

CAUSE NO. 1300847

THE STATE OF TEXAS	§	IN THE 232ND DISTRICT COURT
VS.	§	OF HARRIS COUNTY, TEXAS
MARCUS EARL LOCKETT	§	JANUARY TERM, A. D., 2012

Members of the Jury:

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

A person commits capital murder if he intentionally commits murder in the course of committing or attempting to commit the offense of aggravated robbery. Aggravated robbery is a felony offense.

A person commits felony murder if he commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

A person commits robbery if, in the course of committing theft and with intent to obtain or maintain control of property of another, he:

- (1) intentionally or knowingly causes bodily injury to another; or

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(1) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

A person commits the offense of aggravated robbery if he commits robbery, and he:

- (1) causes serious bodily injury to another; or
- (2) uses or exhibits a deadly weapon.

"In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in the immediate flight after the attempt or commission of theft.

"Attempt" to commit an offense occurs if, with specific intent to commit an offense, a person does an act amounting to more than mere preparation that tends, but fails, to effect the commission of the offense intended.

"Theft" is the unlawful appropriation of property with intent to deprive the owner of property.

"Appropriation" and "appropriate", mean to acquire or otherwise exercise control over property other than real property. Appropriation of property is unlawful if it is without the owner's effective consent.

"Property" means tangible or intangible personal property or documents, including money, that represents or embodies anything of value.

"Deprive" means to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner.

"Effective consent" means assent in fact, whether express or apparent, and includes consent by a person legally authorized to act for the owner. Consent is not effective if induced by deception or coercion.

"Owner" means a person who has title to the property, possession of property, or a greater right to possession of the property than the actor.

"Possession" means actual care, custody, control, or management of the property.

"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.

The definition of intentionally relative to capital murder is as follows:

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.

The definitions of intentionally or knowingly relative to murder are as follows:

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.

The definitions of intentionally or knowingly relative to robbery and aggravated robbery are as follows:

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or 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.

Before you would be warranted in finding the defendant guilty of capital murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant was in the course of committing or attempting to commit the aggravated robbery of Jorge Hernandez, but also that the defendant specifically intended to cause the death of Jorge Hernandez, by shooting Jorge Hernandez, with a deadly weapon namely, a firearm, and unless you so find, then you cannot convict the defendant of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about June 8, 2008, in Harris County, Texas, the defendant, Marcus Earl Lockett, did then and there unlawfully, while in the course of committing or attempting to commit the aggravated robbery of Jorge Hernandez, intentionally cause the death of Jorge Hernandez by shooting Jorge Hernandez with a deadly weapon namely, 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, or if you are unable to agree, you will next consider whether the defendant is guilty of the lesser offense of felony murder.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about June 8, 2008, in Harris County, Texas, the defendant, Marcus Earl Lockett, did then and there unlawfully, while in the furtherance of the commission or attempted commission of the aggravated robbery of Jorge Hernandez, or in immediate flight from the commission or attempted commission^{of} the aggravated robbery of Jorge Hernandez, commit an act clearly dangerous to human life, to-wit: by shooting Jorge Hernandez with a deadly weapon namely, a firearm, that caused the death of Jorge Hernandez, then you will find the defendant guilty of felony 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 felony 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 felony 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 defendant may testify in his own behalf if he elects to do so. This, however, is a right accorded a defendant, and in the event he elects not to testify, that fact cannot be taken as a circumstance against him.

The defendant has elected not to testify and you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

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 exclude 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.

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.

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.


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

FILED

Chris Daniel
District Clerk

FEB 08 2012

Time: 1:27

By: 

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THE STATE OF TEXAS

§ IN THE 232ND DISTRICT COURT

VS.

§ OF HARRIS COUNTY, TEXAS

MARCUS EARL LOCKETT

§ JANUARY TERM, A. D., 2012

CHOOSE ONE

"We, the Jury, find the defendant, Marcus Earl Lockett, not guilty."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Marcus Earl Lockett, guilty of capital murder, as charged in the indictment."

FILED

Chris Daniel
District Clerk

FEB 08 2012

Time: 3:55 pm

By: [Signature]

[Signature]

Foreman of the Jury

STEPHEN RAY WALTZ

(Please Print) Foreman

"We, the Jury, find the defendant, Marcus Earl Lockett, guilty of felony murder."

Foreman of the Jury

(Please Print) Foreman