

JAN 17 2012

CAUSE NO. 1195088D

TIME 8:40am
BY UCC DEPUTY

THE STATE OF TEXAS

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IN THE CRIMINAL DISTRICT COURT

VS.

NUMBER FOUR OF

KWAME A. ROCKWELL

TARRANT COUNTY, TEXAS

COURT'S CHARGE

MEMBERS OF THE JURY:

The Defendant, KWAME A. ROCKWELL, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 23rd day of March, 2010, in Tarrant County, Texas. To this charge, the Defendant, KWAME A. ROCKWELL, has pled not guilty. You are instructed that the law applicable to this case is as follows:

I.

You are instructed that our law provides that a person commits the offense of murder if he intentionally or knowingly causes the death of an individual. A person commits the offense of capital murder if he commits murder as defined above and he intentionally commits the offense of murder while 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 the property, he intentionally causes bodily injury to another or intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

You are further instructed that in order for a murder to qualify as capital murder, the state must prove beyond a reasonable doubt that the intent to commit robbery was formed prior to or concurrent with the murder.

A person attempts to commit an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

II.

"Deadly weapon" means anything manifestly designed or adapted for the purpose of inflicting death or serious bodily injury or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury. A firearm is a deadly weapon.

A person commits theft if he unlawfully appropriates property with intent to deprive the owner of property. Appropriation of property is unlawful if it is without the owner's effective consent.

"Individual" means a human being who has been born and is alive.

"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.

"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.

"Theft" as used herein is the unlawful appropriation of the property of another with the intent to deprive the owner of said property.

"Appropriation" and "appropriate" as those terms are used, means to acquire or otherwise exercise control over personal property. The appropriation of property is unlawful if it is without the owner's effective consent.

"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 Defendant.

"Property" as used herein, means tangible or intangible personal property or documents, including money, that represent or embody anything of value.

"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 the theft.

"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.

III.

You are instructed that a person commits an offense only if he voluntarily engages in conduct, including an act, or omission, or possession. Conduct is not rendered involuntary merely because the person did not intend the results of his conduct.

"Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

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.

IV.

A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

A person is criminally responsible for an offense committed by the conduct of another if:

- (a) 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; or
- (b) 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.

“Conspiracy” is committed if, with intent that a felony be committed, a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and he or one or more of them performs an overt act in pursuance of the agreement.

An agreement constituting a conspiracy may be inferred from acts of the parties.

You are instructed that capital murder, murder, robbery, and aggravated robbery are felony offenses in the State of Texas.

Each party to an offense may be charged with the commission of the offense.

Mere presence alone will not constitute one a party to an offense.

V.

A conviction cannot be had upon the testimony of an accomplice unless the jury first believes that the accomplice's evidence is true and that it shows the defendant is guilty of the offense charged against him, or any other offense herein charged, and even then you cannot convict unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

You are instructed that CHANCE MCKENZIE SMITH is an accomplice.

If you find beyond a reasonable doubt that an offense was committed, you cannot find the defendant, KWAME A. ROCKWELL, guilty upon the testimony of CHANCE MCKENZIE SMITH unless you first believe beyond a reasonable doubt that the testimony of CHANCE MCKENZIE SMITH is true and that it shows the defendant is guilty as charged in the indictment; and even then you cannot convict the defendant unless you further believe that there is evidence other than the testimony of CHANCE MCKENZIE SMITH, if any, tending to connect the defendant with the commission of the offense charged in the indictment, and said corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission, and then you must believe beyond a reasonable doubt from all the evidence that the defendant is guilty.

VI.

CAPITAL MURDER

If you find from the evidence beyond a reasonable doubt that on or about the 23rd day of March, 2010, in Tarrant County, Texas, the Defendant, KWAME A. ROCKWELL, either acting

alone or as a party thereto as hereinbefore defined, did then and there intentionally cause the death of an individual, DANIEL ROJAS, by shooting him with a deadly weapon, to-wit: a firearm, and the said Defendant was then and there in the course of committing or attempting to commit the offense of robbery of DANIEL ROJAS, then you will find the Defendant guilty of the offense of capital murder and so say by your verdict;

-OR-

If you believe from the evidence beyond a reasonable doubt that the Defendant, KWAME A. ROCKWELL, acting with intent to promote or assist the commission of the offense, solicited, encouraged, directed, aided, or attempted to aid RANDY SEIBEL or CHANCE MCKENZIE SMITH or TIM THOMAS or TYRONE THOMAS, or any one or any combination of said individuals, to intentionally cause the death of an individual, DANIEL ROJAS, by shooting him with a deadly weapon, to-wit: a firearm, and the said RANDY SEIBEL or CHANCE MCKENZIE SMITH or TIM THOMAS or TYRONE THOMAS, or any one or any combination of said individuals, was then and there in the course of committing or attempting to commit the offense of robbery of DANIEL ROJAS, then you will find the Defendant guilty of the offense of capital murder and so say by your verdict;

-OR-

If you believe from the evidence beyond a reasonable doubt that the defendant, KWAME A. ROCKWELL, entered into a conspiracy, if any, with RANDY SEIBEL or CHANCE MCKENZIE SMITH or TIM THOMAS or TYRONE THOMAS, or any one or any combination of said individuals, to commit the felony offense of robbery and that on or about the 23rd day of March, 2010 in Tarrant County, Texas, in the attempt to carry out this agreement, if any, one of

the said co-conspirators, if they were such, did then and there intentionally cause the death of an individual, DANIEL ROJAS, by shooting him with a deadly weapon, to-wit: a firearm, if he did, and that such offense was committed in furtherance of the robbery, and was an offense that KWAME A. ROCKWELL should have anticipated as the result of the carrying out of the agreement, if any, then you will find the defendant, KWAME A. ROCKWELL, guilty of the offense of capital murder, though he may have had no specific intent to commit the offense of capital murder.

