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**FILED**

Chris Daniel  
District Clerk

AUG 29 2013

Time: 1:10 pm AUG 29 2013

Harris County, Texas

By \_\_\_\_\_ Deputy 

CAUSE NO. 1273042

THE STATE OF TEXAS	§	IN THE 179TH DISTRICT COURT
VS.	§	OF HARRIS COUNTY, TEXAS
ANDRE EMANUEL	§	JULY TERM, A. D., 2013

Members of the Jury:

The defendant, Andre Emanuel, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 15th day of July, 2009, in Harris County, Texas. The defendant has pleaded not guilty.

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

A person commits the offense of murder if he:

- (1) intentionally or knowingly causes the death of an individual; or
- (2) intends to cause serious bodily injury and intentionally or knowingly commits an act clearly dangerous to human life that causes the death of an individual.

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:

- (1) intentionally or knowingly causes bodily injury to another.

A person commits the offense of aggravated robbery if the person commits robbery, as hereinbefore defined, and the person:

- (1) causes serious bodily injury to another; or
- (2) uses or exhibits a deadly weapon.

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

"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 effect the commission of the offense intended.

"Theft" is the unlawful appropriation of property with intent to deprive the owner of property.

"Appropriation" and "appropriate", as those terms are used herein, means 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" as used herein means tangible or intangible personal property or documents, 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 or threat.

"Owner" means a person who has title to the property, possession of property, or a greater right to possession of the property than the actor.

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

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

"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.

The definition of intentionally relative to the offense of capital murder is as follows:

A person acts intentionally, or with intent, with respect to a result of his conduct when it is his conscious objective or desire to cause the result.

The definitions of intentionally and knowingly relative to the offenses of aggravated robbery and robbery are as follow:

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 his conduct is reasonably certain to cause the result.

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

By the term "conspiracy" as used in these instructions, is meant an agreement between two or more persons with intent, that they, or one or more of them, engage in conduct that would constitute the offense. An agreement constituting a conspiracy may be inferred from acts of the parties.

Before you would be warranted in finding the defendant guilty of capital murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant was in the course of committing or attempting to commit the felony offense of robbery of Kenny Phung, as alleged in this charge, but also that the defendant specifically intended to cause the death of Kenny Phung, by shooting Kenny Phung, with a deadly weapon, namely a firearm; or you must find from the evidence beyond a reasonable doubt that the defendant, Andre Emanuel, with the intent to promote or assist in the commission of the offense of robbery, if any, solicited, encouraged, directed, aided, or attempted to aid Moses Reed and/or Jermaine Clifton A.K.A "Northside" in shooting Kenny Phung, if he did, with the intention of thereby killing Kenny Phung; or you must find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, Andre Emanuel, entered into an agreement with Moses Reed and/or Jermaine Clifton A.K.A "Northside" to commit the felony offense of robbery of Kenny Phung, as alleged in this charge, and pursuant to that agreement they did carry out their conspiracy, and while in the course of

committing said conspiracy, Moses Reed and/or Jermaine Clifton A.K.A "Northside" intentionally caused the death of Kenny Phung by shooting Kenny Phung with a deadly weapon, namely a firearm, and the murder of Kenny Phung was committed in furtherance of the conspiracy and was an offense that should have been anticipated by the defendant as a result of carrying out the conspiracy, and unless you so find, then you cannot convict the defendant of the offense of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of July, 2009, in Harris County, Texas, the defendant, Andre Emanuel, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Kenny Phung, intentionally cause the death of Kenny Phung by shooting Kenny Phung with a deadly weapon, namely a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 15th day of July, 2009, in Harris County, Texas, Moses Reed and/or Jermaine Clifton A.K.A "Northside", did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Kenny Phung, intentionally cause the death of Kenny Phung by shooting Kenny Phung with a deadly weapon, namely a firearm, and that the defendant, Andre Emanuel, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Moses Reed and/or Jermaine Clifton A.K.A "Northside" to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that the defendant, Andre Emanuel, and Moses Reed and/or Jermaine Clifton A.K.A "Northside" entered into an agreement to commit the felony offense of robbery of Kenny Phung, and pursuant to that agreement, if any, they did carry out their conspiracy and that in Harris County, Texas, on or about the 15th day of July, 2009, while in the course of committing such robbery of Kenny Phung, Moses Reed and/or Jermaine Clifton A.K.A "Northside" intentionally caused the death of Kenny Phung by shooting Kenny Phung with a deadly weapon, namely a firearm, and the murder of Kenny Phung was committed in furtherance of the conspiracy and was an offense that should have been anticipated by the defendant as a result of carrying out the conspiracy, 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, or if you are unable to agree, you will next consider whether the defendant is guilty of the lesser offense of aggravated robbery.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of July, 2009, in Harris County, Texas, the defendant, Andre Emanuel, did then and there unlawfully, while in the course of committing or attempting to commit theft of property owned by Kenny Phung and with intent to obtain or maintain control of the property, intentionally or knowingly cause bodily injury to Kenny Phung and the defendant

