IN THE DISTRICT COURT OF JASPER COUNTY, TEXAS

1ST JUDICIAL DISTRICT

THE STATE OF TEXAS	§	
VS.	§	CAUSE NO. 10,824J(1)
SHANE JERMAINE MATTHEWS	§	

CHARGE OF THE COURT

Members of the Jury:

The defendant, SHANE JERMAINE MATTHEWS, stands charged by indictment with the offense of capital murder, alleged to have been committed in Jasper County, Texas, on or about the 13th day of December, 2009. To this charge the defendant has pleaded not guilty. You are instructed that the law applicable to this case is as follows:

I.

A person commits the offense of capital murder if the person intentionally causes the death of an individual and the person intentionally commits the murder in the course of committing or attempting to commit robbery.

II.

"Attempt" means to commit an act with specific intent to commit an offense where the act committed amounts to more than mere preparation but fails to effect the commission of the offense intended.

"Individual" means a human being who is alive including an unborn child at every stage of gestation from fertilization to birth.

III.

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 the conduct is reasonably certain to cause the result.

IV.

A person is criminally responsible as a party to an offense of capital murder if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both. Each party to the offense of capital murder may be charged with the commission of the offense. Mere presence alone will not constitute one a party to an offense.

A person is criminally responsible for the offense of capital murder 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 the offense of robbery, capital murder is committed by one of the conspirators, all conspirators are guilty of the capital murder actually committed, though having no intent to commit it, if the capital murder was committed in furtherance of the robbery and was one that should have been anticipated as a result of the carrying out of the conspiracy.

A person commits criminal conspiracy if, with intent that a robbery be committed

(1) he agrees with one or more person that they or one of them engage in conduct that would constitute robbery; and

(2) he 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

V.

A person commits the offense of robbery if in the course of committing theft as hereinafter defined and with intent to obtain or maintain control of the property, 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.

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

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

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

"Appropriate" means to acquire or otherwise exercise control over property other than real property.

"Deprive" means:

(1) 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;

(2) to restore property only upon payment of reward or other compensation or

(3) to dispose of property in a manner that makes recovery of the property by the owner unlikely.

"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 defendant.

"Property" means:

(1) tangible or intangible personal property including anything severed from land or

(2) a document, including money, that represents or embodies anything of value.

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

"Consent" means assent in fact, whether express or apparent.

"Effective consent" includes consent by a person legally authorized to act for the owner.

Consent is not effective if induced by deception or coercion.

VI

Upon the law of accomplice witness testimony, you are instructed that Miesha Kelly is an accomplice, if any offense was committed as alleged in the indictment. You are further 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, or any other offense herein charged. Even then you cannot convict unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged. You are further instructed that one or more accomplice witnesses cannot corroborate each other. The corroboration is not sufficient if it merely shows the commission of the offense. The mere presence of the accused in the company of an accomplice witness shortly before, during or after the time of the offense, if any, is not in itself sufficient corroboration of the accomplice witness testimony. The other corroborating evidence must tend to connect the defendant with the commission of the offense alleged.

If you believe from the evidence beyond a reasonable doubt that the offense of capital murder was committed, then you cannot convict the defendant, SHANE JERMAINE MATTHEWS, based upon the testimony of Miesha Kelly unless you first believe the testimony is true and that it shows the defendant is guilty as charged in the indictment. Even then you cannot convict the defendant unless you further believe that there is other evidence in the case, outside of the testimony of Miesha Kelly 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 of the offense charged.

If you further believe from the evidence beyond a reasonable doubt that the offense of capital murder was committed and you further believe from the evidence that the witnesses Jason Brown or Melissa Adams was an accomplice or both were accomplices to capital murder, or if you have a reasonable doubt thereof, then you cannot convict the defendant, SHANE JERMAINE MATTHEWS, based upon the testimony of Jason Brown or Melissa Adams or both unless you first believe the testimony is true and that it shows the defendant is guilty as charged in the indictment. Even then you cannot convict the defendant unless you further believe that there is other evidence in the case, outside of the testimony of Jason Brown or Melissa Adams or both 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 of the offense charged

In a criminal prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor 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 whose conduct the actor is criminally responsible for has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or a different type or class of offense, or is immune from prosecution.

VII

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the defendant, SHANE JERMAINE MATTHEWS, individually or as a party as that term has been previously defined, on or about the 13th day of December, 2009, in the County of Jasper, and State of Texas, did then and there intentionally cause the death of an individual, Jessie Palomo, Jr., by shooting Jessie Palomo, Jr. with a firearm and the said SHANE JERMAINE MATTHEWS, individually or as a party as that term has been previously defined, was then in the course of committing or attempting to commit the offense of robbery of Jessie Palomo, you will find the defendant guilty of the offense of Capital Murder and so say by your verdict, but if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

VIII.

In all criminal cases the burden of proof is on the State. 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.

In a criminal case the law permits a defendant to testify in his own behalf but he is not compelled to do so, and the same law provides that the fact that a defendant does not testify shall not be considered as a circumstance against him. You will, therefore, not consider the fact that the defendant did not testify as a circumstance against him; and you will not in your retirement to consider your verdict allude to, comment on, or in any manner refer to the fact that the defendant has not testified

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, or any witness therein, and no juror is permitted

to communicate to any other juror anything he may have heard regarding the case or any witness therein, from any source other than the witness stand.

In deliberating on the cause you are not to refer to or discuss any matter or issue not in evidence before you; nor talk about this case to anyone not of your jury; and after the reading of this charge you shall not separate from each other until you have reached a verdict.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given to the testimony, but you are bound to receive the law from the court, which is herein given you, and be governed thereby.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

Occasionally, during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the Court and request that the Court read the portion of disputed testimony to you from the official transcript. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts. The dispute must be settled by the official transcript, for it is the official transcript, rather than any juror's notes, upon which you must base your determination of the facts and, ultimately, your verdict in this case.

After argument of counsel, you will retire and select one of your members as your foreperson. It is his or her duty to preside at your deliberations and to vote with you in arriving at a verdict. Your verdict must be unanimous, and after you have arrived at your verdict, you may use one of the forms attached hereto by having your foreperson sign his or her name to the particular form that conforms to your verdict.

Presiding Judge

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Kathy Kent
DISTRICT CLERK
JASPER COUNTY, TEXAS

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VERDICT OF THE JURY

Form A

We, the Jury, find the defendant, SHANE JERMAINE MATTHEWS, guilty of the offense of Capital Murder as charged in the indictment

Foreperson

FORM B

We, the Jury, find the defendant, SHANE JERMAINE MATTHEWS, "Not Guilty".

Foreperson

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