

CAUSE NO. 1488657

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THE STATE OF TEXAS	§	IN THE 176TH DISTRICT COURT
VS.	§	OF HARRIS COUNTY, TEXAS
ALAN MARQUIS COOK	§	JANUARY TERM, A. D., 2018

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Members of the Jury:

The defendant, Alan Marquis Cook, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 12<sup>th</sup> day of March, 2012, 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.

A person commits the offense of robbery if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain or maintain control of property of another, he:

- (1) intentionally or knowingly causes bodily injury to another; or
- (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

"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.

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.

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.

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 and they 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.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 12<sup>th</sup> day of March, 2012, in Harris County, Texas, the defendant, Alan Marquis Cook, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Harrell Flood, intentionally cause the death of Deandre Kelly, by shooting Deandre Kelly, with a deadly weapon, namely a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 12th day of March, 2012, in Harris County, Texas, the defendant, Alan Marquis Cook, entered into an agreement with Desmond Duncan, and/or Alan Cook, and/or Errol Alexander, and/or an unknown individual to commit the felony offense of robbery of Harrell Flood, 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, Desmond Duncan, and/or Alan Cook, and/or Errol Alexander, and/or an unknown individual intentionally caused the death of Deandre Kelly by shooting Deandre Kelly with a deadly weapon, namely a firearm, and the murder of Deandre Kelly was committed in furtherance of the conspiracy and was an offense that should have been anticipated

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by the defendant as a result of carrying out the conspiracy, then you will find the defendant guilty of capital murder.

~~Unless you so find from the evidence beyond a reasonable~~  
doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

You are further instructed that if there is any evidence before you in this case regarding the defendant's committing an ~~alleged offense or offenses other than the offense alleged~~ against him in the indictment in this case, you cannot consider such evidence for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offense or offenses, if any, 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, if any, alleged against him in the indictment and for no other purpose.

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Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a right 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 to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

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You are further instructed that any evidence that any witness has been convicted in any case or cases was admitted before you ~~for the purpose of aiding you, if it does aid you, in passing~~ upon the credibility of the witness and the weight to be given his or her testimony, and you will not consider the same for any other purpose.

An accomplice, as the term is here used, means anyone connected with the crime charged, as a party thereto, and ~~includes all persons who are connected with the crime by unlawful~~ act or omission on their part transpiring either before or during the time of the commission of the offense, and whether or not they were present and participated in the commission of the crime. 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. Mere presence alone, however, will not constitute one a party to an offense.

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. The term "conduct" means any act or omission and its accompanying mental state.

You are instructed that a conviction cannot be had upon the testimony of an accomplice unless the jury first believes that the accomplice's testimony is true and that it shows the defendant is guilty of the offense charged against him, 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.



The witness, Desmond Duncan, is an accomplice, if an offense was committed, and you cannot convict the defendant upon his ~~testimony unless you first believe that the testimony of Desmond~~ Duncan 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 other evidence in the case, outside of the testimony of Desmond Duncan tending to connect the defendant with the offense committed, if you find that an offense was committed, 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, and then from all of the evidence you must believe beyond a reasonable doubt that the defendant is guilty of the offense charged against him.

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.

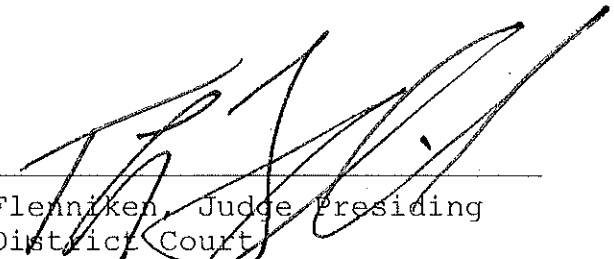
No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written and prepared by the Presiding Juror and shall be submitted to 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 lack thereof of the defendant under the indictment in this cause and

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

~~Your verdict must be by a unanimous vote of all members of the jury.~~

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

  
Terry Flenniken, Judge Presiding  
176th District Court  
Harris County; TEXAS

**FILED**  
Chris Daniel  
District Clerk

MAR 01 2018

Time: 10:00 AM  
Harris County, Texas

By: Steph Rig  
Clerk

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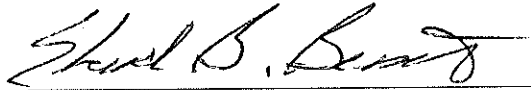
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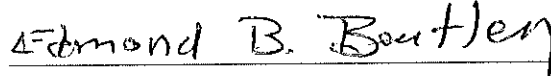
ALAN MARQUIS COOK § JANUARY TERM, A. D., 2018

V E R D I C T

"We, the Jury, find the defendant, Alan Marquis Cook, not guilty."



Presiding Juror of the Jury



(Please Print) Presiding Juror

"We, the Jury, find the defendant, Alan Marquis Cook, guilty of capital murder, as charged in the indictment."

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Presiding Juror of the Jury

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(Please Print) Presiding Juror