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COURT ADMINISTRATION

CAUSE NO. 09-02136-CRF-272

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
VS. § BRAZOS COUNTY, TEXAS
JOHN THUESEN § 272nd JUDICIAL DISTRICT

COURT'S CHARGE

DC	FILED
At 11 o'clock	a
MAY 28 2010	
MARC HAMLIN, DIST. CLERK	
By <i>[Signature]</i>	Deputy

LADIES AND GENTLEMEN OF THE JURY:

The defendant, JOHN THUESEN, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the March 6, 2009, in Brazos County, Texas. To this charge the defendant has pleaded not guilty.

I.

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."

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.

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 be governed by these instructions.

II.

A person commits the offense of capital murder if the person intentionally or knowingly causes the death of more than one individual during the same criminal transaction.

A person commits the offense of murder if the person intentionally or knowingly causes the death of an individual; or if he intends to cause serious bodily injury and commits

an act clearly dangerous to human life that causes the death of an individual.

A person commits the offense of manslaughter if the person recklessly causes the death of an individual.

III.

DEFINITIONS

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

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 with respect to a result if he is aware of but consciously disregards a substantial and unjustifiable risk that 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.

“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.

IV.

You are instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship existing between the defendant and the deceased, if any, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the offense, if any.

V.

EXTRANEOUS BAD ACTS

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed extraneous bad acts 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 extraneous bad acts, if any, were committed, and even then you may only consider the same, for the limited purposes of determining the defendant's intent, knowledge, motive, plan or preparation of the defendant, or rebuttal of a defensive theory, if any, if you find it relevant for those purposes, in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

Under no circumstance can you consider this as evidence of the defendant's character to show he acted in conformity therewith.

VI.

APPLICATION PARAGRAPH

Now, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about March 6, 2009, in Brazos County Texas, the defendant, John Thuesen, did intentionally or knowingly cause the death of an individual, namely, Rachel Joiner, by shooting her with a firearm and did intentionally or knowingly cause the death of another individual, namely, Travis Joiner, by shooting him with a firearm and both murders were committed during the same criminal transaction, you will find the defendant guilty of the offense of capital murder as alleged in the indictment.

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 the offense of Capital Murder, and proceed to consider the lesser offense of murder.

VII.

LESSER OFFENSE OF MURDER

a) Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about March 6, 2009, in Brazos County, ^{Texas} John Thuesen, did then and there intentionally or knowingly cause the death of an individual, namely, Rachel Joiner, by shooting her with a firearm, but you have a reasonable doubt as to whether he intentionally or knowingly caused the death of Travis Joiner, you will find John Thuesen guilty of the lesser offense of murder; or

b) if you unanimously find from the evidence beyond a reasonable doubt that on or about March 6, 2009, in Brazos County, ^{Texas, 2009} John Thuesen, did then and there intentionally or knowingly cause the death of individual, namely, Travis Joiner, by shooting him with a firearm, but you have a reasonable doubt as to whether he intentionally or knowingly caused the death of Rachel Joiner, you will find John Thuesen guilty of the lesser offense of murder; or

c) if you unanimously find from the evidence beyond a reasonable doubt that on or about March 6, 2009, in Brazos County, ^{Texas, 2009} John Thuesen, did then and there intend to cause serious bodily injury to Rachel Joiner and committed an act clearly dangerous to human life that caused the death of an individual, namely, Rachel Joiner, by shooting her with a firearm, you will find John Thuesen guilty of the lesser offense of murder; or

d) if you unanimously find from the evidence beyond a reasonable doubt that on or about March 6, 2009, in Brazos County, ^{Texas, 2009} John Thuesen, did then and there intend to cause serious bodily injury to Travis Joiner and committed an act clearly dangerous to human life that caused the death of an individual, namely, Travis Joiner, by shooting him with a firearm, you will find John Thuesen guilty of the lesser offense of murder.

If you believe from the evidence beyond a reasonable doubt that the defendant is either guilty of Capital Murder on the one hand, or Murder on the other hand, but you have a reasonable doubt as to which the defendant is guilty, then you should resolve that doubt in the defendant's favor, and in such event, find him guilty of the lesser offense of Murder.

