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NO. 2006-1686-C2

THE STATE OF TEXAS                    §            IN THE 54TH DISTRICT COURT  
VS.    §            OF  
ALTON DEGRATE HAWKINS            §            McLENNAN COUNTY, TEXAS

FIRST MAIN CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, Alton Degrate Hawkins, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 27th day of September, 2006, in McLennan County, Texas. The defendant has pleaded not guilty.

Our law provides that 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.

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

- (a) intentionally or knowingly causes bodily injury to another; or
- (b) intentionally or knowingly threatens or places another in fear of

imminent bodily injury or death.

Charge  
FILED  
6th Day of Dec, 2007  
at 9:12 o'clock A M  
KAREN C. MATKIN  
DISTRICT CLERK  
McLennan County, Texas  
By [Signature]  
Deputy



Verdict  
FILED  
6th Day of Dec, 2007  
at 2:45 o'clock P M  
KAREN C. MATKIN  
DISTRICT CLERK  
McLennan County, Texas  
By [Signature]  
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 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.

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

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

"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.

"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 the property.

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of causing 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.

"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.

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.



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

All persons are presumed to be innocent and no person can 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.

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 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.

54

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.

Each party to an offense may be charged with the commission of the offense.

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 being a party to an offense.

6

If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, then 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. Capital murder, murder, robbery, and attempted robbery are felonies.

By the term "conspiracy", as used in these instructions, is meant an agreement between two or more persons, with intent that a felony be committed, 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.

7

Now, if you find from the evidence beyond a reasonable doubt that Alton Degrade Hawkins, Tony Johnson and Jason House entered into a conspiracy to rob Joel Alvarez Perez, and that pursuant thereto they did carry out, or attempt to carry out, such conspiracy to rob Joel Alvarez Perez in that on or about the 27<sup>th</sup> day of September, 2006, in McLennan County, Texas, in the course of committing theft of property from Joel Alvarez Perez, and with intent to obtain or maintain control of said property, Tony Johnson intentionally caused bodily injury to Joel Alvarez Perez, to wit, death, by shooting Joel Alvarez Perez with a firearm, to wit, a gun, intending thereby to kill the said Joel Alvarez Perez, and that the defendant, Alton Degrade Hawkins, pursuant to said conspiracy, if any, with the intent to promote and assist Tony Johnson in the commission of said robbery, then and there, at the time of the shooting, if any, was acting with and aiding the said Tony Johnson in the execution or attempted execution of said robbery of Joel Alvarez Perez, if any, and that the shooting of Joel Alvarez Perez followed in the execution of the conspiracy, if any of Alton Degrade Hawkins, Tony Johnson and Jason House to rob Joel Alvarez Perez of his property, and that the shooting of Joel Alvarez Perez by Tony Johnson, if there was such, was done in furtherance of the conspiracy to rob Joel Alvarez Perez, if any, and was an offense that should have been anticipated as a result of the carrying out of the conspiracy, then you will find the defendant, Alton Degrade Hawkins, guilty of capital murder.

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

28



To warrant a conviction of the defendant, Alton Degrade Hawkins, of capital murder, you must find from the evidence beyond a reasonable doubt not only that Alton Degrade Hawkins, acting as a party with Tony Johnson and Jason House, on the occasion in question, were engaged in the commission of the felony offense of robbery or attempted robbery of Joel Alvarez Perez, as defined in these instructions, but also that during the commission of the robbery or attempted robbery, if any, Tony Johnson shot Joel Alvarez Perez with the intention of killing him. Unless you find from the evidence beyond a reasonable doubt that Tony Johnson, on the occasion in question, intended to kill the said Joel Alvarez Perez when he shot him, if he did, and that such act, if any, was committed in the course of committing or attempting to commit the offense of robbery of Joel Alvarez Perez, you cannot convict Alton Degrade Hawkins of the offense of capital murder. If you have a reasonable doubt thereof, you will acquit Alton Degrade Hawkins of capital murder.

9

You are further instructed that if you believe that Alton Degrade Hawkins was not acting as a party with the said Tony Johnson and/or Jason House in robbing, or attempting to rob, Joel Alvarez Perez, if he did, or that Alton Degrade Hawkins had not previously entered into an agreement with said Tony Johnson and/or Jason House to rob the said Joel Alvarez Perez, or if you have a reasonable doubt thereof, you will acquit the defendant, Alton Degrade Hawkins.

10

Before you would be warranted in convicting the defendant, Alton Degrade Hawkins of Capital Murder, you must find from the evidence beyond a reasonable doubt as to each element. Therefore, unless you so find beyond a reasonable doubt that the Defendant acting as a party, was engaged in the commission, or attempted commission of the felony offense of Robbery, if any, and unless you find beyond a reasonable doubt that Alton Degrade Hawkins acting as a party, did intentionally cause the death of Joel Alvarez Perez, by shooting him with a firearm, if he did, and unless you find beyond a reasonable doubt that Alton Degrade Hawkins acting as a party, during the commission, or attempted commission of robbery, if any, and the said Joel Alvarez Perez was shot, if he was, with the intention of thereby causing his death, you cannot convict the Defendant of Capital Murder.

