

JASON E. MURRAY  
CLERK DISTRICT COURT

FILED  
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AUG 17 2011

NO. 07CR0760

THE STATE OF TEXAS

§

IN THE DISTRICT COURT OF GALVESTON COUNTY, TEXAS

VS.

§

GALVESTON COUNTY, TEXAS

LITREY DEMOND TURNER

§

56<sup>TH</sup> JUDICIAL DISTRICT

BY \_\_\_\_\_

DEPUTY

**CHARGE OF THE COURT**

**LADIES AND GENTLEMEN OF THE JURY:**

The Defendant, LITREY DEMOND TURNER, stands charged by indictment with the offense of Capital Murder, alleged to have been committed in Galveston County, Texas, on or about the 21<sup>st</sup> day of August, A.D., 2006. The Defendant has pleaded not guilty.

A person commits Capital Murder if the person intentionally commits the murder in the course of committing or attempting to commit robbery.

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

A person commits the offense of Robbery if, in the course of committing theft and with the intent to obtain and maintain control of the property he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. Robbery is a felony offense.

A person commits the offense of Aggravated Robbery if, he commits a robbery and he uses or exhibits a deadly weapon. Aggravated Robbery is a felony offense.

A person commits theft from a person if he unlawfully appropriates property with intent to deprive the owner of property, and if he steals said property from the person of another. Theft from a person is a felony offense.

A person commits the offense of theft if he unlawfully appropriates property with intent

to deprive the owner of property.

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

"Appropriate" and "appropriation" means 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 including anything severed from the land, or a document, 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 force, threats, deception or coercion.

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

"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.

“Attempt” means with the 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.

You are instructed that under our law a statement of a defendant made while he was in jail or in custody of an officer and while under interrogation shall be admissible in evidence if it appear that the same was freely and voluntarily made without compulsion or persuasion. However, before a statement by a defendant made orally to officers may be considered voluntary, it must be shown by legal evidence beyond a reasonable doubt that, prior to making such oral statement, the accused has been warned by a magistrate, that (1) the defendant may remain silent and not make any statement at all and that any statement that the child makes may be used in evidence against the defendant, (2) the defendant has the right to have an attorney present to advise the defendant either prior to any questioning or during the questioning, (3) if the defendant is unable to employ an attorney, the defendant has the right to have an attorney appointed to counsel with the child before or during any interviews with peace officers or attorneys representing the state, and (4) the defendant has the right to terminate the interview at any time. Additionally, in order for a statement to be admissible, a defendant must waive his rights. Waiver may be express or implied. The burden of proving voluntariness and waiver is *beyond a reasonable doubt* by the State.

So, in this case, if you find from the evidence, or if you have a reasonable doubt thereof, that prior to the time the defendant gave the alleged statement to Detective John Lopez, if he did give it, Judge Kathleen McCumber, a magistrate, did not warn defendant in the respects

enumerated above, or as to any one of such requirements, then you will wholly disregard the statement and not consider it for any purpose nor any evidence obtained as a result thereof. If, however, you find beyond a reasonable doubt that the aforementioned warning was given the defendant prior to his having made such statement, if he did make it, still, before you may consider such alleged statement as evidence in this case, you must find from the evidence beyond a reasonable doubt that prior to making such statement, if he did, the defendant knowingly, intelligently and voluntarily waived the rights hereinbefore set out in the said warning, and unless you so find, or if you have a reasonable doubt thereof, you will not consider the statement for any purpose whatsoever or any evidence obtained as a result of the statement, if any.

All persons are parties to an offense who are guilty of acting together in the commission of an offense. Each party to an offense may be charged with commission of the offense.

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.

A person is criminally responsible as a party to an offense 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. Mere presence alone will not constitute a party to the offense.

A conspiracy is an 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. An agreement constituting a conspiracy may be inferred from acts of the parties.

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.

Now, if you find from the evidence beyond a reasonable doubt, that in Galveston County, Texas, on or about the 21<sup>st</sup> day of August, A.D., 2006, LITREY DEMOND TURNER, did then and there, intentionally cause the death of an individual, namely, Phoung Thi Lam by shooting the said Phoung Thi Lam with a handgun and the defendant was then and there in the course of committing or attempting to commit the offense of robbery of Phoung Thi Lam; OR that ANDREW BROWN and the Defendant, LITREY DEMOND TURNER, intentionally or knowingly entered into a conspiracy to commit the offense of robbery of Phoung Thi Lam and that pursuant thereto they did carry out or attempt to carry out such conspiracy to commit the offense of robbery of Phoung Thi Lam and that on or about the 21<sup>st</sup> day of August, 2006, in Galveston County, Texas, ANDREW BROWN, a member of the said conspiracy, if he was, did then and there commit another offense, to wit, capital murder, by intentionally causing the death of Phoung Thi Lam, by shooting her with a handgun during the course of the robbery or attempted robbery of Phoung Thi Lam, and that the murder of Phoung Thi Lam was done in furtherance of the conspiracy to rob Phoung Thi Lam, if any, and was an offense that should have been anticipated by defendant, LITREY DEMOND TURNER, would occur as a result of the carrying out of the conspiracy to rob Phoung Thi Lam; OR that ANDREW BROWN intentionally caused the death of Phoung Thi Lam, by shooting her with a handgun during the course of the robbery or attempted robbery of Phoung Thi Lam, and the Defendant, LITREY DEMOND TURNER, with the intent to promote or assist the commission of the offense of Capital Murder by ANDREW BROWN, he solicited or

