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CAUSE NO. 1323910

THE STATE OF TEXAS	§	IN THE 179TH DISTRICT COURT
VS.	§	OF HARRIS COUNTY, TEXAS
MONSOUR G. OWOLABI	§	JANUARY TERM, A. D., 2013

Members of the Jury:

The defendant, Monsour G. Owolabi, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 16th day of August, 2011, in Harris County, Texas. The defendant has pleaded not guilty.

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 intentionally commits murder, as hereinbefore defined, in the course of committing or attempting to commit the offense of robbery. Robbery is a felony offense.

A person commits the offense of felony murder if he commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

A person commits the offense of robbery if, in the course of committing theft, and with intent to obtain or maintain control of property of another he intentionally or knowingly causes bodily injury to another.

A person commits the offense of aggravated robbery if he commits robbery, as hereinbefore defined, and he:

(1) causes serious bodily injury to another; or

(2) uses or exhibits a deadly weapon.

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

"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.

"Theft" is the unlawful appropriation of property with intent to deprive the owner of property.

"Appropriation" and "appropriate", as those terms are used herein, means 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" as used herein 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 property, or a greater right to possession of the property than the actor.

"Possession" means actual care, custody, control, or management of the property.

"Deadly weapon" means a firearm or anything manifestly designed, made, 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.

"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.

The definition of intentionally relative to the offense of capital murder is as follows:

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.

The definitions of intentionally or knowingly relative to the offense of murder are as follows:

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.

The definitions of intentionally or knowingly relative to the offenses of robbery and aggravated robbery are as follows:

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.

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 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.

All persons are parties to an offense who are guilty of acting together in the commission of the offense. 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, 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. Mere presence alone will not constitute one a party to an 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.

By the term "conspiracy" as used in these instructions, is meant an agreement between two or more persons with intent, 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.

Before you would be warranted in finding the defendant guilty of capital murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant was in the course of committing or attempting to commit the felony offense of robbery of Jose Prieto, as alleged in this charge, but also that the defendant specifically intended to cause the death of Jose Prieto, by shooting Jose Prieto, with a deadly weapon, namely a firearm; or you must find from the evidence beyond a reasonable doubt that the defendant, Monsour G. Owolabi, with the intent to promote or assist in the commission of the offense of robbery, if any, solicited, encouraged, directed, aided, or attempted to aid Josh Horn and/or Coy Thompson and/or an unknown person in shooting Jose Prieto, if he

did, with the intention of thereby killing Jose Prieto; or you must find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, Monsour G. Owolabi, entered into an agreement with Josh Horn and/or Coy Thompson and/or an unknown person to commit the felony offense of robbery of Jose Prieto, as alleged in this charge, and pursuant to that agreement they did carry out their conspiracy, and while in the course of committing said conspiracy, Josh Horn and/or Coy Thompson and/or an unknown person intentionally caused the death of Jose Prieto by shooting Jose Prieto with a deadly weapon, namely a firearm, and the murder of Jose Prieto was committed in furtherance of the conspiracy and was an offense that should have been anticipated by the defendant as a result of carrying out the conspiracy, and unless you so find, then you cannot convict the defendant of the offense of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 16th day of August, 2011, in Harris County, Texas, the defendant, Monsour G. Owolabi, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Jose Prieto, intentionally cause the death of Jose Prieto by shooting Jose Prieto with a deadly weapon, namely a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 16th day of August, 2011, in Harris County, Texas, Josh Horn and/or Coy Thompson and/or an unknown person, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Jose Prieto, intentionally

cause the death of Jose Prieto by shooting Jose Prieto with a deadly weapon, namely a firearm, and that the defendant, Monsour G. Owolabi, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Josh Horn and/or Coy Thompson and/or an unknown person to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that the defendant, Monsour G. Owolabi, and Josh Horn and/or Coy Thompson and/or an unknown person entered into an agreement to commit the felony offense of robbery of Jose Prieto, and pursuant to that agreement, if any, they did carry out their conspiracy and that in Harris County, Texas, on or about the 16th day of August, 2011, while in the course of committing such robbery of Jose Prieto, Josh Horn and/or Coy Thompson and/or an unknown person intentionally caused the death of Jose Prieto by shooting Jose Prieto with a deadly weapon, namely a firearm, and the murder of Jose Prieto was committed in furtherance of the conspiracy and was an offense that should have been anticipated by the defendant as a result of carrying out the conspiracy, then you will find the defendant guilty of capital murder, as charged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether the defendant is guilty of the lesser offense of felony murder.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 16th day of August, 2011, in Harris

County, Texas, the defendant, Monsour G. Owolabi, did then and there unlawfully, while in the furtherance of the commission or attempted commission of the felony of robbery of Jose Prieto, or in immediate flight from the commission or attempted commission of the felony of robbery of Jose Prieto, commit an act clearly dangerous to human life, to-wit: by shooting Jose Prieto with a deadly weapon, namely a firearm, that caused the death of Jose Prieto; or