11

Now if you find from the evidence beyond a reasonable doubt that on or about the 27th day of September, 2006, in McLennan County, Texas, Tony Johnson, individually or acting as a party with Jason House, did then and there intentionally cause the death of an individual, namely, Joel Alvarez Perez, by shooting him with a firearm, and that Tony Johnson, individually or acting as a party with Jason House, was then and there in the course of committing or attempting to commit the offense of robbery of Joel Alvarez Perez; or that Tony Johnson and/or Jason House did then and there intentionally cause the death of an individual, namely, Joel Alvarez Perez, by shooting him with a firearm, and the said Tony Johnson and/or Jason House were then and there in the course of committing or attempting to commit the offense of robbery, and that the defendant, Alton Degrade Hawkins, knew of the unlawful intent, if any, of Tony Johnson and/or Jason House, to intentionally cause the death of Joel Alvarez Perez by shooting him with a firearm, and commit or attempt to commit the offense of robbery, and that Alton Degrade Hawkins acted with intent to promote or assist the commission of the offense by soliciting, encouraging, directing, aiding or attempting to aid Tony Johnson and/or Jason House to commit the offense of Capital Murder, then you will find the defendant, Alton Degrade Hawkins, guilty of the offense of Capital Murder as alleged in the indictment.

Unless you so find beyond a reasonable doubt or if you have a reasonable doubt thereof, you will acquit the defendant, Alton Degrade Hawkins of Capital Murder, and say by your verdict not guilty.

The mere presence of defendant, Alton Degrade Hawkins, at the scene of the offense charged, if any, would not constitute him being a party to the offense charged, and if you should find from the evidence beyond a reasonable doubt that Tony Johnson individually or acting as a party with Jason House did then and there intentionally kill Joel Alvarez Perez as alleged in the indictment aforesaid, and that Tony Johnson and/or Jason House were then and there in the course of committing, or attempting to commit robbery as alleged, but you further find and believe from the evidence, or you have a reasonable doubt thereof, that the defendant, Alton Degrade Hawkins, did not act with intent to promote or assist the commission of the said offense of Murder, if any, by shooting Joel Alvarez Perez, while in the commission of robbery, or attempting to commit robbery, if any, by encouraging, soliciting, directing, aiding, or attempting to aid Tony Johnson and/or Jason House in the commission of said offense, then you will find defendant, Alton Degrade Hawkins, not guilty of Capital Murder.

You are instructed that Tony Johnson and/or Jason House were accomplices, if any offense was committed as alleged in the indictment, and you cannot convict the defendant upon Jason House's testimony unless you first believe that Jason House's testimony is true and shows the guilt of the defendant as charged in the indictment, and then you cannot convict the defendant unless the accomplice testimony of Jason House 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 an offense, but it must tend to connect the defendant with its commission.

Therefore, bearing in mind that Tony Johnson and/or Jason House were accomplices, if any offense was committed, you are instructed that you cannot find the defendant, Alton Degrade Hawkins, guilty of the offense charged against him upon Jason House's testimony unless you first believe that said testimony is true and that it shows the defendant is guilty as charged in the indictment; and then you cannot convict the defendant unless you further believe that there is other evidence in the case outside of the evidence of each accomplice tending to connect the defendant with the offense committed, if you find that an offense was committed, and the corroboration is not sufficient if it merely shows the commission of an offense, but it must tend to connect the defendant with its commission, and then from all the evidence you must believe beyond a reasonable doubt that the defendant is guilty of the offense charged against him.

15

You are instructed that certain testimony was admitted in evidence before you in regard to the defendant's having been charged and convicted of offenses other than the one for which he is now on trial. Such testimony cannot be considered by you against the defendant as any evidence of guilt in this case. Said testimony was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the weight you will give his testimony, and you will not consider the same for any other purpose.

You are also instructed that certain testimony was admitted in evidence before you in regard to certain witnesses having been convicted of other offenses. Said testimony was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the weight you will give their testimony, and you will not consider the same for any other purpose.



You are instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship existing between the accused and the deceased, if any, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense, if any.

After you retire to your jury room you will select one of your members as your Foreperson. Your foreperson will certify to your verdict by using the appropriate form attached hereto, and signing the same as Foreperson. If you agree upon a verdict, it must be by unanimous vote.

Until you have finished your deliberations, you shall not communicate to anyone outside the jury room how the jury may stand numerically in its voting, nor how the jury may stand numerically on any issue before you, unless you are first called upon by the Court to do so.

Any communications from the jury to the Court must be written, prepared by the Foreperson, signed by the Foreperson, and submitted to the Court through the Bailiff. Therefore, if you wish to communicate with the Court about any matter, then your Foreperson shall prepare your communication in writing, then sign it, and deliver it to the bailiff, and the bailiff will deliver it to the Court.

Do not let personal bias, prejudice, sympathy or resentment on your part, or any such personal emotion on your part, enter into your deliberations or affect your verdict in this case.

18

In your deliberations, you must not relate to your fellow jurors any personal experience of your own, nor shall you relate any occurrence, happening or event known to you, and not shown by the evidence in this case. And you shall not speculate on, nor concern yourself with matters not shown by the evidence in this case and about which you are not called upon to make any decision. In all of your deliberations, you will confine yourselves strictly to the evidence introduced before you in this trial under the rulings of the Court, and the definitions and instructions given to you by the Court. If any member of the jury attempts a violation of these instructions, the other members shall stop them at once. If the juror persists in the violation, the foreperson shall immediately report that fact to the Court.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and the weight to be given to their testimony, but in matters of law you must be governed by the instructions, definitions, and the rulings of the Court.

You shall have this written charge with you when you go to the jury room.

Upon your written request therefor, any exhibits admitted as evidence in this case will be furnished to you.

  
\_\_\_\_\_  
JUDGE

18

JURY VERDICT

We, the jury, find the defendant, Alton Degrade Hawkins, guilty of the offense of Capital Murder, as alleged in the indictment.

  
\_\_\_\_\_  
Foreperson

\* \* \*

We, the jury, find the defendant, Alton Degrade Hawkins, not guilty of the offense of Capital Murder, as alleged in the indictment.

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Foreperson

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20