

Ronald M Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

STATE OF GEORGIA :
 :
v. : INDICTMENT NO.
 : CR-2000433
TRAVIS MCMICHAEL, and :
 :
GREGORY MCMICHAEL, :
 :
Defendants. :

DEFENDANTS' FIRST REQUESTS TO CHARGE

Pursuant to this Court's Trial Notice, dated May 7, 2021, and USCR 10.3, Defendants GREGORY and TRAVIS MCMICHAEL, through counsel, hereby submit the following proposed Requests to Charge:

1.

Pursuant to the Court's May 7, 2021, Defendants request that the Court charge the following Pattern Jury Instructions:

- 1.10.10 Indictment
- 1.10.20 Plea of Not Guilty
- 1.20.20 Grave Suspicion
- 1.20.30 Jury is Judge of the Facts
- 1.30.20 Direct and Circumstantial Evidence: SHORT version
- 1.31.10 Credibility of Witnesses
- 1.31.30 Expert Witness
- 1.31.47 Prior Statements
- 1.31.93(B) Statement by One Defendant at Joint Trial
- 1.32.70 Corroboration of Defendant's Statement
- 1.40.10 Definition of a Crime
- 1.41.10 Intent
- 1.41.11 No Presumption of Criminal Intent
- 1.51.10 Venue, Generally
- 1.60.12 Multiple Defendants
- 1.70.11 Sympathy

- 2.62.13 Burglary – Intent to Steal
- 2.62.31 Burglary; Entry
- 3.0110 Justification
- 3.10.10 Use of Force
- 3.10.11 Forcible Felony
- 3.10.12 Reasonable Beliefs
- 3.10.13 No Duty to Retreat

REQUEST TO CHARGE NO. 1.
Presumption of Innocence/Reasonable Doubt

The defendants are charged in this indictment with crimes that are violations of certain laws of the State of Georgia. I want to emphasize to you that the indictment, and the plea of not guilty are the legal procedures by which these criminal charges are brought against the defendants. The charges and pleas of not guilty are not evidence of guilt, and you should not consider them as evidence or implication of guilt of any crime whatsoever. Each of these defendants are presumed to be innocent unless or until he is proven guilty. The defendants enter upon the trial of the case with a presumption of innocence in their favor, and this presumption remains with each defendant unless or until it is overcome by the State with evidence that is sufficient to convince you beyond a reasonable doubt that the defendant is guilty of the crime or crimes charged.

No person shall be convicted of any crime unless and until each element of the crime is proven beyond a reasonable doubt. The burden of proof rests upon the State to prove every material allegation of the indictment and every essential element of the crimes charged beyond a reasonable doubt. ~~However, the State is not required to prove the guilt of the accused beyond all doubt or to a mathematical certainty.~~¹

¹ See Defendant McMichaels' Motion 5.7 to Eliminate the "All Doubt" and to a "Mathematical Certainty" Sentence from Jury Charge on Reasonable Doubt.

A reasonable doubt means just what it says. It is a doubt of a fair-minded, impartial juror honestly seeking the truth. It is a doubt based upon common sense and reason. It does not mean a vague or arbitrary doubt, but it is a doubt for which a reason can be given arising from a consideration of the evidence or lack of evidence, a conflict in the evidence, or any combination of these. There is no burden of proof upon the defendant whatsoever, and the burden never shifts to the defendant to prove his innocence.

If, after giving consideration to all of the facts and circumstances of this case, your minds are wavering, unsettled, or unsatisfied, then that is a doubt of the law, and you must acquit the defendant. But if no doubt exists in your minds about the guilt of the accused, then you will be authorized to convict the defendant. If the State fails to prove the defendant's guilt beyond a reasonable doubt, it would be your duty to acquit the defendant.

REQUEST TO CHARGE NO. 2
Citizen's Arrest

A private person may arrest an offender if the offense is committed in his presence or within his immediate knowledge. If the offense is a felony and the offender is escaping or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion.

OCGA § 17-4-60

REQUEST TO CHARGE NO. 3
Right and Duty to Execute Citizen's Arrest

It is not only the right but the duty of a private citizen when a felony is committed to apprehend the felon; and after a felony is committed, any private person may arrest the felon with the same view, upon reasonable and probable ground of suspicion of his guilt.

Long v. State, 12 Ga. 293(4) (1852)

Johnson v. Jackson, 140 Ga.App. 252, 230 S.E.2d 756, 760 (1976)

REQUEST TO CHARGE NO. 4
Probable Cause

A private person may arrest an offender upon “upon reasonable and probable grounds of suspicion”--that is, on probable cause--if

- (1) the offense is a felony, and
- (2) the offender is attempting to escape.

