

No. 09-DCR-52456

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
VS.	§	FORT BEND COUNTY, TEXAS
MICHAEL DESHAWN WINFREY	§	240 th JUDICIAL DISTRICT

COURT'S CHARGE TO THE JURY

The defendant, MICHAEL DESHAWN WINFREY, stands charged by indictment with the offense of Capital Murder, alleged to have been committed on or about April 24, 1994, in Fort Bend County, Texas. To this charge, the defendant has pleaded not guilty.

I.

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

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

II.

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

"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" 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.

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

"Theft" as used herein is the unlawful appropriation of the corporeal personal property of another with the intent to deprive such person of said property.

"Appropriation" and "appropriate," as those terms are used herein, 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" as used herein means tangible or intangible personal property or documents, including money that represents or embodies anything of value.

"Deprive" as used herein means to withhold property from the owner permanently.

"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 deception or coercion or force or threats.

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

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

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.

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.

III.

Now, if you find from the evidence beyond a reasonable doubt that on or about April 24, 1994, in Fort Bend County, Texas, the defendant, MICHAEL DESHAWN WINFREY, did then and there while in the course of attempting to commit or committing

the robbery of Jeffery Brown intentionally caused the death of Jeffery Brown, by shooting Jeffery Brown with a firearm, then you will find the defendant, Michael Deshawn Winfrey, guilty of Capital Murder as charged in the indictment.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof you will find the defendant "not guilty".

IV.

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.

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

You are 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 that the defendant is guilty of the offense charged against him, and even then you cannot convict unless the testimony of the accomplice is corroborated by other evidence tending to connect the defendant with the offense charged. The corroboration, if any, is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

Therefore, if you find from the evidence beyond a reasonable doubt that Michael Deshawn Winfrey, in Fort Bend County, Texas, on or about the 24th day of April 1994

did then and there while attempting to commit or committing the robbery of Jeffery Brown intentionally caused the death of Jeffery Brown by shooting Jeffery Brown with a firearm, but you find from the evidence beyond a reasonable doubt that the witness Dalton Boudreaux or Kenneth Mouton did not know of the intent, if any, of Michael Deshawn Winfrey to cause the death of Jeffery Brown by shooting him with a firearm in the course of committing robbery, or even if Dalton Boudreaux or Kenneth Mouton had knowledge of such intent of Michael Deshawn Winfrey, that Dalton Boudreaux or Kenneth Mouton did not act with the intent to promote or assist the commission of the offense by Michael Deshawn Winfrey by soliciting, encouraging, directing, aiding, or attempting to aid Michael Deshawn Winfrey to commit the offense then you will find that the said witnesses Dalton Boudreaux, or Kenneth Mouton are not accomplices to the offense of capital murder.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find that the witness, Dalton Boudreaux or Kenneth Mouton, was an accomplice to the offense of capital murder.

doubt
If you find from the evidence that the witness, Dalton Boudreaux or Kenneth Mouton was an accomplice then you are instructed that if you find beyond a reasonable doubt that the offense was committed, you cannot convict the defendant, Michael Deshawn Winfrey, of capital murder upon the testimony of whichever witness you may find to be a accomplice, if any, unless you first believe that the testimony is true and shows that the defendant is guilty as charged; and even then you cannot convict the defendant unless you further believe that there is other evidence in this case outside the testimony of whichever witness you may find to be a accomplice, tending to connect the defendant

with the offense committed, if you find that an offense was committed, and tending to establish that the defendant Michael Deshawn Winfrey, committed the offense for which he is charged and then from all the evidence you must believe beyond a reasonable doubt that the defendant is guilty of capital murder. The corroboration, if any, is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

V.

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.

You are instructed that the law provides that the election by the defendant not to testify shall not be taken as circumstance against him, and you must not allude to, comment on, or discuss in your retirement the election of the defendant not to testify in this cause, nor will you refer to or discuss any matter not before you in evidence, and any juror doing so may be guilty of Contempt of Court.

If any juror starts to mention the defendant's election not to testify in this case, then it is the duty of the other jurors to stop him at once.

VI.

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 the guilt of 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.

In all criminal cases the burden of proof rests upon the State throughout the trial and never shifts to the defendant. 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 the defendant and say by your verdict "Not Guilty".

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.

After argument of counsel, you will retire and select one of your members as your presiding juror. 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 presiding juror sign his or her name to the particular form that conforms to your verdict.

No one has any authority to communicate with you except the officer who has you in charge. 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.

Your deliberations at this time are limited to the issue of guilt or innocence of the defendant of the offense charged, and you are not authorized to pass upon the punishment, if any, to be imposed.

After you have retired, you may communicate with this court in writing through the officer who has you in charge. Do not attempt to talk to the officer who has you in

charge, or the attorneys, or the court, or anyone else concerning any question you may have. After you have reached a unanimous verdict, the presiding juror will certify thereto by filling in the appropriate form attached to this charge and signing his ^{or her} name as presiding juror. After argument of counsel, you may retire to consider your verdict.

Thomas R. Culver III

Hon Thomas R. Culver III
Judge Presiding
240th District Court

FILED

JUL 28 2011

AT

3:00 PM
Annie Renee Elliott
Clerk District Court, Fort Bend Co., TX

No. 09-DCR-52436

THE STATE OF TEXAS

VS.

MICHAEL DESHAWN WINFREY

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IN THE DISTRICT COURT OF
FORT BEND COUNTY, TEXAS
240th JUDICIAL DISTRICT

VERDICT OF THE JURY

We, the Jury, find the defendant, Michael Deshawn Winfrey "Not Guilty" of Capital Murder as charged in the indictment.

Presiding Juror

No. 09-DCR-52456

THE STATE OF TEXAS

VS.

MICHAEL DESHAWN WINFREY

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IN THE DISTRICT COURT OF
FORT BEND COUNTY, TEXAS
24th JUDICIAL DISTRICT

VERDICT OF THE JURY

We, the Jury, find the defendant, Michael Deshawn Winfrey "Guilty" of Capital Murder as charged in the indictment.

Shawn Hobbs
Presiding Juror

FILED

JUL 28 2011

AT

Cherie Renee Estick
Clerk District Court, Fort Bend Co., TX