If you do not so find, or if you have a reasonable doubt thereof, you will acquit John Thuesen of murder, and consider the lesser offense of manslaughter.

VIII.

LESSER OFFENSE OF MANSLAUGHTER

a) Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about the March 6, 2009, in Brazos County, ^{Texas} John Thuesen, did then and there recklessly cause the death of two individuals, namely, Rachel Joiner and Travis Joiner, by shooting them with a firearm, you will find the defendant guilty of the lesser offense of manslaughter; or

b) if you unanimously find from the evidence, beyond a reasonable doubt, that on or about the March 6, 2009, in Brazos County, Texas, John Thuesen, did then and there recklessly cause the death of an individual, namely, Rachel Joiner, by shooting her with a firearm, and you have found the defendant not guilty in the death of Travis Joiner, you will find John Thuesen guilty of the offense of manslaughter; or

c) if you unanimously find from the evidence beyond a reasonable doubt that on or about the March 6, 2009, in Brazos County, ^{Texas} John Thuesen, did then and there recklessly cause the death of ^{an} individual, Travis Joiner, by shooting him with a firearm, and you have found the defendant not guilty in the death of Rachel Joiner, you will find John Thuesen guilty of the offense of manslaughter;

If you believe from the evidence beyond a reasonable doubt that the defendant is

either guilty of Murder on the one hand, or Manslaughter on the other hand, but you have a reasonable doubt as to which the defendant is guilty, then you should resolve that doubt in the defendant's favor, and in such event, find him guilty of the lesser offense of Manslaughter.

If you do not so find, or if you have a reasonable doubt thereof, you will acquit John Thuesen of manslaughter, and say by your verdict, "Not Guilty."

IX.

RIGHT TO REMAIN SILENT

A defendant in a criminal case is not bound by law to testify in his own behalf, but 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, and any juror doing so may be guilty of contempt of court. 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 at once.

X.

VOLUNTARY INTOXICATION

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.

XI.

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 to your verdict by using the appropriate form attached hereto, and signing the same as Presiding Juror.

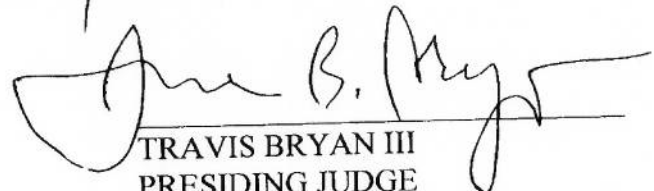
No one has any authority to communicate with you except the officer who has you in charge. During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence before you. In determining the guilt or innocence of the defendant, you shall not discuss or consider the punishment, if any, which may be assessed against the defendant in the event he is found guilty beyond a reasonable doubt.

You have been permitted to take notes during the testimony in this case. In the event that you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal

memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

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. When you have reached a unanimous verdict, the Presiding Juror will certify thereto by filling in the appropriate form attached to this Charge and signing his or her name as Presiding Juror.

Signed this 20 day of May, 2010.


TRAVIS BRYAN III
PRESIDING JUDGE
272ND JUDICIAL DISTRICT COURT

CAUSE NO. 09-02136-CRF-272

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
VS. § BRAZOS COUNTY, TEXAS
JOHN THUESEN § 272ND JUDICIAL DISTRICT

VERDICT OF THE JURY
(use only one)

WE, THE JURY, find the defendant, JOHN THUESEN, guilty of the offense of Capital Murder as charged in the indictment.

Gordon A. Rynderson
PRESIDING JUROR

WE, THE JURY, find the defendant, JOHN THUESEN, guilty of the lesser offense of Murder.

PRESIDING JUROR

WE, THE JURY, find the defendant, JOHN THUESEN, guilty of the lesser offense of Manslaughter.

PRESIDING JUROR

WE, THE JURY, find the defendant, JOHN THUESEN, not guilty.

PRESIDING JUROR