If you find from the evidence beyond a reasonable doubt that on or about the 16th day of August, 2011, in Harris County, Texas, Josh Horn and/or Coy Thompson and/or an unknown person, did then and there unlawfully, while in the furtherance of the commission or attempted commission of the felony of robbery of Jose Prieto, or in immediate flight from the commission or attempted commission of the felony of robbery of Jose Prieto, commit an act clearly dangerous to human life, to-wit: by shooting Jose Prieto with a deadly weapon, namely a firearm, that caused the death of Jose Prieto, and that the defendant, Monsour G. Owolabi, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Josh Horn and/or Coy Thompson and/or an unknown person to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that the defendant, Monsour G. Owolabi, and Josh Horn and/or Coy Thompson and/or an unknown person entered into an agreement to commit the felony offense of robbery of Jose Prieto, and pursuant to that agreement, if any, they did carry out their conspiracy

and that in Harris County, Texas, on or about the 16th day of August, 2011, while in the course of committing such robbery of Jose Prieto, Josh Horn and/or Coy Thompson and/or an unknown person committed an act clearly dangerous to human life that caused the death of Jose Prieto by shooting Jose Prieto with a deadly weapon, namely a firearm, and that the murder of Jose Prieto was committed in furtherance of the conspiracy and was an offense that should have been anticipated by the defendant as a result of carrying out the conspiracy, then you will find the defendant guilty of felony murder.

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

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 16th day of August, 2011, in Harris County, Texas, the defendant, Monsour G. Owolabi, did then and there unlawfully, while in the course of committing theft of property owned by Jose Prieto, and with intent to obtain or maintain control of the property, intentionally or knowingly cause serious bodily injury to Jose Prieto by shooting Jose Prieto with a deadly weapon, namely a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 16th day of August, 2011, in Harris County, Texas, Josh Horn and/or Coy Thompson and/or an unknown person, did then and there unlawfully, while in the course of committing theft of property owned by Jose Prieto, and with intent to obtain

or maintain control of the property, intentionally or knowingly cause serious bodily injury to Jose Prieto by shooting Jose Prieto with a deadly weapon, namely a firearm, and that the defendant, Monsour G. Owolabi, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Josh Horn and/or Coy Thompson and/or an unknown person to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that the defendant, Monsour G. Owolabi, and Josh Horn and/or Coy Thompson and/or an unknown person entered into an agreement to commit the felony offense of robbery of Jose Prieto, and pursuant to that agreement, if any, they did carry out their conspiracy and that in Harris County, Texas, on or about the 16th day of August, 2011, while in the course of committing such robbery of Jose Prieto, Josh Horn and/or Coy Thompson and/or an unknown person caused serious bodily injury to Jose Prieto by shooting Jose Prieto with a deadly weapon, namely a firearm, and said offense was committed in furtherance of the conspiracy and was an offense that should have been anticipated by the defendant as a result of carrying out the conspiracy, then you will find the defendant guilty of aggravated robbery.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder on the one hand or felony murder or aggravated robbery on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in the defendant's

favor and find him guilty of the lesser offense of either felony murder or aggravated robbery.

If you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge you will acquit the defendant and say by your verdict "Not Guilty."

There is evidence before you in this case alleging the Defendant committed an offense or offenses other than the offense alleged against him in the indictment in this case. You are instructed that you cannot consider such evidence for any purpose unless you first find and believe beyond a reasonable doubt that the Defendant did commit such other alleged offense or offenses.

You are instructed that evidence of crimes, wrongs or acts other than what is alleged in the indictment is not admissible to prove the character of the Defendant in order to show action in conformity with that character, as proof he is guilty of the offense charged in the indictment.

It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, and even then you may only consider the same in determining the motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident of the defendant, if any, in connection with the offense, alleged against him in the indictment, and for no other purpose.

You are instructed that certain evidence was admitted before you in regard to the defendant's having been charged and convicted of an offense or offenses other than the one for which he is now on trial. Such evidence cannot be considered by you against the defendant as any evidence of guilt in this case. Said evidence was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the weight you will give his testimony, and you will not consider the same for any other purpose.

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.

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."

You are the exclusive judges of the facts proved, of the credibility of the witnesses and the weight to be given their testimony, but the law you shall receive in these written instructions, and you must be governed thereby.

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.

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.

No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written and prepared by the Presiding Juror and shall be submitted to the court through this officer. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the Court, or anyone else concerning any questions you may have.

Your sole duty at this time is to determine the guilt or innocence of the defendant under the indictment in this cause and

restrict your deliberations solely to the issue of guilt or innocence of the defendant.

Following the arguments of counsel, you will retire to consider your verdict.

Kristin M. Guiney, Judge
179th District Court
Harris County, TEXAS

FILED
Chris Daniel
District Clerk
MAY - 9 2013
Time: 3:24 pm
Harris County, Texas
By _____ Deputy

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VS.	§	OF HARRIS COUNTY, TEXAS
MONSOUR G. OWOLABI	§	JANUARY TERM, A. D., 2013

CHOOSE ONE

"We, the Jury, find the defendant, Monsour G. Owolabi, not guilty."

FILED
Chris Daniel
District Clerk
MAY 10 2013
11:07 AM
Harris County, Texas
Time: By: Deputy

Presiding Juror

(Please Print) Presiding Juror

"We, the Jury, find the defendant, Monsour G. Owolabi, guilty of capital murder, as charged in the indictment."

BRUCE MORGAN
Presiding Juror

BRUCE MORGAN
(Please Print) Presiding Juror

"We, the Jury, find the defendant, Monsour G. Owolabi, guilty of felony murder."

_____

Presiding Juror

_____

(Please Print) Presiding Juror

"We, the Jury, find the defendant, Monsour G. Owolabi, guilty of aggravated robbery."

_____

Presiding Juror

_____

(Please Print) Presiding Juror