

NO. 1054973D

AUG 14 2008

TIME 3:48
DEPUTY

THE STATE OF TEXAS)(IN THE CRIMINAL DISTRICT
VS.)(COURT NUMBER TWO
DEMARKCUS CLARK)(TARRANT COUNTY, TEXAS

MEMBERS OF THE JURY:

The Defendant, Demarcus Clark, stands charged by Indictment with the offense of Capital Murder, alleged to have been committed on or about the 25th day of July, 2004, in Tarrant County, Texas. To this charge, the Defendant has pled not guilty.

1.

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

2.

A person commits the offense of Capital Murder if the person intentionally commits the offense of Murder in the course of committing or attempting to commit the offense of Robbery.

3.

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 intentionally or knowingly causes bodily injury to another or intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

The offense is Aggravated if during the course of committing Robbery, he uses or exhibits a deadly weapon.

4.

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

"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.

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

intended.

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

“Property” means tangible or intangible property including anything severed from land; or a document, including money, that represents or embodies anything of value.

“Appropriation” and “appropriate” 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.

“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.

“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.

“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 or force or threats.

"Act" means a bodily movement, whether voluntary or involuntary and includes speech.

"Possession" means actual care, custody, control or management of property.

"Individual" means a human being who has been born and is alive.

"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 converted to that use.

5.

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 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.

6.

All persons are presumed 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 prosecutions' 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 the Defendant and say by your verdict "not guilty".

7.

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.

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.

8.

A person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of that actor clearly insufficient.

A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated, or risked is that:

- (1) a different offense was committed; or
- (2) a different person or property was injured, harmed, or otherwise affected.

9.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 25th day of July, 2004, in Tarrant County, Texas,

Demarcus Clark, acting alone or as a party, with intent to promote or assist the commission of the offense, solicited, encouraged, directed, aided, or attempted to aid another to commit the offense, did then and there intentionally cause the death of an individual, Keiss Allison, by shooting him with a deadly weapon, to-wit: a firearm, and the said Defendant was then and there in the course of committing or attempting to commit the offense of Robbery of Keiss Allison, then you will find the Defendant guilty of Capital Murder as charged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Capital Murder and say by your verdict "not guilty".

10.

Now, if you find from the evidence beyond a reasonable doubt that the Defendant, Demarcus Clark, in the County of Tarrant and State of Texas, on or about the 25th day of July, 2004, entered into a conspiracy with Isaac Fountain and Avion Anderson to commit the felony offense of Aggravated Robbery and that in the attempt to carry out this agreement, if any, Isaac Fountain did then and there intentionally

cause the death of an individual, Keiss Allison, by shooting Keiss Allison with a firearm, if he did, and that such offense was committed in furtherance of the unlawful purpose to commit the Aggravated Robbery and was an offense that should have been anticipated as a result of the carrying out of the agreement, then you will find the Defendant, Demarcus Clark, guilty of Capital Murder, though he may have had no intent to commit it, and so say by your verdict.

If you do not so believe, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Capital Murder and say by your verdict "Not Guilty".

11.

You are instructed that an "accomplice," as the term is hereinafter used, means any person connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime, such as parties, by unlawful act or omission on their part transpiring either before or during the time of the commission of the offense.

You are further instructed that a conviction cannot be had upon the testimony of an accomplice alone 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 against him. 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.

Now, if you believe from the evidence beyond a reasonable doubt that an offense was committed and you further believe from the evidence that the witness, Isaac Fountain, was an accomplice, or you have a reasonable doubt whether he was or not, as that term is defined in the foregoing instructions, then you cannot convict the Defendant upon the testimony of said Isaac Fountain alone unless you first believe that the testimony of the said Isaac Fountain is true and that it shows that 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 the evidence of said Isaac Fountain 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.

12.

You are instructed if there is any testimony before you in this case regarding the Defendant's having committed offenses other than the offense alleged against him 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 offenses, if any were committed, and even then you may only consider the same in determining the motive, intent, or knowledge of the Defendant, if any, in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

13.

Our law provides that a Defendant may testify in his own behalf if he elects to do so. This, however, is a privilege accorded to 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 him.

14.

The Indictment in this case is no evidence whatsoever of the guilt of the Defendant. It is a written instrument necessary in order to bring this case into court for trial, and you will not consider the indictment as any evidence in this case or as any circumstance whatsoever against the Defendant.

15.

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

16.

You are charged that it is only in open court 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 or she may have seen or heard regarding the case or any witness therein, from any source other than in open court.

17.

Your verdict must be by a unanimous vote of all members of the jury. In your deliberations you shall consider the charge as a whole and you must not refer to or discuss any matters not in evidence.

18.

At times throughout the trial the Court may have been called upon to rule on the question of whether or not certain offered evidence might properly be admitted. You are not to concern yourselves with the reasons for the Court's ruling nor draw any inferences therefrom. Whether offered evidence is admissible is a question of law and in admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does the Court pass on the credibility of the witness. You must not consider any evidence offered that has been rejected by the Court. As to any question to which an objection was sustained, you must not engage in any conjecture as to what the answer might have been or as to the reason

for the objection.

19.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting the outcome of the case. The Court has not intended to express any opinion upon any matter of fact, and if you have observed anything which you may have interpreted as the Court's opinion as to any matter of fact, you must wholly disregard it.

20.

After you retire to the jury room, you should select one of your members as your foreman. Any member of the jury may serve as foreman. It is the foreman'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 and signing the same as your foreman.

21.


At this time you will confine your deliberations solely to the issue of whether the Defendant is guilty or not guilty of the offense set forth in this charge.

22.

Should the jury desire to have any or all of the admitted exhibits delivered to the jury for your deliberations, your foreman shall so notify the Court in writing and the requested exhibits will be delivered.

23.

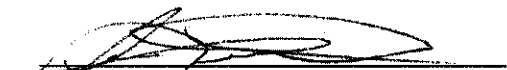
After you have retired, you may communicate with the Court in writing through the bailiff who has you in charge. Your written communication must be signed by the foreman. Do not attempt to talk to the bailiff, the attorneys, or the Court regarding any question you may have concerning the trial of the case. After you have reached a unanimous verdict or if you desire to communicate with the Court, please knock on the door and one of the bailiffs will respond.



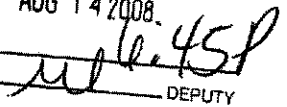
JUDGE WAYNE F. SALVANT
Criminal District Court No. 2
Tarrant County, Texas

VERDICT FORMS

We, the jury, find the Defendant, Demarkcus Clark, guilty of the offense of Capital Murder.



FOREMAN

FILED
THOMAS A. WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS
AUG 14 2008
TIME _____
BY  DEPUTY

-OR-

We, the jury, find the Defendant, Demarkcus Clark, not guilty.

FOREMAN