, and nothing else.

After you have retired, no one has any authority to communicate with you except the officer who has you in charge. Do not attempt to talk to the officer, or anyone else concerning any question you may have; instead address your inquiry to the Court in writing. If the jury wishes to communicate with the Court, they shall notify the bailiff; any communication relative to the case must be written, prepared by the presiding juror, and shall be submitted to the Court through the bailiff.

Respectfully submitted,



Judge PHILIP A. KAZEN, Jr.
Judge Presiding

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VS.	§	144TH JUDICIAL DISTRICT
MAURICE MOSES	§	BEXAR COUNTY, TEXAS

VERDICT FORM

~~We, the Jury, find the defendant, Maurice Moses, not guilty.~~

~~_____
PRESIDING JUROR~~

VERDICT FORM

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

[Signature]

PRESIDING JUROR

VERDICT FORM

~~We, the Jury, find the defendant, Maurice Moses, guilty of the offense of aggravated robbery~~

~~_____
PRESIDING JUROR~~