

MAY 21 2019

TIME 12:20 PM
BY m3 DEPUTY

CAUSE NO. 1563875R

THE STATE OF TEXAS

§

IN THE 213TH JUDICIAL

v.

§

DISTRICT COURT OF

KEVIN WAYNE POWELL

§

TARRANT COUNTY, TEXAS

COURT'S CHARGE

MEMBERS OF THE JURY:

The defendant, KEVIN WAYNE POWELL, stands charged by indictment with the offense of capital murder, alleged to have been committed in Tarrant County, Texas, on or about the 15th day of December 2015. To this charge, the defendant has pled not guilty.

A person commits the offense of "capital murder" if he intentionally commits the murder in the course of committing or attempting to commit the offense of retaliation or obstruction.

A person commits the offense of "murder" if he intentionally or knowingly causes the death of an individual; or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.

A person commits the offense of "retaliation or obstruction" if he intentionally or knowingly harms or threatens to harm another by an unlawful act in retaliation for or on account of the service or status of another as a public servant, witness, prospective witness, or informant or person who has reported or who the actor knows intends to report the occurrence of a crime; or to prevent or delay the service of another as a public servant, witness, prospective witness, or informant or person who has reported or who the actor knows intends to report the occurrence of a crime.

"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.

“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 affect the commission of the offense intended.

“Harm” means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

“Informant” means a person who has communicated information to the government in connection with any governmental function.

A person acts intentionally, or with intent, with respect to the 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 the result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of December 2015, in Tarrant County, Texas, the defendant, KEVIN WAYNE POWELL, did then and there, intentionally cause the death of Kasey Nutter, by manner and means unknown to the grand jury, and the said defendant was in the course of committing or attempting to commit the offense of retaliation or obstruction of Kasey Nutter, then you will find the defendant guilty of capital murder.

Unless you find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder as charged in the indictment and next consider whether the Defendant is guilty of a lesser-included offense. If you, however, find from the evidence beyond a reasonable doubt that the defendant is guilty of capital murder, you need not proceed to the lesser included offenses below. If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder on the one hand or murder or retaliation 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 included offense.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of December 2015, in Tarrant County, Texas, the defendant, KEVIN WAYNE POWELL, did then and there intentionally or knowingly cause the death of Kasey Nutter by manner and means unknown to the Grand Jury or intended to cause serious bodily injury and committed an act clearly dangerous to human life that caused the death of Kasey Nutter by manner and means unknown to the Grand Jury then you will find the defendant guilty of the lesser-included offense of murder.

Unless you find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of murder and next proceed to consider whether the defendant is guilty of the lesser-included offense of retaliation or obstruction.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of December 2015, in Tarrant County, Texas, the defendant, KEVIN WAYNE POWELL, did then and there harm/ or threaten to harm Kasey Nutter by an unlawful act in retaliation for or on

account of her service or status as a public servant, witness, prospective witness, or informant or person who had reported or who he knew intended to report the occurrence of a crime; or to prevent or delay the service ^{of} Kasey Nutter as a public servant, witness, prospective witness, or informant or person who had reported or who he knew intended to report the occurrence of a crime then you will find the defendant guilty of the lesser-included offense of retaliation or obstruction.

Unless you 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.”

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.

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 issue 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.

You are instructed that the state is not bound by a specific date on which the offense, if any, is alleged in the indictment to have been committed, but conviction may be had upon proof that the offense, if any, was committed any time prior to the presentment of the indictment.

You are instructed that the court has taken judicial notice that the date the indictment in this case was presented was September 28, 2018. The jury is further instructed that it may, but is not required to, accept as conclusive the fact judicially noticed.

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 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 of 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.

You are instructed that voluntary intoxication does not constitute a defense to the commission of a crime. "Intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

You are instructed that if there is any testimony before you in this case regarding the defendant having committed crimes, wrongs or acts other than the crime alleged in the indictment in this case, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other crimes, wrongs or

acts, if any were committed, and even then you may only consider those other crimes, wrongs or acts in determining the proof of the defendant's motive, opportunity, intent, or identity.

You are instructed that if there is testimony in this case regarding the previous relationship existing between the accused and deceased, if any, that you may consider the testimony and all relevant facts and circumstances surrounding the killing, if any, together with all other relevant facts and circumstances to show the condition of the mind of the accused at the time of the murder in question, if any.

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 must be governed by you shall receive in these written instructions.

Statements made by the lawyers are not evidence. The questions asked by the attorneys are not evidence. Evidence consists of the testimony of the witnesses and materials admitted into evidence.

Nothing the judge has said or done in this case should be considered by you as an opinion about the facts of this case or influence you to vote one way or the other.

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.


No one has any authority to communicate with you except the officer who has you in charge. 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.

You may, if you wish, examine exhibits. If you wish to examine an exhibit, the foreperson will inform the court and specifically identify the exhibit you wish to examine. Only exhibits that were admitted into evidence may be given to you for your examination.

Certain testimony will be read back to you by the court reporter if you request. To request that testimony be read back to you, you must follow these rules. The court will allow testimony to be read back to the jury only if the jury, in a writing signed by the foreperson, (1) states that it is requesting that testimony be read back, (2) states that it has a disagreement about a specific statement of a witness or a particular point in dispute, and (3) identifies the name of the witness who made the statement. The court will then have the court reporter read back only that part of the statement that is in disagreement.

After you have retired, you may communicate with this court in writing through the officer who has you in charge. 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. After you have reached a unanimous verdict, the Presiding Juror will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as Presiding Juror. You may now retire to consider your verdict.

 5/21/2019

CHRIS WOLFE, JUDGE
213th District Court
Tarrant County, Texas

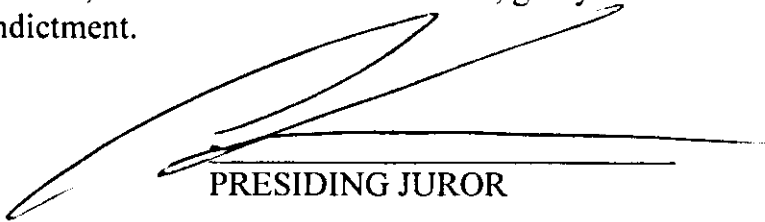
FILED
THOMAS A WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

MAY 21 2019

TIME 3:15 PM
BY MB DEPUTY

VERDICT FORMS

We, the jury, find the defendant, KEVIN WAYNE POWELL, guilty of the offense of capital murder as alleged in the indictment.



PRESIDING JUROR

-OR-

We, the jury, find the defendant, KEVIN WAYNE POWELL, guilty of the lesser-included offense of murder.

PRESIDING JUROR

-OR-

We, the jury, find the defendant, KEVIN WAYNE POWELL, guilty of the lesser included offense of retaliation or obstruction.

PRESIDING JUROR

-OR-

We, the jury, find the defendant, KEVIN WAYNE POWELL, not guilty.

PRESIDING JUROR