did then and there use or exhibit a deadly weapon, namely a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 15th day of July, 2009, in Harris County, Texas, Moses Reed and/or Jermaine Clifton A.K.A "Northside," did then and there unlawfully, while in the course of committing or attempting to commit theft of property owned by Kenny Phung and with intent to obtain or maintain control of the property, intentionally or knowingly cause bodily injury to Kenny Phung, and Moses Reed and/or Jermaine Clifton A.K.A "Northside" did then and there use or exhibit a deadly weapon, namely a firearm, and that the defendant, Andre Emanuel, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Moses Reed and/or Jermaine Clifton A.K.A "Northside" to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that on or about the 15th day of July, 2009, in Harris County, Texas, the defendant, Andre Emanuel, did then and there unlawfully, while in the course of committing or attempting to commit theft of property owned by Kenny Phung, and with intent to obtain or maintain control of the property, intentionally or knowingly cause bodily injury to Kenny Phung, by shooting Kenny Phung with a deadly weapon, namely a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 15th day of July, 2009, in Harris County, Texas, Moses Reed and/or Jermaine Clifton A.K.A "Northside," did then



and there unlawfully, while in the course of committing or attempting to commit theft of property owned by Kenny Phung, and with intent to obtain or maintain control of the property, intentionally or knowingly cause bodily injury to Kenny Phung, by shooting Kenny Phung with a deadly weapon, namely a firearm, and that the defendant, Andre Emanuel, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Moses Reed and/or Jermaine Clifton A.K.A "Northside" to commit the offense, if he did, then you will find the defendant guilty of aggravated robbery.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder on the one hand or aggravated robbery 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 offense of aggravated robbery.

If you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge you will acquit the defendant and say by your verdict "Not Guilty."

An oral statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion.

No oral statement made by an accused juvenile as a result of custodial interrogation (while the accused was in jail or other place of confinement or in the custody of a peace officer) is admissible as evidence against him in any criminal proceeding unless:

(a) the statement is made orally and is recorded by an electronic recording device, including a device that records images, and the statement shows that the accused, prior to making the statement, received from a magistrate a warning that:

(1) he has the right to remain silent and not make any statement at all and that any statement he makes may be used in evidence against him;

(2) he has the right to have a attorney present to advise him prior to or during any questioning;

(3) if he is unable to employ an attorney, he has the right to have an attorney appointed to counsel him before to or during any questioning or interviews with peace officers or attorneys representing the state;

(4) he has the right to terminate the interview at any time;

(b) the warning by the magistrate must be part of the recording, and the child must knowingly, intelligently and voluntarily waive each right stated in the warning.

c) the recording device must be capable of making an accurate recording and the operator of the device must be competent to use

the device and the recording must be accurate and the recording must not be altered unless allowed by the court, and

(d) each voice on the recording must be identified.

(7) the juvenile must knowingly, intelligently and voluntarily waive these rights prior to and during the making of the statement.

So in this case, if you find from the evidence, or if you have a reasonable doubt thereof, that prior to the time the defendant gave the alleged statement to X. Avila, if he did give it, the foregoing provisions were not complied with you will wholly disregard the alleged statement and not consider it for any purpose. But if you find beyond a reasonable doubt that the defendant was warned in the respects outlined above before making a statement, you still may not consider it as evidence in this case unless you find beyond a reasonable doubt that prior to and during the making of the statement, that the defendant knowingly, intelligently and voluntarily waived the rights set out above. Unless you so find, or if you have a reasonable doubt thereof, you will not consider the statement for any purpose.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a right 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 to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

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."

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 shall receive in these written instructions, and you must be governed thereby.

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.

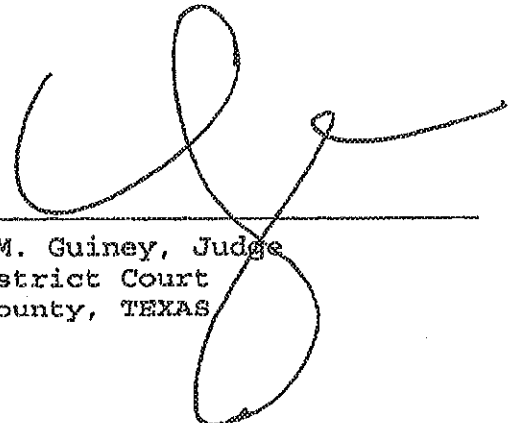
During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

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 and prepared 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.

Your sole duty at this time is to determine the guilt or innocence of the defendant under the indictment in this cause and

restrict your deliberations solely to the issue of guilt or innocence of the defendant.

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



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Kristin M. Guiney, Judge  
179th District Court  
Harris County, TEXAS

CAUSE NO. 1273042

THE STATE OF TEXAS

§ IN THE 179TH DISTRICT COURT

VS.

§ OF HARRIS COUNTY, TEXAS

ANDRE EMANUEL

§ JULY TERM, A. D., 2013

CHOOSE ONE

"We, the Jury, find the defendant, Andre Emanuel, not guilty."

*Gerardine A. Shaw*

Presiding Juror

*Gerardine A. Shaw*

(Please Print) Presiding Juror

"We, the Jury, find the defendant, Andre Emanuel, guilty of capital murder, as charged in the indictment."

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Presiding Juror

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(Please Print) Presiding Juror



"We, the Jury, find the defendant, Andre Emanuel, guilty of aggravated robbery."

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Presiding Juror

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(Please Print) Presiding Juror