

NO. F11-55034-P

THE STATE OF TEXAS (IN THE 203RD JUDICIAL
VS. (DISTRICT COURT OF
WAAD JAJEES HABIB (DALLAS COUNTY, TEXAS

MEMBERS OF THE JURY:

The defendant, WAAD JAJEES HABIB, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 4th day of May, A.D., 2011, in Dallas County, Texas. The defendant has pleaded not guilty.

Our law provides that I submit the following charge to you in this case. This charge contains all the law necessary to enable you to reach a verdict. If any evidence was presented to raise an issue, the law on that issue must be provided.

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

A person commits the offense of capital murder when such person commits murder, as defined above, and the person murders more than one person during the same criminal transaction.

"Criminal transaction" means a continuous and uninterrupted chain of conduct occurring over a very short period of time in a rapid sequence of unbroken events.

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.

"Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

"Person" means an individual.

"Death" includes, for an individual who is an unborn child, the failure to be born alive.

"Deadly weapon" means a firearm.

"Firearm" means any device designed, made or adapted to expel a projectile through a barrel by using energy generated by an explosion or burning substance or any device readily convertible to that use.

Deadly Force in Defense of Person

A person is justified in using force against another in self-defense when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force. The use of force against another is not justified in response to verbal provocation alone. The use of force against another is not justified if the actor provoked the other's use or attempted use of unlawful force, unless: 1) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

2) the other nevertheless continues or attempts to use unlawful force against the actor.

A person is justified in using deadly force against another if he is justified in using force against the other in self-defense, and when and to the degree he reasonably believes the deadly force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly force, or to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery or aggravated robbery.

When a person is attacked with unlawful deadly force, or he reasonably believes he is under attack or attempted attack with unlawful deadly force, and there is created in the mind of such person a reasonable expectation or fear of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, viewed from his standpoint at the time, to protect himself from such attack or attempted attack. It is not necessary that there be an actual attack or attempted attack, as a person has a right to defend his life and person from apparent danger as fully and to the same extent as he would had the danger been real, provided that he acted upon a reasonable apprehension of danger, as it appeared to him from his standpoint at the time, and that he reasonably believed such force was immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

In determining the existence of real or apparent danger, you should consider all of the facts and circumstances in the case in

evidence before you, and the words, acts, and conduct, if any, of Salah Zaredeh and Eid Faltaous, at the time of and prior to the time of the alleged killing and the previous relationship existing between the defendant and ^{Salā Zardā} Salah Zaredeh and ^{Eed Faltaus} Eid Faltaous, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the occurrence in question, and in considering such circumstances, you should place yourselves in the defendant's position at that time and view them from his standpoint alone.

A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and is not engaged in criminal activity at the time the deadly force is used, is not required to retreat before using deadly force as that term is defined herein.

"Deadly force" means force that is intended or known by the actor to cause, or 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.

"Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.

In determining whether an actor reasonably believed that the use of deadly force was immediately necessary, you may not

consider whether the actor failed to retreat if the actor had a right to be present at the location where the deadly force was used, the actor did not provoke the person against whom the deadly force was used, and the actor was not engaged in criminal activity at the time the deadly force was used.

Therefore, if you find beyond a reasonable doubt that the defendant, Waad Jejees Habib, did cause the death of Salah Zardeh and Eid Faltaous by shooting Salah Zardeh and Eid Faltaous with a firearm, a deadly weapon, but you further find, or have a reasonable doubt thereof, that under the circumstances as the defendant reasonably believed them to be, as viewed from the standpoint of the defendant at the time, it reasonably appeared to the defendant that he was under attack from Salah Zardeh and Eid Faltaous and that the defendant reasonably believed that his life or person was in danger and there was created in his mind a reasonable expectation or fear of death or serious bodily injury from the use of unlawful deadly force by Salah Zardeh and Eid Faltaous, and that acting under such apprehension, the defendant reasonably believed that the use of deadly force on his part was immediately necessary to protect himself against Salah Zardeh's and Eid Faltaous' use or attempted use of unlawful deadly force, and in so believing he shot Salah Zardeh and Eid Faltaous with a firearm, a deadly weapon, then you will acquit the defendant on the grounds of self defense and say by your verdict "not guilty."

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, Waad Jajeess Habib, on or about the 4th day of May A.D., 2011, in Dallas County, Texas did unlawfully then and there intentionally or knowingly cause the death of an individual, to-wit: Salah Zardeh, by shooting Salah Zardeh with a firearm, a deadly weapon, and during the same criminal transaction said defendant did then and there intentionally or knowingly cause the death of another individual, to-wit: Eid Faltaous, by shooting Eid Faltaous with a firearm, a deadly weapon, you will find the defendant guilty of the offense of capital murder as charged in the indictment.

If you are unable to agree, you will next consider the lesser included offense of manslaughter.

Our law provides that a person commits the offense of manslaughter when he recklessly causes the death of an individual.

