

CAUSE NO. 2018-R117

THE STATE OF TEXAS                   §                   IN THE DISTRICT COURT  
VS.   §                   OF FAYETTE COUNTY, TEXAS  
DERRICK JAMAL MCKENZIE           §                   155<sup>TH</sup> JUDICIAL DISTRICT

**JURY CHARGE**

Members of the jury:

The defendant, DERRICK JAMAL MCKENZIE, stands charged by indictment with the offense of CAPITAL MURDER alleged to have been committed on or about June 17, 2013, in Fayette County, Texas. To the charge the Defendant has pleaded not guilty.

**I.**

**Relevant Statutes and Definitions**

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

Capital Murder. A person commits the offense of capital murder when such person intentionally or knowingly commits the murder in the course of committing or attempting to commit the offense of robbery.

Aggravated Robbery. A person commits an offense if he commits robbery as defined below and he causes serious bodily injury to another or uses or exhibits a deadly weapon.

Robbery. A person commits the offense of robbery if, in the course of committing theft and with intent to obtain or maintain control of the property, he (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

Bodily Injury. "Bodily Injury" means physical pain, illness, or any impairment of physical condition.

Serious Bodily Injury. "Serious bodily injury" means bodily injury that creates substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member of organ.

Person. "Person" means an individual, corporation, or association.

Individual. "Individual" means a human being who has been born and is alive.

Intentionally. 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.

Knowingly. 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.

Recklessly. A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Theft. "Theft" is a criminal offense requiring proof that (1) the person appropriated property of another; (2) that appropriation was unlawful; and (3) the person did this with the intent to deprive the owner of the property.

Deadly Weapon. A deadly weapon means anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

Criminal Attempt. A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended. If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.

Manslaughter. A person commits an offense if he recklessly causes the death of an individual.

## **II. Application**

### Capital Murder

Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about June 17, 2013, in FAYETTE County, Texas, the defendant, DERRICK JAMAL MCKENZIE, while in the course of committing or attempting to commit robbery, of Sandra Lynn Pfeiffer, intentionally or knowingly caused the death of Sandra Lynn Pfeiffer, by repeatedly stabbing and cutting said Sandra Lynn Pfeiffer, with a knife, knives or other sharp instrument, said knife, knives or sharp instrument was or were deadly weapons in that the manner of their use or intended use they were capable of and did cause serious bodily injury and death, then you will find the defendant guilty of capital murder as charged in the indictment and say by your verdict "Guilty."

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

Or

*Murder*

If you unanimously find from the evidence beyond a reasonable doubt that on or about June 17, 2013, in FAYETTE County, Texas, the defendant, DERRICK JAMAL MCKENZIE, did intentionally or knowingly cause the death of Sandra Lynn Pfeiffer by repeatedly stabbing and cutting Sandra Lynn Pfeiffer with a knife, knives or other sharp instrument capable of causing serious bodily injury or death, but you have a reasonable doubt as to whether the defendant was then and there engaged in the commission of robbery, at the time of the stabbing and cutting, if any, then you will find the defendant guilty of murder and say by your verdict "Guilty."

Unless you unanimously 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."

Or

*Aggravated Robbery*

If you unanimously find from the evidence beyond a reasonable doubt that on or about June 17, 2013, in FAYETTE County, Texas, the defendant, DERRICK JAMAL MCKENZIE, did, in the course of committing theft from Sandra Lynn Pfeiffer, and with intent to obtain or maintain control of the property belonging to Sandra Lynn Pfeiffer, intentionally or knowingly cause bodily injury to Sandra Lynn Pfeiffer with a knife, knives or other sharp instrument. Said knife, knives or sharp instrument was or were deadly weapons in that in the manner of their use or intended use they were capable of causing serious bodily injury or death.

