

You will, therefore, not consider the failure of the defendant to 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.

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.

You must not consider facts that have not been introduced into evidence or legal principles not contained in this charge. It is improper for a juror to discuss or consider anything which they know or have learned outside of the testimony presented to you, and the law contained in this charge. If a juror should discover that they have any outside information, they must not mention this information to any other juror, nor consider it themselves in arriving at a verdict.

You shall not discuss or consider the punishment, if any, which may be assessed against the defendant in the event he is found guilty.

Questions and comments of the attorneys do not constitute testimony and must not be considered as evidence. You must also disregard any statement of the attorneys that is inconsistent with the law contained in this charge.

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.

I.

A person commits the offense of murder if the person intentionally causes the death of an individual.

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

A person commits the offense of capital murder if he commits murder, as defined above, 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 as hereinafter defined, and with intent to obtain or maintain control of the property, he:

- (1) intentionally, knowingly or recklessly causes bodily injury to another; or
- (2) 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 of, or in immediate flight after the attempt or commission of theft.

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

"Appropriate" means:

- (1) to bring about a transfer or purported transfer of title to or other non-possessory interest in property, whether to the actor or another; or
- (2) 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, or a greater right to possession of the property than the actor.

"Property" means:

- (A) tangible or intangible personal property including anything severed from land; or
- (B) 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:

- (A) induced by deception or coercion; or,
- (B) given by a person the actor knows is not legally authorized to act for the owner; or
- (C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions; or,
- (D) given solely to detect the commission of an offense.

"Attempt" means to commit an act with 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.

A person commits the offense of Aggravated Robbery if he commits the offense of robbery as heretofore defined, and he:

- (1) uses or exhibits a deadly weapon.

A firearm is a deadly weapon.

III.

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.

A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

You are instructed that the State is not bound by the date alleged in the indictment as long as it proves the offense occurred on a date prior to the presentment of the indictment and within

the Statute of Limitations. You are instructed that there is no Statute of Limitations for Capital Murder.

IV.

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.

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 commission of the offense.

All traditional distinctions between accomplices and principals are abolished and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

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 does not constitute being 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. Capital Murder, Robbery and Aggravated Robbery are felonies.

By the term "conspiracy" as used in these instructions, is meant any 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, and 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.

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

An "overt act" is any act knowingly committed by one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It must, however, be an act which follows and tends toward accomplishment of the plan or scheme and must be knowingly done in furtherance of some object or purpose of the conspiracy.

The word "conduct" means an act or omission and its accompanying mental state.

In a 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.

V.

A conviction cannot be had solely 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, if any. Even then, you cannot convict the defendant unless you believe that the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense, if any. The corroboration is not sufficient if it merely shows the

commission of the offense, if any. The corroboration must tend to connect the defendant with the commission of the offense, if any.

You are further instructed that mere presence of the accused in the company of an accomplice witness shortly before or after the time of the offense, if any, is not, in itself, sufficient corroboration of the accomplice witness' testimony.

You are charged that Daniel Lee Carruth was an accomplice if any offense was committed, and you are instructed that you cannot find the defendant guilty solely upon the testimony of Daniel Lee Carruth unless you first believed that the testimony of the said Daniel Lee Carruth is true and that it shows the defendant is guilty as charged in the indictment; and even then you cannot convict the defendant, LARRY DONNEL BOSWELL JR. unless you further believe that there is other evidence in this case, outside the evidence of said Daniel Lee Carruth 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.

VI.

You are further instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, of Ricky Brandon, and the previous relationship existing between the accused and Ricky Brandon, 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 alleged in the indictment.

You are instructed that 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 intent, knowledge, motive, absence of mistake or accident 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.

You are instructed that in order to convict the Defendant of the offense of capital murder you must find from the evidence beyond a reasonable doubt that the murder, if any, occurred in the course of the commission or attempted commission of the offense of robbery, as herein defined, in that it occurred in an attempt to commit, during the commission of, or in the immediate flight after the attempt or the commission of the offense of robbery.

VII.

Now bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt that on or about the 7th day of July, 2012, in the County of Bell, State of Texas, as alleged in the indictment, the Defendant, LARRY DONNEL BOSWELL JR., did then and there, either acting alone or as a party with Fred Lee Williams Jr., Stephon Mitchell Lewis and Kevin Lee Stafford, as that term has been previously defined, in the course of attempting to commit or committing robbery, intentionally cause the death of an individual, Ricky Brandon, by shooting him with a deadly weapon to wit: a firearm, you will find the defendant GUILTY 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 of the offense of Capital Murder and so say by your verdict, NOT GUILTY. If you do acquit the defendant of the

offense of Capital Murder you will then proceed to consider whether the defendant is guilty of the lesser included offense of Aggravated Robbery.

VIII.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the Defendant, LARRY DONNEL BOSWELL JR., on or about the 7th day of July, 2012 in the County of Bell, State of Texas, as alleged in the indictment, either alone or as a party with Fred Lee Williams Jr., Stephon Mitchell Lewis and Kevin Lee Stafford, as that term has been previously defined, while in the course of committing theft and with the intent to obtain or maintain control of property of Jonic Arrington, to-wit: money, did then and there by using and exhibiting a deadly weapon, to-wit: a firearm, intentionally and knowingly threaten or place Jonic Arrington in fear of imminent bodily injury or death, you will find the defendant guilty of the offense of Aggravated Robbery. However, if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Aggravated Robbery and say by your verdict "not guilty".

After the reading of this Charge, you shall not be permitted to separate from each other, nor shall you talk with anyone not of your jury. After argument of counsel, you will retire and select one of your members as your foreman. It is his or her duty to preside at your deliberations and to vote with you in arriving at a unanimous verdict. After you have arrived at your verdict, you may use one of the blanks attached hereto by having your foreman sign his or her name to the particular blank that conforms to your verdict.


JUDGE PRESIDING

FILED

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NO. 72,804

THE STATE OF TEXAS

*

IN THE DISTRICT COURT

VS.

*

OF BELL COUNTY, TEXAS

LARRY DONNEL BOSWELL JR.

*

27TH JUDICIAL DISTRICT

JOANNA STATON
DISTRICT COURT
BELL COUNTY, TX
BY [Signature] DEPUTY

VERDICT OF THE JURY

We, the Jury, find beyond a reasonable doubt, the Defendant, LARRY DONNEL BOSWELL JR., GUILTY of the lesser included offense of Aggravated Robbery.

FOREMAN

We, the Jury, find the Defendant NOT GUILTY of the lesser included offense of Aggravated Robbery.

FOREMAN