

9.30.13
9:24 A.M.
M.P.
Judge

THE STATE OF TEXAS
VS
LEROY KILLIAN ARISTA

§
§
§

IN THE 206TH DISTRICT COURT
OF
HIDALGO COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, LEROY KILLIAN ARISTA, stands charged by indictment with the offense of Capital Murder alleged to have been committed in Hidalgo County, Texas, on or about JULY 12, 2011, and to this charge the Defendant has pleaded NOT GUILTY.

1.

Our law provides that a person commits the offense of Murder when the person intentionally or knowingly causes the death of an individual.

A person commits the offense of Capital Murder when such person intentionally commits the murder in the course of committing or attempting to commit the offense of Burglary of a Habitation.

2.

Our law provides that a person commits the offense of Burglary of Habitation if, without the effective consent of the owner, the person enters a habitation and commits or attempts to commit theft.

Our law provides that 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 and maintain control of property of another, he intentionally or knowingly threatens or places another in fear of imminent injury or death.

“Enter” means to intrude any part of the body or any physical object connected with the body into the habitation.

“Habitation” means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes: (a) each separately secured or occupied portion of the structure or vehicle and (b) each structure appurtenant to or connected with the structure or vehicle.

“Theft” is the unlawful appropriation of property with intent to deprive the owner of said property.

“Appropriate” and “appropriation” mean 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” means tangible or intangible personal property or a document, 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 force, threats, deception or coercion.

“Owner” means a person who has a greater right to possession of the property than the defendant.

“Possession” means actual care, custody, control, or management of the property

2.

A person acts intentionally, or with intent, with respect to the nature of his conduct when it is his conscious objective to engage in the conduct.

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.

3.

All persons are parties to an offense who are guilty of acting together in the commission of an 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.

4.

To warrant a conviction of the Defendant of the offense of Capital Murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the Defendant was engaged in the commission of the burglary of habitation or attempted commission thereof, if any, but also that the Defendant struck WILLIS SPEARS KIMMONS with a crowbar with the intention of killing WILLIS SPEARS KIMMONS. Unless you find from the evidence beyond a reasonable doubt that the Defendant, on said occasion, specifically intended to kill WILLIS SPEARS KIMMONS when Defendant struck WILLIS SPEARS KIMMONS, if Defendant did strike WILLIS SPEARS KIMMONS, you cannot convict him of the offense of Capital Murder.

5.

Now, if you find from the evidence beyond a reasonable doubt that on or about JULY 12, 2011, in Hidalgo County, Texas, the Defendant, LEROY KILLIAN ARISTA, did then and there intentionally cause the death of an individual, namely, Willis Spears Kimmons, by striking him with a crow bar, or object unknown to the grand jurors, and the defendant was then and there in the course of committing or attempting to commit the offense of burglary of a habitation of Willis Spears Kimmons, then you will find the Defendant GUILTY of the offense of Capital Murder.

OR

If you find from the evidence beyond a reasonable doubt that on or about JULY 12, 2011, in Hidalgo County, Texas, DAVID TARBUTTON, did then and there intentionally cause the death of an individual, namely, Willis Spears Kimmons, by striking him with a crow bar, or object unknown to the grand jurors, and DAVID TARBUTTON was then and there in the course of committing or attempting to commit the offense of burglary of a habitation of Willis Spears Kimmons and that the Defendant, LEROY KILLIAN ARISTA, knew of the intent of DAVID TARBUTTON, if any, to cause the death of Willis Spears Kimmons while in the course of committing or attempting to commit the offense of burglary of habitation, and the Defendant LEROY KILLIAN ARISTA acted with intent to promote or assist the commission of the offense by DAVID TARBUTTON by encouraging, directing, or aiding DAVID TARBUTTON to commit CAPITAL MURDER, then you will find the Defendant, LEROY KILLIAN ARISTA, GUILTY of the offense of CAPITAL MURDER.

Unless you find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Capital Murder.

6.

If you find from the evidence beyond a reasonable doubt that on or about JULY 12, 2011, in Hidalgo County, Texas, the Defendant, LEROY KILLIAN ARISTA, did intentionally or knowingly cause the death of WILLIS SPEARS KIMMONS by striking him with a crow bar or object unknown to the grand jurors, but you have a reasonable doubt as to whether the Defendant was then and there engaged in the commission of burglary of habitation or attempted burglary of habitation of WILLIS SPEARS KIMMONS at the time of the said striking, if any, then you will find the Defendant GUILTY of Murder, but not Capital Murder.

OR

If you find from the evidence beyond a reasonable doubt that on or about JULY 12, 2011, in Hidalgo County, Texas, DAVID TARBUTTON, did then and there intentionally or knowingly cause the death of WILLIS SPEARS KIMMONS, by striking him with a crow bar, or object unknown to the grand

jurors, but you have a reasonable doubt as to whether DAVID TARBUTTON was then and there engaged in the commission of burglary of habitation or attempted burglary of habitation of WILLIS SPEARS KIMMONS at the time of the said striking, if any, and the Defendant LEROY KILLIAN ARISTA acted with intent to promote or assist the commission of the offense by DAVID TARBUTTON by encouraging, directing, or aiding DAVID TARBUTTON to commit MURDER, then you will find the Defendant LEROY KILLIAN ARISTA GUILTY of Murder, but not Capital Murder.