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

Or

*Manslaughter*

If you unanimously find from the evidence beyond a reasonable doubt that on or about June 17, 2013, in FAYETTE County, Texas, the defendant, DERRICK JAMAL MCKENZIE, did recklessly cause the death of Sandra Lynn Pfeiffer by repeatedly stabbing and cutting Sandra Lynn Pfeiffer with a knife, knives or other sharp instrument capable of causing serious bodily injury or death, you will find the defendant guilty of manslaughter and say by your verdict "Guilty."

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

### III. General Instructions

The Indictment. The indictment is not evidence of guilt. The indictment is only a document required to bring the case before you. The indictment cannot be considered in any way by the jury. Do not consider the fact that the defendant has been arrested, confined, or indicted or otherwise charged. You may not draw any inference of guilt from any of these circumstances.

Presumption of Innocence. The defendant is presumed innocent of the charge. 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 law does not require a defendant to prove his innocence or produce any evidence at all. 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 presumption of innocence alone is sufficient to acquit the defendant.

Burden of Proof. The burden of proof throughout the trial is always on the State. The defendant does not have the burden to prove anything. The State must prove every element of the offense beyond a reasonable doubt to establish guilt for the offense. If the State proves every element of the offense beyond a reasonable doubt, then you must find the defendant guilty. If the State does not prove every element of the offense beyond a reasonable doubt, then you must find the defendant not guilty. If, after you have considered all the evidence and these instructions, you have a reasonable doubt about whether the defendant is guilty, you must find the defendant not guilty.

Confession. You are instructed that unless you believe from the evidence beyond a reasonable doubt that the alleged confession or statement introduced into evidence as State's Exhibit 41 was freely and voluntarily made by the defendant without compulsion or persuasion, or if you have a reasonable doubt thereof, you shall not consider such alleged statement or confession for any purpose.

You are further instructed that no recorded oral statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless prior to the statement but during the recording the accused is given the following warning by a magistrate:

- (1) he has the right to remain silent and not make any statement at all and any statement he makes may be used as evidence against him;
- (2) he has the right to have an attorney present to advise him prior to and during any questioning;
- (3) if he is unable to employ an attorney, he has the right to have an attorney appointed to advise him prior to and during any questioning; and

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

and the accused knowingly, intelligently, and voluntarily waives those rights. The warnings given need not be in the literal language stated above, so long as the language of the warning used was the substantial equivalent of the above language and conveyed the same meaning.

A statement invoking one of the rights above must be clear and unambiguous. A statement is not voluntarily made if prior to or during the statement, the accused invokes one of the rights set out above.

“Custodial interrogation” is defined as questioning initiated by law enforcement officer after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

You are further instructed, however, that any statement is admissible regardless of whether or not the accused was provided with the above warnings or waived the above rights if the statement contains assertions of facts or circumstances that are found to be true and which tend to establish the guilt of the accused, such as the finding of secreted or stolen property or the instrument with which he states the offense was committed.

Jury as Fact Finder. As the jurors, you review the evidence and determine the facts and what they prove. You judge the believability of the witnesses and what weight to give their testimony.

In judging the facts and the believability of the witnesses, you must apply the law provided in these instructions.

Evidence. The evidence consists of the testimony and exhibits admitted in the trial. You must consider only evidence to reach your decision. You must not consider, discuss, or mention anything that is not evidence in the trial. You must not consider or mention any personal knowledge or information you may have about any fact or person connected with this case that is not evidence in the trial.

Statements made by the lawyers are not evidence. The questions asked by the attorneys are not evidence. Evidence consists of the testimony of the witnesses and materials admitted into evidence.

Nothing the judge has said or done in this case should be considered by you as an opinion about the facts of this case or influence you to vote one way or the other.

You should give terms their common meanings, unless you have been told in these instructions that the terms are given special meanings. In that case, of course, you should give those terms the meanings provided in the instructions.

While you should consider only the evidence, you are permitted to draw reasonable inferences from the testimony and exhibits that are justified in the light of common experience. In

other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence.

You are to render a fair and impartial verdict based on the evidence admitted in the case under the law that is in these instructions. Do not allow your verdict to be determined by bias or prejudice.