The facts necessary to establish probable cause for arrest are much less than those required to prove guilt beyond a reasonable doubt at trial; the test merely requires a probability—less than a certainty but more than a mere suspicion or possibility.

In determining whether probable cause existed, the totality of the circumstances must be considered. Probable cause can be based upon the collective knowledge of others, so long as there is some degree of communication between them.

Murphy v. State, 286 Ga.App. 447, 649 S.E.2d 565, 567

Gregoire v. State, 285 Ga.App. 111, 113, 645 S.E.2d 611 (2007)

Goodman v. State, 255 Ga. 226, 229(13), 336 S.E.2d 757 (1985).

Burgeson v. State, 267 Ga. 102, 475 S.E.2d 580 (1996)

REQUEST TO CHARGE NO. 5
Flight

Flight is circumstantial evidence of consciousness of guilty. The fact that a suspect flees the crimes scene points to the question of guilt and can be a significant factor in determining probable cause. The jury may infer criminal intent from an individual's flight upon being discovered on premises which he has unlawfully entered.

Hewatt v. State, 216 Ga.App. 550, 455 S.E.2d 104 (1995)

Howie v. State, 218 Ga.App. 45, 46(1), 459 S.E.2d 179 (1995)

Manley v. State, 217 Ga.App. 556(1), 458 S.E.2d 179 (1995)

Burgeson v. State, 267 Ga. 102, 475 S.E.2d 580 (Ga. 1996)

Westmoreland v. State. 281 Ga.App. 497, 500, 636 S.E.2d 692 (2006)

Wilson v. State, 261 Ga.App. 576, 583, S.E.2d 243 (Ga. App. 2003)

REQUEST TO CHARGE NO. 6
Probable Cause is Question for the Jury

Whether the Defendant possessed reasonable and probable grounds for suspicion, was for the determination of the jury.

Adams v. Carlisle, 278 Ga.App. 777 630 S.E.2d 529 (2006)

Davidson v. State, 125 Ga.App. 502, 188 S.E.2d 124 (1972)

REQUEST TO CHARGE NO. 7
Burglary

2.62.11 Burglary in the First Degree (Intent to Commit a Theft)

(Give charge in cases where the offense is alleged to have occurred on or after July 1, 2012.)

A person commits the offense of burglary in the first degree when without authority and with the intent to commit a theft therein that person enters the dwelling of another. For purpose of this law, a dwelling includes any house, building, or structure (~~vehicle, railroad car, watercraft, aircraft, or other such structure~~) (~~or any portion thereof~~) which is designed or intended for occupancy for residential use. It makes no difference whether the building or structure was occupied, unoccupied, or vacant; however, you may consider occupation status in determining whether or not the structure in question was designed or intended for residential use.

REQUEST TO CHARGE NO. 8
Burglary: Intent to Steal

The evidence need not show that an actual theft was accomplished; however, an intent to commit a theft, that is, an intent to steal, is an essential element of burglary.

An intent to steal may be shown in many ways, provided you, the jury, believe that it existed from the proven facts and circumstances before you.

Unauthorized entry into a place where there are items of value is sufficient to support a finding that the intruder intended to steal, particularly when no other motive for the unauthorized entry is apparent.

Pattern Jury Instruction 2.62.13

Parrish v. State, 141 Ga.App. 631 , 234 S.E.2d 174, (1977)

Bowen v. State, 128 Ga.App. 577, 197 S.E.2d 738 (1973)

Prothro v. State, 186 Ga.App. 836, 368 S.E.2d 793, (1988)

Bradshaw v. State, 172 Ga.App. 330, 331(2), 323 S.E.2d 253 (1984)

Studemeyer v. State, 278 Ga.App. 756 (2006)

DEFENDANT'S REQUEST TO CHARGE NO. 9
Affirmative Defense

Self-defense is an affirmative defense, which is a defense that admits the doing of the act charged but invokes a legal defense to justify it. Once an affirmative defense is raised, the burden is on the State to disprove it beyond a reasonable doubt.

3.00.00 Georgia Suggested Pattern Jury Instructions, Criminal

O.C.G.A. §§16-1-3, 16-3-28

State v. Moore, 237 Ga. 269 (1976)

This 18th day of October, 2021.

s/Franklin J. Hogue

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Certificate of Service

I hereby certify by my signature that I have served a copy of **Defendants Proposed Requests to Charge** on the Office of the District Attorney for the Cobb Judicial Circuit by delivering it by email to:

Linda Dunikoski
Cobb County District Attorney's Office
70 Haynes Street
Marietta, GA 30090
Linda.dunikoski@cobbcounty.org

This 18th day of October, 2021.

s/Laura D. Hogue
LAURA D. HOGUE