

NO. 8126

THE STATE OF TEXAS
VS.
DONALD DEAN GOWER

*
*
*

IN THE 27TH DISTRICT
COURT OF
LAMPASAS COUNTY, TEXAS

FILED
a.m. 1:47 p.m. oclo

AUG 28 2008

FERRI COX
District Court, Lampasas County
By *[Signature]*

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, DONALD DEAN GOWER, is charged by indictment with the offense of CAPITAL MURDER, alleged to have been committed on or about July 4, 2007, in Lampasas County, Texas. The defendant has pleaded not guilty.

I.

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

II.

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

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 commits the murder for remuneration or the promise of remuneration or employees another to commit murder for remuneration or promise of remuneration.

“Remuneration” means a reward or benefit received because of the murder.

III.

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.

A person is responsible as a party to the offense if the offense is committed by his own conduct, by the conduct of another for which he is responsible, or by both. A person is responsible for an offense committed by the conduct of another if, acting with the 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 a party to the offense.

IV.

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about July 4, 2007 in Lampasas County, Texas, the defendant, DONALD DEAN GOWER, did then and there intentionally or knowingly cause the death of Hidi Lynn Gower by employing another to cause the death of Hidi Lynn Gower for remuneration or the promise of remuneration, to-wit: U.S. Currency, from the defendant, and pursuant to said employment, Chaka Romain Johnson did then and there cause the death of Hidi Lynn Gower by shooting her with a gun, then you will find the defendant guilty of Capital Murder as charged in the indictment.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of Capital Murder and next consider whether he is guilty of the lesser offense of Murder.

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that Chaka Romain Johnson, did intentionally or knowingly cause the death of Hidi Lynn Gower, by shooting Hidi Lynn Gower with a gun, and the defendant then and there knew of the intent of the other to shoot and kill Hidi Lynn Gower, and the defendant acted with intent to promote the commission of the offense by the other, by encouraging, directing, aiding or attempting to aid the other to commit the offense of causing the death of Hidi Lynn Gower, then you will find the defendant guilty of MURDER, a lesser included charge of the indictment.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of Murder and say by your verdict, Not Guilty.

V.

You are further instructed as a part of the law in this case that the indictment against the defendant is not evidence in the case, and that the true and sole use of the indictment is to charge the offense, and to inform the defendant of the offense alleged against him. The reading of the indictment to the jury in the statement of the case of the State against the defendant cannot be considered as evidence or as a circumstance against the defendant in your deliberations.

VI.

An accomplice as the word is used here means anyone connected with the crime charged as a party to the offense or is one who participates with the defendant before, during, or after the commission of the crime. To be an accomplice, there must be some evidence of an affirmative act on the witness' part, to assist in commission of the offense. If the witness cannot be prosecuted for the offense with which the accused is charged,

then the witness is not an accomplice witness as a matter of law. A witness is not an accomplice witness merely because he or she knew of the offense and did not disclose it, or even concealed it. The witness's presence at the scene of the crime does not render that witness an accomplice witness.

The witnesses, Jeremiah Ellison and John Martinez, are accomplices, and you cannot find the defendant guilty upon their in-court testimony unless you first believe that their testimony is true and that it shows the defendant committed the offense as charged against him.

Now, if you believe from the evidence beyond a reasonable doubt that an offense was committed and you further believe from the evidence that Regina Edwards was an accomplice, as the term is defined in the foregoing instructions, then you cannot convict the defendant upon the testimony of the said Regina Edwards, unless you first believe that the testimony of Regina Edwards is true and that it shows the defendant guilty as charged in the indictment.

Even then, you cannot find he committed the offense unless the accomplice's in-court testimony is corroborated by other evidence tending to connect the defendant with the offense. The corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission, and then from all of the evidence you have received in the trial of this case, you must believe beyond a reasonable doubt that the defendant committed the offense charged against him. You are further instructed that one or more accomplices cannot corroborate each other. Such corroborative evidence, if any, must be from some other source than said accomplices as herein above charged.

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.

VII.

The defendant has the election not to testify. The law provides that the election of the defendant not to testify shall not be taken as a circumstance against him, and you must not allude to, comment on, or discuss in your deliberations the election of the defendant not to testify, nor will you refer to or discuss with any other juror during your deliberations anything you might know, or may have heard, concerning the defendant or the case, other than what you have heard from the witness stand during the trial.

VIII.

In deliberating on the cause you are not to refer to or discuss any matter or issue not in evidence before you; and in determining the guilt or innocence of the defendant, you shall not consider the punishment, if any, which may be assessed against the defendant in the event he is found guilty beyond a reasonable doubt.

IX.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, and no juror is permitted to communicate to any other juror anything he may have heard regarding the case or any witness therein, from any source other than the witness stand.

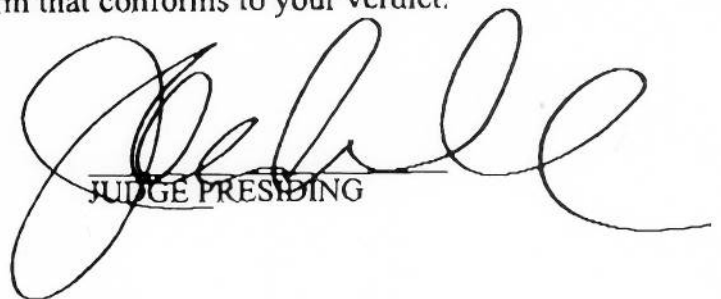
All persons are presumed to be innocent and no person may be convicted of an offense unless each element is proved beyond a reasonable doubt. The presumption of innocence alone is sufficient to acquit the defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt.

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. 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.

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 given to you in this charge, and be governed thereby.

In arriving at your verdict, it will not be proper to fix the same by lot, chance, or any other method other than by a full, fair, and free exercise of the opinions of the individual jurors under the evidence admitted before you.

After reading this Charge, you shall not be permitted to separate from each other, nor shall you talk with anyone not of your jury. Any questions can be directed through the Bailiff to the Court. After argument of counsel, you will retire and select one of your members as your PRESIDING JUROR. 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 the form attached hereto by having your PRESIDING JUROR sign his or her name to the part of the form that conforms to your verdict.


JUDGE PRESIDING

NO. 8126

THE STATE OF TEXAS
VS.
DONALD DEAN GOWER

* IN THE 27TH DISTRICT
* COURT OF
* LAMPASAS COUNTY, TEXAS

VERDICT OF THE JURY

SIGN ONLY ONE PART

We, the Jury, find the defendant, DONALD DEAN GOWER, **Guilty** of the offense of **CAPITAL MURDER** beyond a reasonable doubt, as charged in the indictment.


PRESIDING JUROR *Fredrick Klingner*

We, the Jury, find the defendant, DONALD DEAN GOWER, **Guilty** of the offense of **MURDER**, beyond a reasonable doubt, as a lesser included charge of the indictment.

PRESIDING JUROR

We, the Jury, find the defendant, DONALD DEAN GOWER, **Not Guilty**.

PRESIDING JUROR