Admitted Exhibits. You may, if you wish, examine exhibits. If you wish to examine an exhibit, the foreperson will inform the court and specifically identify the exhibit you wish to examine. Only exhibits that were admitted into evidence may be given to you for examination.

Testimony. Certain testimony will be read back to you by the court reporter if you request. To request that testimony be read back to you, you must follow these rules. The court will allow testimony to be read back to the jury only if the jury, in a writing signed by the foreperson, (1) states that it is requesting that testimony be read back, (2) states that it has a disagreement about a specific statement of a witness or a particular point in dispute, and (3) identifies the name of the witness who made the statement. The court will then have the court reporter read back only that part of the statement that is in disagreement.

Juror Notes. Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during your deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence in this case. Each of you should rely on your independent recollection of the evidence and must not be influenced by the fact that another juror has or has not taken notes. You must leave your notes with the bailiff in the jury room when you are not deliberating and are on break. The bailiff will ensure they are kept secure in the jury room. When you retire for the evening, you must leave your notes with the bailiff. The bailiff will give your notes to me promptly after collecting them. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations and reach a verdict, the bailiff will collect your notes. When you are completely released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote during the course of your service as a juror in this case.

Unanimous Verdict. The law requires that you render a verdict of either "guilty" or "not guilty." The verdict of "not guilty" simply means that the State's evidence does not prove the defendant guilty beyond a reasonable doubt.

You may return a verdict only if it is unanimous, meaning all twelve of you agree on this verdict.

When you reach a verdict, the foreperson should notify the court.

Defendant's Right to Remain Silent. The defendant has a constitutional right to remain silent. The defendant may testify on his own behalf. The defendant may also choose not to testify. The defendant's decision not to testify cannot be held against him, and it is not evidence of guilt. You must not speculate, guess, or even talk about what the defendant might have said if he had

taken the witness stand or why he did not. The foreperson of the jury must immediately stop any juror from mentioning the defendant's decision not to testify.

*Evidence of Wrongful Acts Possibly Committed by Defendant.* You are instructed that if there is any testimony before you in this case regarding the Defendant's having committed an offense 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 the Defendant committed such other offense, if any was committed, and even then you may only consider the same in determining the intent, opportunity, plan, or method of operation, of the Defendant, if any, in connection with the offense, if any, alleged against him in the indictment and in this case, and for no other purpose.

#### IV.

#### **Rules that Control Deliberations**

You must follow these rules while you are deliberating and until you reach a verdict. After the closing arguments by the attorneys, you will go into the jury room.

Your first task will be to pick your foreperson. The foreperson should conduct the deliberations in an orderly way. Each juror has one vote, including the foreperson. The foreperson must supervise the voting, vote with other members on the verdict, and sign the verdict sheet. Suitable forms for your verdict are attached; your verdict must be in writing and signed by your foreperson. Your sole duty at this time is to determine the guilt or innocence of the defendant. Your verdict must be by a unanimous vote of all members of the jury. In arriving at your verdict it will not be proper to fix the same by lot, chance, or any other method than by a full, fair, and free exercise of the opinions of the individual jurors under the evidence admitted before you.

While deliberating and until excused by the trial court, all jurors must follow these rules:

1. You must not discuss this trial with any court officer, or the attorneys, or anyone not on the jury.
2. You must not discuss this case unless all of you are present in the jury room. If anyone leaves the room, then you must stop your discussions about the case until all of you are present again.
3. You must communicate with the judge only in writing, signed by the foreperson and given to the judge through the officer assigned to you.
4. You must not conduct any independent investigations, research, or experiments.
5. You must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as telephone, cell phone, smart phone, or computer; the internet, any internet service, or any text or instant

messaging service; or any internet chat room, blog, or website to communicate with anyone any information about this case or to conduct any research about this case until discharged by me.

