

Signed and Filed
2-22-11 @ 12:07 PM

NO. 63,971

Joe Carroll
Judge Presiding

THE STATE OF TEXAS

*

IN THE DISTRICT COURT

VS.

*

OF BELL COUNTY, TEXAS

DERRICK LYNN LEWIS

*

27TH JUDICIAL DISTRICT

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, DERRICK LYNN LEWIS, stands charged by indictment with the offense of Capital Murder, alleged to have occurred on or about the 28th day of August, 2008, in Bell County, Texas. To this indictment the Defendant has pleaded not guilty. You are instructed the law applicable to this case is as follows:

I.

A person commits the offense of murder if the person intentionally or knowingly 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 intentionally commits murder, as defined above, in the course of committing or attempting to commit the offense of retaliation.

II.

A person commits the offense of retaliation if he intentionally or knowingly harms or threatens to harm another by an unlawful act:

(1) in retaliation for or on account of the service or status of another as a:

(A) public servant, witness, prospective witness, or informant; or



(B) person who has reported or who the actor knows intends to report the occurrence of a crime.

“Informant” means a person who has communicated information to the government in connection with any governmental function.

“Public servant” includes an honorably retired peace officer.

"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.

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.

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.

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 and Retaliation 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.

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 the circumstances surrounding the arrest 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.

VI.

You are further instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, of Jamie Lujan, and the previous relationship, if any, existing between the accused and Jamie Lujan, 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 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 retaliation, as herein defined, in that it occurred in an attempt to commit, during the commission, or in the immediate flight after the attempt or the commission of the offense of retaliation.

You are instructed that the State is not bound by the date of August 28, 2008, alleged in the indictment, and the defendant may be convicted if you believe beyond a reasonable doubt that he committed the offense alleged at any time prior to the filing of the indictment. In this case, the indictment was filed November 19, 2008.

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 28th day of August, 2008, in the County of Bell, State of Texas, as alleged in the indictment, the Defendant, DERRICK LYNN LEWIS, did then and there, either acting alone or with another or others as a party to the offense, as that term has been previously defined, in the course of attempting to commit or committing retaliation against Mark Jimenez, intentionally cause the death of an individual, namely, Jamie Lujan, by shooting him with 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 next consider the lesser offense of Murder.

VIII.

Now bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt that on or about the 28th day of August, 2008, in the County of Bell, State of Texas, as alleged in the indictment, the Defendant, DERRICK LYNN LEWIS, did then and there, either acting alone or with another or others as a party to the offense, as that term has been previously defined, intentionally or knowingly cause the death of an individual, namely, Jamie Lujan, by shooting him with a firearm, you will find the defendant guilty of Murder and say so 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 Murder and say by your verdict “not guilty”.

You have a right to consider all of the facts that are shown by the evidence, and to draw natural and reasonable inferences from such facts. You alone have the authority and the duty to determine what the facts are in this case. In evaluating the evidence, you must totally disregard what you believe is my opinion about any factual matter.

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, or indicted for, or otherwise charged with, an 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 this case.

Our law provides that a defendant may testify in his own behalf if he elects to do so. However, in the event he elects not to testify, that fact cannot be taken as a circumstance against him. In this case, Derrick Lewis has elected not to testify, and you are instructed that you cannot and must not refer or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever.

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 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 a fact or circumstance against the defendant in your deliberations.

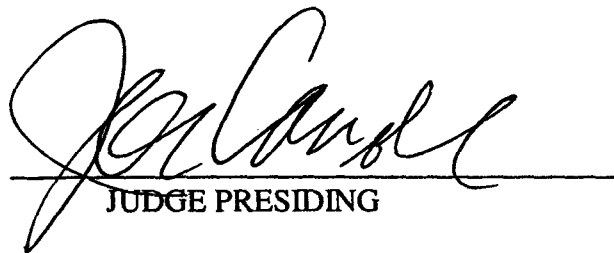
You must not consider facts that have not been introduced into evidence or legal principles not contained in this charge. It is improper for a juror to discuss or consider anything which they know or have learned outside of the testimony presented to you, and the law contained in this charge. If a juror 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.

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, but in no event shall he or she sign more than one of such blanks.



JUDGE PRESIDING

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27TH JUDICIAL DISTRICT

VERDICT OF THE JURY

We, the Jury, find beyond a reasonable doubt, that the Defendant, DERRICK LYNN LEWIS is guilty of the offense of Capital Murder as alleged in the indictment.

Sealed By Order of The Court
Foreman of The Jury

We, the Jury, find beyond a reasonable doubt that the Defendant, DERRICK LYNN LEWIS is guilty of the offense of Murder as alleged in the indictment.

FOREMAN

We, the Jury, find the Defendant not guilty.

FOREMAN

[Handwritten Signature]
SHELLA MORNAN
DISTRICT CLERK
BELL COUNTY, TX
DEPUTY

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FILED

