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COURT ADMINISTRATION

CAUSE NO. 1087475

THE STATE OF TEXAS                   §    IN THE 232ND DISTRICT COURT  
VS.                                       §    OF HARRIS COUNTY, TEXAS  
MERVYN LOPEZ ALDABA                 §    FEBRUARY TERM, A. D., 2008

Members of the Jury:

A person commits the offense of murder if he:

- (1) intentionally or knowingly causes the death of an individual; or
- (2) intends to cause serious bodily injury and intentionally or knowingly commits an act clearly dangerous to human life that causes the death of an individual.

A person commits the offense of capital murder if he intentionally commits murder, as hereinbefore defined in paragraph (1), and the person intentionally or knowingly causes the death of more than one person during the same criminal transaction.

"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.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 18th day of June, 2006, in Harris County, Texas, the defendant, Mervyn Lopez Aldaba, did then and there unlawfully, during the same criminal transaction, intentionally or knowingly cause the death of Angelito Montemayor by shooting Angelito Montemayor with a deadly weapon, to-wit: a firearm, and intentionally or knowingly cause the death of Eloisa Cruz by shooting Eloisa Cruz with a deadly weapon, to-wit: a firearm, 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 of capital murder and next consider whether the defendant is guilty of the lesser offense of murder.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 18th day of June, 2006, in Harris County, Texas, the defendant, Mervyn Lopez Aldaba, did then and there unlawfully, intentionally or knowingly cause the death of Eloisa Cruz, by shooting Eloisa Cruz with a deadly weapon, namely, a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 18th day of June, 2006, in Harris County, Texas, the defendant, Mervyn Lopez Aldaba, did then and there unlawfully intend to cause serious bodily injury to Eloisa Cruz, and did cause the death of Eloisa Cruz by intentionally or knowingly committing an act clearly dangerous to human life, namely, by shooting Eloisa Cruz with a deadly weapon, namely, a firearm, then you will find the defendant guilty of murder.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of murder.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder on the one hand or murder on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in the defendant's favor and find him guilty of the lesser offense of murder.

If you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge you will acquit the defendant and say by your verdict "Not Guilty."

A person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other person's use or attempted use of unlawful force. The use of force against another is not justified in response to verbal provocation alone.

A person is justified in using deadly force against another if he would be justified in using force against the other in the first place, as above set out, and when he reasonably believes that such deadly force is immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force, and if a reasonable person in the defendant's situation would not have retreated.

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

"Deadly force" means force that is intended or known by the persons using it to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

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. And 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 deadly 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 the facts and circumstances in the case in evidence before you, 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 yourself in the defendant's position at that time and view them from his standpoint alone.

Therefore, if you find from the evidence beyond a reasonable doubt that the defendant, Mervyn Lopez Aldaba, did cause the death of Angelito Montemayor by shooting Angelito Montemayor with

a deadly weapon, to-wit: a firearm, and/or cause the death of Eloisa Cruz by shooting Eloisa Cruz with a deadly weapon, to-wit: a firearm, as alleged, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct or both of Angelito Montemayor and/or Eloisa Cruz it reasonably appeared to the defendant 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 at the hands of Angelito Montemayor and/or Eloisa Cruz, and that acting under such apprehension and reasonably believing that the use of deadly force on his part was immediately necessary to protect himself against Angelito Montemayor and/or Eloisa Cruz's use or attempted use of unlawful deadly force, he shot Angelito Montemayor and/or Eloisa Cruz and that a reasonable person in the defendant's situation would not have retreated, then you should acquit the defendant on the grounds of self-defense; or if you have a reasonable doubt as to whether or not the defendant was acting in self-defense on said occasion and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict, not guilty.

If you find from the evidence beyond a reasonable doubt that at the time and place in question the defendant did not reasonably believe that he was in danger of death or serious bodily injury, or that a reasonable person in the defendant's

situation would have retreated before using deadly force against Angelito Montemayor and/or Eloisa Cruz, or that the defendant, under the circumstances as viewed by him from his standpoint at the time, did not reasonably believe that the degree of force actually used by him was immediately necessary to protect himself against Angelito Montemayor and/or Eloisa Cruz's use or attempted use of unlawful deadly force, then you should find against the defendant on the issue of self-defense.

If there is any evidence before you in this case regarding the defendant's committing an alleged offense or offenses other than an offense included against him in the indictment, you cannot consider such evidence for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offense or offenses, if any, and even then you may only consider the same in determining the motive, intent, preparation, plan, knowledge, or absence of mistake or accident of the defendant in connection with the offense, if any, alleged against him in the indictment and for no other purpose.

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."

If you took notes during the trial, you may rely on your notes during your deliberations. You may discuss the contents of your notes with other jurors. You may not, however, show your



notes to other jurors, and you should not permit other jurors to show their notes to you. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes.

Sometimes during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the Court and request that the Court read the portion of disputed testimony to you from the official transcript. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts.

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. 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.

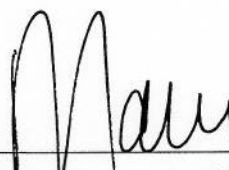
During your deliberations in this case, you must not consider, discuss, or relate any matters not in evidence before you. You should not consider or mention any personal knowledge

or information you may have about any fact or person connected with this case that is not shown by the evidence.

No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written, prepared and signed by the Foreman and shall be submitted to the court through this officer. 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.

Following the arguments of counsel, you will retire to consider your verdict.

  
Mary Lou Keel, Judge  
232nd District Court  
Harris County, TEXAS

**FILED**

Theresa Chang  
District Clerk

APR 30 2008

Time: 2080  
Harris County, Texas

By [Signature]  
Deputy

CAUSE NO. 1087475

THE STATE OF TEXAS  
VS.  
MERVYN LOPEZ ALDABA

§ IN THE 232ND DISTRICT COURT  
§ OF HARRIS COUNTY, TEXAS  
§ FEBRUARY TERM, A. D., 2008

CHOOSE ONE

"We, the Jury, find the defendant, Mervyn Lopez Aldaba, not guilty."

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Foreman of the Jury

\_\_\_\_\_  
(Please Print) Foreman

"We, the Jury, find the defendant, Mervyn Lopez Aldaba, guilty of capital murder, as charged in the indictment."

**FILED**  
Theresa Chang  
District Clerk

MAY 01 2008

Time: 1:55 AM  
Harris County, Texas

By: [Signature]  
Deputy

Mary E. Johnson  
Foreman of the Jury

Mary E. Johnson  
(Please Print) Foreman

"We, the Jury, find the defendant, Mervyn Lopez Aldaba, guilty of murder."

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Foreman of the Jury

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(Please Print) Foreman

