

THE STATE OF TEXAS                   §    IN THE 209TH DISTRICT COURT  
VS.                                       §    OF HARRIS COUNTY, TEXAS  
MABRY J. LANDOR, III                 §    FEBRUARY TERM, A. D., 2010

Members of the Jury:

The defendant, Mabry J. Landor, III, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 7th day of December, 2008, in Harris County, Texas. The defendant has pleaded not guilty.

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

A person commits the offense of capital murder if he intentionally or knowingly commits murder, as hereinbefore defined, and the person murders a peace officer who is acting in the lawful discharge of an official duty and who the person knows is a peace officer.

"Peace Officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure.

The following are peace officers:

- (1) sheriffs and their deputies;
- (2) constables and their deputies; and
- (3) marshals or police officers of an incorporated city, town, or village.

"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.

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.

Before you would be warranted in finding the defendant guilty of capital murder of a peace officer, you must find from the evidence beyond a reasonable doubt that:

- (1) the defendant intentionally or knowingly caused the death of Timothy Abernethy by shooting Timothy Abernethy with a firearm; and
- (2) that at the time of the shooting, if any, the deceased, Timothy Abernethy was then and there a peace officer; and
- (3) the defendant then and there knew, at the time of the shooting, if any, that Timothy Abernethy was a peace officer; and
- (4) at the time of the shooting, if any, Timothy Abernethy was acting in the lawful discharge of an official duty.

If you have a reasonable doubt as to the existence of any of the foregoing elements, then you cannot find the defendant guilty of capital murder of a peace officer.

You are instructed that you may consider all relevant facts and circumstances surrounding the death and any previous relationship existing between the accused and Timothy Abernethy, 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.

Now, if you find from the evidence beyond a reasonable doubt that in Harris County, Texas, on or about the 7th day of December, 2008, the defendant, Mabry J. Landor, III, did then and there unlawfully, intentionally or knowingly cause the death of Timothy Abernethy, a peace officer in the lawful discharge of an

official duty, by shooting Timothy Abernethy with a deadly weapon, namely, a firearm, knowing at the time that Timothy Abernethy was a peace officer, 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, you will acquit the defendant and say by your verdict "Not Guilty."

You are instructed that certain evidence was admitted before you in regard to the defendant's having been charged and convicted of an offense or offenses other than the one for which he is now on trial. Such evidence cannot be considered by you against the defendant as any evidence of guilt in this case. Said evidence 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 instructed that a 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 of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless:

(1) An electronic recording, which may include audio, motion picture, videotape, or other visual recording, is made of the statement;

(2) Prior to the statement but during the recording the accused is given the following warning:

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

(b) any statement he makes may be used as evidence against him in court;

(c) he has the right to have a lawyer present to advise him prior to and during any questioning;

(d) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning;

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

(f) the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) the recording device was capable of making an accurate recording, the operator was competent, and the recording is accurate, has not been altered, and reflects that the accused was advised before the interrogation that the interrogation would be recorded; and

(4) all voices on the recording are identified.

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 oral statement or oral confession to Bobby Roberts and/or Brian Harris, if he did give it, the said Bobby Roberts and/or Brian Harris did not warn the defendant in

the respects outlined above, or as to any one of such requirements, then you will wholly disregard the alleged oral confession and not consider it for any purpose nor any evidence obtained as a result thereof; if, however, you find beyond a reasonable doubt that the aforementioned warning was given the defendant prior to his having made such oral statement, if he did make it, still, before you may consider such oral statement as evidence in this case, you must find from the evidence beyond a reasonable doubt that prior to and during such oral statement, if any, the defendant knowingly, intelligently and voluntarily waived the rights hereinabove set out in the said warning, and unless you so find, or if you have a reasonable doubt thereof, you will not consider the oral statement or oral confession for any purpose whatsoever or any evidence obtained as a result of same.

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 foreman or forelady. 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 Foreman or Forelady.

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.

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 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.

After you have reached a unanimous verdict, the foreman or forelady will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as Foreman or Forelady. Following the arguments of counsel, you will retire to consider your verdict.



Michael T. McSpadden, Judge  
209th District Court  
Harris County, TEXAS

**FILED**

Loren Jackson  
District Clerk

APR 06 2010

Time: 10:20 A.M.

Harris County, Texas

By 

Deputy





CAUSE NO. 1194597

THE STATE OF TEXAS  
VS.  
MABRY J. LANDOR, III

§ IN THE 209TH DISTRICT COURT  
§ OF HARRIS COUNTY, TEXAS  
§ FEBRUARY TERM, A. D., 2010

V E R D I C T

"We, the Jury, find the defendant, Mabry J. Landor, III, not guilty."

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Foreman or Forelady of the Jury

"We, the Jury, find the defendant, Mabry J. Landor, III, guilty of capital murder, as charged in the indictment."

  
Foreman or Forelady of the Jury