Unless you so find and believe beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether he is guilty of the offense of aggravated robbery.

VII.

AGGRAVATED ROBBERY

A person commits the offense of aggravated robbery if he commits the offense of robbery as defined above and he uses or exhibits a deadly weapon.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that on or about the 23rd day of March, 2010, in Tarrant County, Texas, the Defendant, KWAME A. ROCKWELL, did then and there intentionally or knowingly, while in the course of committing theft of property and with intent to obtain or maintain control of said property, threaten or place DANIEL ROJAS in fear of imminent bodily injury or death, and the Defendant used or exhibited a deadly weapon, to-wit: a firearm, then you will find the Defendant guilty of the offense of aggravated robbery;

OR

If you believe from the evidence beyond a reasonable doubt that the Defendant, KWAME A. ROCKWELL, acting with intent to promote or assist the commission of the offense, solicited, encouraged, directed, aided, or attempted to aid RANDY SEIBEL or CHANCE MCKENZIE SMITH or TIM THOMAS or TYRONE THOMAS, or any one or any combination of said individuals, to intentionally or knowingly, while in the course while in the course of committing theft of property and with intent to obtain or maintain control of said property, threaten or place DANIEL ROJAS in fear of imminent bodily injury or death, and the Defendant or RANDY SEIBEL or CHANCE MCKENZIE SMITH or TIM THOMAS or TYRONE THOMAS used or exhibited a deadly weapon, to-wit: a firearm, then you will find the Defendant guilty of the offense of aggravated robbery;

Unless you so find and believe from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, then you will acquit the Defendant of aggravated robbery with a deadly weapon, and say by your verdict, "not guilty".

VIII.

You are instructed that if there is testimony before you regarding the defendant having committed offenses, wrongs, or acts other than the offense charged in the indictment in this case, now on trial before you, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such conduct, if any were committed, and even then you may only consider the same in determining the motive, opportunity, intent, preparation, plan, knowledge, identity, or consciousness of guilt, if any, of this defendant now on trial before you, and for no other purpose. Unless you find and believe beyond a reasonable doubt that the defendant committed such conduct, if any, you shall

disregard said testimony.

IX.

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.

X.

All persons are presumed 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 the Defendant and say by your verdict "not guilty".

XI.

The indictment in this case is no evidence whatsoever of the guilt of the Defendant. It is a mere pleading necessary in order to bring this case into court for trial and you will consider it for no purpose at all.

XII.

It is your duty to consult with one another and to deliberate in an effort to reach a verdict based on these instructions if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are the judges of the facts. Your sole duty is to decide whether the State has proved the Defendant guilty beyond a reasonable doubt.

You are instructed that your verdict must be unanimous.

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

You must decide the issues in the case solely on the testimony and exhibits admitted into evidence before you. You must not consider any fact or evidence learned by you outside the

courtroom. You also may not consider any fact or evidence that you were instructed to disregard during trial.


You must not tell other jurors matters of your own personal or professional knowledge or those of other persons, nor relate to them any special knowledge you may have about any facts or person connected with this case that is not a part of the evidence you heard during the trial.

You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against the state or the defendant in this case, for each is entitled to the same fair and impartial consideration.

You have been permitted to take notes during the testimony in this case. In the event 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 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 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 retire to the jury room, you should select one of your members as your Foreperson. It is his or her duty to preside at your deliberations, vote with you, and when you have reached a unanimous verdict, to certify to your verdict by using one of the attached forms and signing the same as your Foreperson.

If the jury wishes to communicate with the Court pertaining to this case, such communication must be in writing and signed by the Foreman and handed to the Bailiff. Please ring the buzzer in the jury room and wait for the Bailiff who will be in attendance. 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.



ELIZABETH BERRY, JUDGE PRESIDING
Criminal District Court Number Four
Tarrant County, Texas

Verdict of the Jury

We, the Jury, find the defendant, KWAME A. ROCKWELL, guilty of the offense of capital murder as charged in the indictment.

Kenneth A. Hunter
FOREPERSON

FILED
THOMAS A WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

JAN 17 2012

-OR-

TIME 2:21 pm
BY *SS* DEPUTY

We, the Jury, find the defendant, KWAME A. ROCKWELL, guilty of the lesser offense of aggravated robbery.

FOREPERSON

-OR-

We, the jury, find the Defendant, KWAME A. ROCKWELL, not guilty.

FOREPERSON