

NO. 69 825 A

THE STATE OF TEXAS	§	IN THE 47 th DISTRICT COURT
	§	
VS.	§	IN AND FOR
	§	
KENYA ABDULE MARTIN	§	POTTER COUNTY, TEXAS

CHARGE TO THE JURY ON GUILT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, KENYA ABDULE MARTIN, stands charged by indictment with the offense of Capital Murder, alleged to have been committed in Potter County, Texas on or about the 1st day of May, 2013. To this charge, the defendant has pleaded not guilty.

1.

A person commits the offense of murder if the person intentionally or knowingly causes the death of an individual.

“Individual” means a human being who is alive.

A person commits the offense of capital murder if the person intentionally commits the murder in the course of committing or attempting to commit a robbery.

“In the course of committing” means conduct occurring in an attempt to commit, during the commission of, or in the immediate flight after the attempt or commission of the offense.

A person commits a criminal attempt 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.

Filed at
Caroline Woodburn

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

By _____ Deputy

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

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FILED IN OPEN COURT
 47th DISTRICT COURT
 POTTER COUNTY TEXAS
 20 day of Feb 2015
 [Signature]

A person commits the offense of theft if the person unlawfully appropriates property with intent to deprive the owner of the property.

“Appropriate” means to acquire or otherwise exercise control over property.

Appropriation of property is unlawful if it is without the owner’s effective consent.

“Effective consent” includes consent by a person legally authorized to act for the owner. Consent is not effective if induced by coercion.

“Consent” means assent in fact, whether express or apparent.

“Coercion” means a threat, however communicated to commit an offense.

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

“Property” means 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 property is lost to the owner.

“Owner” means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor.

“Actor” means a person whose criminal responsibility is in issue in a criminal action.

The term “firearm” means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. You are instructed that a firearm is a “deadly weapon”.

2.

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.

With regard to the offense of robbery, a person acts intentionally, or with intent, with respect to the nature of his conduct or as a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

With regard to the offense of robbery, 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.

With respect to the offense of robbery, a person acts recklessly with respect to a result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

3.

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.

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 carrying out the conspiracy.

In a prosecution in which a defendant's criminal responsibility is based on the conduct of another, the defendant may be convicted on proof of commission of the offense and that he was a party to its commission, and it is no defense that the person for whose conduct the defendant is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type of class of offense, or is immune from prosecution.

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

4.

Now, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about the 1st day of May, 2013, in Potter County, Texas, the Defendant, KENYA ABDULE MARTIN, did then and there intentionally cause the death of an individual, namely Edward Pendleton, by shooting the said Edward Pendleton with a firearm, and that the Defendant was then and there in the course of committing or attempting to commit the offense of Robbery of Edward Pendleton, you will find the Defendant guilty of capital murder as charged in the indictment and say so by your verdict; or

If you find from the evidence beyond a reasonable doubt that on or about the 1st day of May, 2013, in Potter County, Texas, that STEVON POLK or DAMARRUS ARY or ANDREA BROWN, did then and there intentionally cause the death of an individual, namely Edward Pendleton, by shooting the said Edward Pendleton with a firearm, and that the Defendant was then and there in the course of committing or attempting to commit the offense of Robbery of Edward Pendleton; and that KENYA ABDULE MARTIN, acting with intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided, or attempted to aid either STEVON POLK or DAMARRUS ARY or ANDREA BROWN to commit the offense, if any, by his own actions or conduct during the commission of the offense, if any, then you will find the defendant guilty of capital murder as charged in the indictment and say so by your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder.

5.

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, 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 further instructed that mere presence of the accused in the company of an accomplice witness shortly before or after the time of the offense, if any, is not, in itself, sufficient corroboration of the accomplice witness' testimony.

You are further instructed that while the testimony of an accomplice must be corroborated by proof that tends to connect the defendant to the crime, the defendant's

knowledge or intent may be established by the uncorroborated testimony of the accomplice.

You are charged that ANDREA BROWN was an accomplice if any offense was committed, and you are instructed that you cannot find the defendant guilty upon the testimony of ANDREA BROWN unless you first believe that the testimony of the said ANDREA BROWN 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 this case, outside the evidence of said ANDREA BROWN, tending to connect the defendant with the commission of the offense charged in the indictment and then from all the evidence you must believe beyond a reasonable doubt that the defendant is guilty.

An accomplice as the word is here used, means anyone connected with the crime charged as a party to the offense.

6.

The law provides that a defendant in a criminal action has the right, but is under no compulsion to testify as a witness in his trial, but that if he does not do so, that fact shall not be considered as any circumstance against him; and in this case you are instructed that you must not consider, discuss, comment upon or refer to the fact that he did not testify.

7.

You are instructed that if there is testimony or evidence before you in this case regarding the defendant having committed other acts or participated in other transactions other than the offense alleged against him in the indictment in this case, that you cannot consider such other acts or transactions, if any, unless you first find and believe beyond a reasonable doubt that the defendant committed such acts or participated in such transactions, if any, but if you do not so believe, or if you have a reasonable doubt thereof, you will not consider such testimony for any purpose. Further, such evidence cannot be considered by you against the defendant as any evidence of guilt in this case. The evidence was admitted before you for the purpose of aiding you, if it does, in passing upon the defendant's knowledge, intent or identity, and you will not consider the same for any other purpose.

8.

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."

The only function of the jury under this charge is to find the guilt, if any, of the Defendant, the matter of punishment being the subject of further proceedings in this case.

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

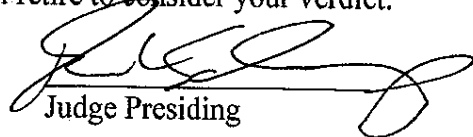
After you retire to the jury room, you should select one of your members as your Presiding Juror. It is his or her duty to preside at your deliberations, vote with you, and, when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form attached hereto and signing the same as Presiding Juror.

Before you can return a verdict of "guilty" or "not guilty" in this case, all twelve jurors must agree upon the verdict. After you retire to the jury room, you will select one of your members as your presiding juror. It is the duty of the presiding juror 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 and signing the same as presiding juror. The presiding juror should also see to it that discussion goes forward in a sensible and orderly fashion and that each juror has the opportunity to discuss the issues fully and fairly.

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, prepared and signed 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.

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



Judge Presiding

NO. 69825A

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VS.	§	IN AND FOR
KENYA ABDULE MARTIN	§	POTTER COUNTY, TEXAS

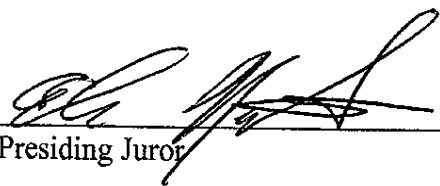
(1) VERDICT OF THE JURY

We, the jury, find the defendant, KENYA ABDULE MARTIN, not guilty.

 Presiding Juror

(2) VERDICT OF THE JURY

We, the jury, find the defendant, KENYA ABDULE MARTIN, guilty of the offense of Capital Murder as charged in the indictment.



 Presiding Juror

Filed at _____ M
 Caroline Woodburn

FEB 26 2015

District Clerk Potter Co., Texas

By _____ Deputy