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.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, Waad Jajees Habib, on or about the 4th day of May A.D., 2011, in Dallas County, Texas did unlawfully then and there recklessly cause the death of an individual, to-wit: Salah Zardeh, by shooting Salah Zardeh with a firearm, a deadly weapon, and during the same criminal transaction said defendant did then and there recklessly cause the death of another individual, to-wit: Eid Faltaous, by shooting Eid Faltaous with a firearm, a deadly weapon, you will find the defendant guilty of the offense of manslaughter as included in the indictment.

If you do not so believe or if you have a reasonable doubt thereof, you will acquit the defendant of the lesser included offense of manslaughter as included in the indictment.

If you find from the evidence beyond a reasonable doubt that the defendant is guilty of capital murder or manslaughter, but you have a reasonable doubt as to which of the said offenses he is guilty, then you should resolve that doubt in the defendant's favor and find him guilty of the lesser included offense of manslaughter as included in the indictment.

If you have a reasonable doubt or you cannot agree as to whether the defendant is guilty of either of the offenses defined to you in this charge, then you will find the defendant "not guilty."

You are further instructed that an indictment is no evidence of guilt, and in this case you shall not consider the indictment herein as any evidence of guilt, if any.

In all criminal cases, the burden of proof is on the State. 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, indicted for or otherwise charged with an offense gives rise to no inference of guilt at his trial.

You are instructed that if there is any evidence before you of the defendant having committed any other offenses or bad acts, other than the offense alleged against him in the indictment in this case, you cannot consider such evidence for any purpose unless you first find and believe beyond a reasonable doubt that the defendant committed such other offenses or bad acts, if any, and even then, you may only consider such evidence to aid you in determining, if it does aid you, the defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

You are not to be influenced by what you may suppose the opinion of the trial judge to be on any fact issue in the case. Under the law, the trial judge has no right to express such an opinion by word, deed, or gesture. The judge also must not express any desire as to the trial's outcome. If you have seen or heard anything during the trial which you have interpreted as such an opinion or desire, you are instructed to disregard it.

You are to disregard any statement of counsel made during the trial or during argument not supported by the evidence and any statement of law made by counsel not in harmony with the law as given to you in these instructions.

All evidence in the case comes from the witness stand, and no juror may communicate anything heard about the case from any other source. You must not discuss any matter or issue not in evidence before you. You must not talk about the case to anyone outside your jury.

You must reach your verdict as a result of deliberation about the evidence and not as a result of drawing lots or any other method of chance.

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 must receive the law from the court as set out in this charge and be governed by it.

After argument of counsel, you will go to the jury room and select one of your members as your presiding juror. As the title suggests, it is the presiding juror's duty to preside at your deliberations and to vote with you in reaching a verdict. Your verdict must be unanimous. After you have reached your verdict, your presiding juror will sign the appropriate form attached to this charge.



TERESA HAWTHORNE
Judge, 203rd District Court

VERDICT FORM FOR CAPITAL MURDER

We, the jury, unanimously find the defendant guilty of the offense of capital murder as charged in the indictment.

A handwritten signature in cursive script, appearing to read "Sarah M. S.", written over a horizontal line.

PRESIDING JUROR

VERDICT FORM FOR MANSLAUGHTER

We, the jury, unanimously find the defendant guilty of the lesser included offense of manslaughter as included in the indictment.

PRESIDING JUROR

VERDICT FORM FOR NOT GUILTY

We, the jury, unanimously find the defendant not guilty.

PRESIDING JUROR

NO. F11-55034-P

THE STATE OF TEXAS

(IN THE 203RD JUDICIAL

VS.

(DISTRICT COURT OF

WAAD JAJEES HABIB

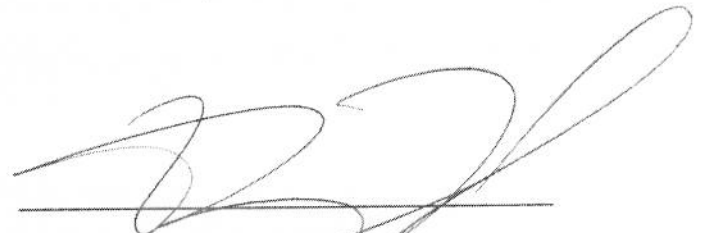
(DALLAS COUNTY, TEXAS

MEMBERS OF THE JURY:

You have made the following request in writing:

(See attached.)

You are instructed that you have been given all of the law and instruction that this Court is, under the law, allowed to give to you.

A handwritten signature in black ink, appearing to read 'Teresa Hawthorne', is written over a horizontal line. The signature is stylized and cursive.

TERESA HAWTHORNE

Judge, 203rd Judicial District Court

TRANSLATION OF AUDIO RECORDING

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE INTERPRETER: Listen, this is your last
chance. Solution. I give you a lot of chances. Give me my
money. I'm not asking for all of it, half. If you don't give
it to me, this is your last chance. Solution.

A handwritten signature in cursive script, appearing to read "J. H. Judge". The signature is written in dark ink and is positioned to the right of the numbered lines of text.