encouraged or directed or aided or attempted to aid the ANDREW BROWN to commit the offense of Capital Murder, then you will find the Defendant, LITREY DEMOND TURNER, guilty of Capital Murder as alleged 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 the offense of Capital Murder and next go on to consider the lesser included offense of Murder.

A person commits the offense of Murder if he commits or attempts to commit a felony 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.

Now, if you find from the evidence beyond a reasonable doubt, that in Galveston County, Texas, on or about the 21<sup>st</sup> day of August, A.D., 2006, LITREY DEMOND TURNER did then and there, commit or attempt to commit a felony, to-wit: robbery of Phoung Thi Lam, and in the course of and in furtherance of the commission, or in immediate flight from the commission of the said felony, LITREY DEMOND TURNER committed or attempted to commit an act clearly dangerous to human life, to wit: by shooting Phoung Thi Lam with a handgun that caused the death of Phoung Thi Lam, then you will find the defendant LITREY DEMOND TURNER guilty of the lesser offense 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 the offense of Murder and next go on to consider the lesser included offense of Aggravated Robbery.

Aggravated Robbery was previously defined in this charge.

Now, if you find from the evidence beyond a reasonable doubt, that in Galveston County, Texas, on or about the 21<sup>st</sup> day of August, A.D., 2006, that LITREY DEMOND TURNER did then and there in the course of committing theft of property and with the intent to obtain and maintain control of the property intentionally or knowingly threatened or placed Phoung Thi Lam in fear of imminent bodily injury or death and used or exhibited a deadly weapon, to-wit: a handgun; OR if ANDREW BROWN and the Defendant, LITREY DEMOND TURNER, intentionally or knowingly entered into a conspiracy to commit the offense of robbery of Phoung Thi Lam and that pursuant thereto they did carry out or attempt to carry such conspiracy to commit the offense of robbery of Phoung Thi Lam and that on or about the 21<sup>st</sup> day of August, 2006, in Galveston County, Texas ANDREW BROWN, a member of the said conspiracy, if he was, did then and there commit another offense, to wit, Aggravated Robbery, by in the course of committing a theft of property and with the intent to obtain and maintain control of the property intentionally or knowingly threaten or place Phoung Thi Lam in fear of imminent bodily injury or death and used or exhibited a deadly weapon, to wit: a handgun and that was done in furtherance of the conspiracy to rob Phoung Thi Lam, if any, and was an offense that should have been anticipated by the defendant, LITREY DEMOND TURNER, would occur as a result of the carrying out of the conspiracy to rob Phoung Thi Lam; OR that ANDREW BROWN did then and there in the course of committing theft of property and with the intent to obtain and maintain control of the property ANDREW BROWN intentionally or knowingly threatened or placed Phoung Thi Lam in fear of imminent bodily injury or death and used or exhibited a deadly weapon, to-wit: a handgun and the Defendant, LITREY DEMOND TURNER, with the intent to promote or assist the commission of the offense of Aggravated Robbery by ANDREW BROWN, solicited or

encouraged or directed or aided or attempted to aid the ANDREW BROWN to commit the offense of Aggravated Robbery, then you will find the Defendant, LITREY DEMOND TURNER, guilty of Aggravated Robbery.

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 the offense of Aggravated Robbery and next go on to consider the lesser included offense of Robbery.

Robbery has previously been defined in this charge.

Now, if you find from the evidence beyond a reasonable doubt, that in Galveston County, Texas, on or about the 21<sup>st</sup> day of August, A.D., 2006, that LITREY DEMOND TURNER did then and there in the course of committing theft of property and with the intent to obtain and maintain control of the property intentionally or knowingly threatened or placed Phoung Thi Lam in fear of imminent bodily injury or death; OR if ANDREW BROWN and the Defendant, LITREY DEMOND TURNER, intentionally or knowingly entered into a conspiracy to commit the offense of Theft from the Person of Phoung Thi Lam and that pursuant thereto they did carry out or attempt to carry out such conspiracy to commit the Felony offense of Theft from the Person of Phoung Thi Lam and that on or about the 21<sup>st</sup> day of August, 2006, in Galveston County, Texas ANDREW BROWN, a member of the said conspiracy, if he was, did then and there commit another offense, to wit, Robbery, by in the course of committing a theft of property and with the intent to obtain and maintain control of the property intentionally or knowingly threaten or place Phoung Thi Lam in fear of imminent bodily injury or death and that was done in furtherance of the conspiracy to commit Theft from a Person of Phoung Thi Lam, if any, and was an offense that should have been anticipated by the defendant, LITREY DEMOND TURNER, would occur



