

No. #

THE STATE OF TEXAS

§
§
§
§
§

IN THE COUNTY CRIMINAL

V.

COURT NUMBER N

XXX YYY

HARRIS COUNTY, TEXAS

DEFENDANT'S REQUEST FOR SPECIAL JURY
INSTRUCTION ON AUTOMATISM

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW XXX YYY, Defendant in the above captioned and numbered cause, and, pursuant to Sections 6.01(a) and 8.01(a) of the Texas Penal Code and in defense of his right to Due Process under the Fifth and Fourteenth Amendments to the United States Constitution and Due Course of Law under Article I, Section 19 of the Texas Constitution, files this Request for Special Jury Instruction on Automatism, and in this connection would respectfully request that the Court instruct the jury, in the terms set out in quotations below, as follows:

1.

“A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession. An ‘act’, when referred to in these instructions, means a bodily movement, whether voluntary or involuntary.”
[Tex. Pen. Code §§ 1.07(a) (1) and 6.01(a)]

2.

“A person who engages in what would otherwise be criminal conduct is not guilty of a crime if he does so in a state of unconsciousness or semi-consciousness.”
[Mendenhall v. State, 77 S.W.3d 815, 818 n.4 (Tex.Crim.App.2002), *quoting with approval*, LaFave & Scott, Substantive Criminal Law, Section 4.9 (1986).]

3.

“As used in these instructions, the term “unconscious or semi-conscious” is intended to describe the condition of a person who, though capable of action or bodily movement, is not conscious of what he is doing.”
[LaFave & Scott, Substantive Criminal Law, Section 4.9 (1986), at 542.]

4.

“With regard to the determination of whether a person has ‘voluntarily’ engaged in conduct alleged to constitute a criminal offense, you are instructed that a ‘voluntary act’ means a ‘conscious act’, and the State of Texas must

therefore prove beyond a reasonable doubt that a person accused of a criminal offense has engaged in conduct that includes a conscious act.”

[Mendenhall v. State, supra, 77 S.W.3d at 818 (“voluntary act” means “conscious act”), citing Alford v. State, 866 S.W.2d 619, 625 (Tex.Crim.App.1993) (Clinton, J., concurring).]

5.

“The legal requirement that a person commits a criminal offense only if he has voluntarily or consciously engaged in certain conduct does not require that each and every act comprising the person’s alleged course of conduct be proven to have been voluntarily, or consciously, undertaken by the person. The requirement is only that the alleged course of conduct engaged in by the person include one or more voluntary or conscious acts. Thus, while no act of a person that follows the person’s state of semi-consciousness may establish the person’s guilt for a criminal offense; a person’s guilt for a criminal offense may be established by proving the occurrence of a prior conscious act preceding his semi-conscious state such that, when considered together with other subsequent acts whether consciously undertaken or not, his conduct is shown to have included a conscious act and to have culminated in a violation of law.”

[American Law Institute, Model Penal Code and Commentaries, Section 2.01, at 217-218 (1985); Wechsler, Codification of Criminal Law in the United States: The Model Penal Code, 68 Colum. L. Rev. 1425, 1436 (1968); See also, Brown v. State, 955 S.W.2d 276, 284 (Tex.Crim.App. 1997) (en banc) (Price, J., dissenting).]

6.

“Now, if you find from the evidence beyond a reasonable doubt that the Defendant, XXX YYY, in Harris County, Texas, on the occasion alleged in the Information herein, did then and there drive or operate a motor vehicle in a public place, while the said Defendant was then and there intoxicated, to wit: not having the normal use of his mental or physical faculties by reason of the introduction of a controlled substance, a drug, a dangerous drug, or a combination of two or more of those substances into his body, you will find the Defendant guilty of driving while intoxicated as alleged in the Information. But should you further find from the evidence, or should you have a reasonable doubt thereof, that the Defendant did not consciously act when driving or operating a motor vehicle in a public place while intoxicated, you shall acquit the Defendant and say by your verdict ‘Not Guilty’.”

Respectfully submitted,
BENNETT & BENNETT
735 Oxford Street
Houston, Texas 77007
Telephone: 713.224.1747
Telecopier: 832.201.7770

BY: _____
MARK BENNETT
TEXAS BAR #00792970
ATTORNEY FOR DEFENDANT

5.5.

“A person who has voluntarily ingested an intoxicant, and who has become intoxicated by reason of the introduction of such intoxicant into his body, may not be legally excused for his subsequent criminal conduct undertaken while in a state of unconsciousness or semi-consciousness. However, a person may not be deemed to have voluntarily ingested an intoxicant, or be deemed to have become voluntarily intoxicated, where the evidence, if any, shows: 1) that the person has taken a medication prescribed to him by a physician; 2) that the person became intoxicated by reason of the introduction of such medication into his body; 3) that the medication was taken by the person in accordance with such a prescription; and 4) that the person when taking the medication had no prior knowledge of the intoxicating effects of the medication.”

[Mendenhall v. State, 15 S.W.3d 560, 565 (Tex.App.-Waco 2000), *rev'd on other grounds*, 77 S.W.3d 815 (Tex.Crim.App.2002); Heard v. State, 887 S.W.2d 94, 98 (Tex.App.-Texarkana 1994); Spriggs v. State, 878 S.W.2d 878 S.W.2d 646, 649 (Tex.App.- Corpus Christi 1994); Shubert v. State, 652 S.W.2d 425, 428 (Tex.App.-Austin 1982); Comment, Involuntary Intoxication is a Defense in Texas, 12 St. Mary's L.J. 232, 240 n. 65 (1980) (taking medically prescribed drugs without knowledge of their intoxicating effects is involuntary “since independent judgment is exercised in taking the drug as medicine, not as an intoxicant”), *citing* Perkins v. United States, 228 F.2d 408, 415-416 (4th Cir. 1915) (person is not presumed to know of the intoxicating effects of drugs, but notice of such a possibility may be considered in determining involuntariness); and City of Minneapolis v. Altimus, 238 N.W.2d 851, 856-857 (Minn. 1976) (if defendant knows, or has reason to know, of prescription's intoxicating effect, intoxication is voluntary). See also, Burnett v. Commonwealth, 284 S.W.2d 654, 659 (Ky. 1955) (intoxication is involuntary when a defendant, without knowledge of drug's intoxicating effects, is “under the influence of drugs taken under a physician's prescription to such an extent that he was incapacitated from exercising slight care in operating his automobile”); The Queen v. King, 1962 S.C.R 746, 35 D.L.R. 2d 386 (Can.1962) (same); *Cf.*, People v. Koch, 294 N.Y.S. 987 (N.Y.App.Div.1937) (construing driving while intoxicated statute to exclude intoxication induced by taking prescribed medication).]