7.

If you find from the evidence beyond a reasonable doubt that on or about JULY 12, 2011, in Hidalgo County, Texas, the Defendant, LEROY KILLIAN ARISTA, did knowingly cause the death of WILLIS SPEARS KIMMONS by striking him with a crow bar, or object unknown to the grand jurors, but you have a reasonable doubt as to whether the Defendant intentionally killed WILLIS SPEARS KIMMONS, as the term "intentionally" has been defined herein, then you will find the Defendant GUILTY of Murder, but not Capital Murder, regardless of whether you find from the evidence beyond a reasonable doubt that Defendant was then and there in the course of committing or attempting to commit the offense of burglar of habitation.

OR

If you find from the evidence beyond a reasonable doubt that on or about JULY 12, 2011, in Hidalgo County, Texas, DAVID TARBUTTON, did knowingly cause the death of WILLIS SPEARS KIMMONS, by striking him with a crow bar, or object unknown to the grand jurors, but you have a reasonable doubt as to whether DAVID TARBUTTON intentionally killed WILLIS SPEARS KIMMONS, as the term "intentionally" has been defined herein, and the Defendant LEROY KILLIAN ARISTA acted with intent to promote or assist the commission of the offense by DAVID TARBUTTON by encouraging, directing, or aiding DAVID TARBUTTON to commit MURDER then you will find the

Defendant GUILTY of Murder, but not Capital Murder, regardless of whether you find from the evidence beyond a reasonable doubt that DAVID TARBUTTON was then and there in the course of committing or attempting to commit the offense of burglary of habitation.

If you should find from the evidence that Defendant is GUILTY of neither Capital Murder nor Murder, or if you have a reasonable doubt thereof, you will acquit the Defendant and say by your verdict, "NOT GUILTY."

8.

If you should find from the evidence beyond a reasonable doubt that the Defendant is either GUILTY of Capital Murder or Murder, but you have a reasonable doubt as to which offense Defendant is GUILTY of, then you should resolve that doubt in the Defendant's favor, and in such event, you will find the Defendant GUILTY of the lesser offense of Murder.

If you should find from the evidence that Defendant is GUILTY of neither Capital Murder nor Murder, nor the lesser-included offense of Burglary of Habitation, or if you have a reasonable doubt thereof, you will find the Defendant NOT GUILTY.

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

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

9.

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.

10.

You are instructed that the allegation that the offense was committed on or about JULY 12, 2011, does not bind the State to any one particular date but may include any day prior to OCTOBER 13, 2011, the day the indictment was filed. There is no statute of limitations for Murder.

11.

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.

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 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 "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 Defendant 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. You will be governed by the law you shall receive in these written instructions.

When you retire to the jury room, you should first select one of your members as Presiding Juror. It is the Presiding Juror's 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 thereto, and signing the same as Presiding Juror.

In order to return a verdict, each juror must agree thereto, but jurors have a duty to consult with each other and to deliberate with a view of reaching an agreement, if it can be done without violence to individual judgment.

Each juror must decide the case for himself or herself, but only after an impartial consideration of the evidence with his or her fellow jurors.

In the course of deliberations, a juror should not hesitate to re-examine his or her own views and change his or her opinion if convinced it is erroneous. However, no juror should surrender his or her honest conviction as to the weight or effect of the evidence solely because of the opinion of his or her fellow jurors, or for the mere purpose of returning a verdict.

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 should not discuss or consider punishment for the offense charged for any purpose. You must concern yourselves solely with the question of guilt or innocence of the Defendant under these written instructions without regard to any possible punishment imposed by law for the offense charged.

During your deliberations, you are instructed that you should not consider the remarks, rulings or actions of the presiding judge during this trial as any indication of the Court's opinion as to the guilt or

innocence of the Defendant. The remarks, rulings and actions of the presiding judge were upon matters of the law only and were not upon the facts which you, and you alone, must determine.

While you are deliberating, no one has authority to communicate with you except the officer who has you in charge being the Bailiff. However, after you have retired, you may communicate with the Court as to any questions you may have, but that communication must be in writing through the officer of the Court.

When you have reached a verdict you will notify the bailiff in writing, as to reaching a verdict, but not what the verdict is.

Do not let bias, prejudice, or sympathy play any part in your deliberations.

Your verdict must be unanimous, and after you have reached a unanimous verdict, the Presiding Juror will certify thereto by signing the appropriate form attached to this charge.

Filed on this the 30 day of August, 2013, at 9:45 o'clock A.m.


HON. G. JAIME GARZA
JUDGE PRESIDING
AUXILIARY COURT
HIDALGO COUNTY, TEXAS