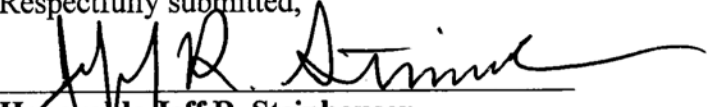
6. You must tell the judge if anyone attempts to contact you about the case before you reach your verdict.

Your sole duty at this point is to determine whether the defendant has been proven guilty. You must restrict your deliberations to this matter.

After you have arrived at your verdict, you are to use one of the forms attached to these instructions. You should have your foreperson sign his or her name to the particular form that conforms to your verdict.

After the closing arguments by the attorneys, you will begin your deliberations to decide your verdict.

Respectfully submitted,

  
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**Honorable Jeff R. Steinhauser**  
155<sup>th</sup> Judicial District Court  
Fayette County, Texas

**FILED**  
At 10:10 o'clock A M

JUL 26 2019  
Lynida Swock  
Clerk, District Court, Fayette County, Texas  
By [Signature] Deputy



Cause No. 2018R-117

The State of Texas	§	In the District Court
vs.	§	155 <sup>th</sup> Judicial District
Derrick Jamal McKenzie	§	Fayette County, Texas

**Verdict**

We, the jury, unanimously find the defendant, Derrick Jamal McKenzie, GUILTY of the offense of CAPITAL MURDER as alleged in the indictment.

Penny Joerster 7/26/19 3:15pm  
Foreperson of the Jury

We the jury, unanimously find the defendant, Derrick Jamal McKenzie, NOT GUILTY of the offense of CAPITAL MURDER.

\_\_\_\_\_  
Foreperson of the Jury

If you have unable to agree to a verdict on CAPITAL MURDER then proceed to consider the lesser included offenses.

**FILED**  
At 3:35 o'clock P M

JUL 26 2019  
Linda Swick  
Clerk of the District Court, Fayette County, Texas  
By Jessica P. [Signature] Deputy

Cause No. 2018R-117

The State of Texas	§	In the District Court
vs.	§	155 <sup>th</sup> Judicial District
Derrick Jamal McKenzie	§	Fayette County, Texas

**Verdict**

If you have previously found the defendant guilty of manslaughter, do not complete the verdict form for murder.

We, the jury, having found the defendant not guilty of capital murder; unanimously find the defendant, Derrick Jamal McKenzie, GUILTY of the offense of MURDER as alleged in the indictment.

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Foreperson of the Jury

We the jury, having found the defendant not guilty of capital murder unanimously find the defendant, Derrick Jamal McKenzie, NOT GUILTY of the offense of MURDER.

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Foreperson of the Jury

Cause No. 2018R-117

The State of Texas	§	In the District Court
vs.	§	155 <sup>th</sup> Judicial District
Derrick Jamal McKenzie	§	Fayette County, Texas

**Verdict**

We, the jury, having found the defendant not guilty of murder unanimously find the defendant, Derrick Jamal McKenzie, GUILTY of the offense of AGGRAVATED ROBBERY as alleged in the indictment.

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Foreperson of the Jury

We the jury, having found the defendant not guilty of murder unanimously find the defendant, Derrick Jamal McKenzie, NOT GUILTY of the offense of AGGRAVATED ROBBERY.

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Foreperson of the Jury

Cause No. 2018R-117

The State of Texas	§	In the District Court
vs.	§	155 <sup>th</sup> Judicial District
Derrick Jamal McKenzie	§	Fayette County, Texas

**Verdict**

If you have previously found the defendant guilty of murder, do not complete the verdict form for manslaughter.

We, the jury, having found the defendant not guilty of aggravated robbery, unanimously find the defendant, Derrick Jamal McKenzie, GUILTY of the offense of MANSLAUGHTER as alleged in the indictment.

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Foreperson of the Jury

We the jury, having found the defendant not guilty of aggravated robbery, unanimously find the defendant, Derrick Jamal McKenzie, NOT GUILTY of the offense of MANSLAUGHTER.

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Foreperson of the Jury