as a result of the carrying out the conspiracy to commit theft from the person of Phoung Thi Lam; OR, that ANDREW BROWN did then and there in the course of committing theft of property and with the intent to obtain and maintain control of the property did intentionally or knowingly threatened or placed Phoung Thi Lam in fear of imminent bodily injury or death and the Defendant, LITREY DEMOND TURNER, with the intent to promote or assist the commission of the offense of Robbery by ANDREW BROWN solicited or encouraged or directed or aided or attempted to aid the ANDREW BROWN to commit the offense of Robbery, then you will find the Defendant, LITREY DEMOND TURNER, guilty of Robbery.

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 the offense of Robbery and next go on to consider the lesser included offense of Theft from a Person.

Theft from a Person has previously been defined in the charge.

Now, if you find from the evidence beyond a reasonable doubt that in Galveston County, Texas, on or about the August 21, 2006, the defendant, LITREY DEMOND TURNER did then and there unlawfully, appropriate by acquiring or otherwise exercising control over property owned by Phoung Thi Lam, from her person with the intent to deprive Phoung Thi Lam of the property, and without the effective consent of Phoung Thi Lam; OR if you find that ANDREW BROWN did then and there unlawfully, appropriate by acquiring or otherwise exercising control over property owned by Phoung Thi Lam, from her person and with the intent to deprive Phoung Thi Lam of the property, and without the effective consent of Phoung Thi Lam, and that LITREY DEMOND TURNER, with the intent to promote or assist the commission of the offense of Theft from a Person by ANDREW BROWN, solicited or encouraged or directed or

aided or attempted to aid the ANDREW BROWN to commit the offense of Theft from a Person, then you will find the Defendant, LITREY DEMOND TURNER, guilty of Theft from a Person.

If you believe that the Defendant, LITREY DEMOND TURNER, is guilty of an offense, Capital Murder, Murder, Aggravated Robbery, Robbery, or Theft from a Person but you have a reasonable doubt as to which offense he is guilty, you must give the Defendant the benefit of the doubt and find him guilty of the appropriate lesser offense. If you have a reasonable doubt that the defendant is guilty of any offense, you must acquit the defendant of all offenses and find him "not guilty".

Our law provides that 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 <sup>him</sup> ~~her~~. In this case, the Defendant has elected not to testify and you are instructed that 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 <sup>him</sup> ~~her~~.

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 determining his intent or plan in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

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, 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.

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".

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.

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 which is not shown by the evidence.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with

you. You may, however, discuss the contents of your notes with the other jurors. 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. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

Occasionally, 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. The dispute must be settled by the official transcript, for it is the official transcript, rather than any juror's notes, upon which you must base your determination of the facts and, ultimately, your verdict in this case.

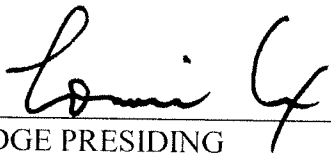
After you have retired to your jury room, you should select one of your members as your foreperson. It is his or her duty to preside at your deliberations, vote with you and, when you have unanimously agreed upon a verdict, to certify to your verdict by signing the same as foreperson.

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 to you, and be governed thereby.

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 the officer

who has you in charge. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the court, or anyone else concerning any question you may have. After you have reached a unanimous verdict, the foreman will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as foreperson.

Suitable forms for your verdict are hereto 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 under the indictment in this case; and restrict your deliberations solely to the issue of guilt or innocence of the Defendant.

  
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JUDGE PRESIDING

JASON E. MURRAY  
CLERK DISTRICT COURT  
FILED  
4:59 pm  
AUG 17 2011  
BY \_\_\_\_\_  
DEPUTY

NO. 07CR0760

THE STATE OF TEXAS                                    §                   IN THE DISTRICT COURT OF GALVESTON COUNTY, TEXAS  
VS.   §                   GALVESTON COUNTY, TEXAS  
LITREY DEMOND TURNER                             §                   56<sup>TH</sup> JUDICIAL DISTRICT

**VERDICT**

We, the Jury, find the Defendant, LITREY DEMOND TURNER, guilty of Capital Murder, as charged in the indictment.

  
FOREPERSON OF THE JURY

We, the Jury, find the Defendant, LITREY DEMOND TURNER, guilty of the lesser included offense of Murder.

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FOREPERSON OF THE JURY

We, the Jury, find the Defendant, LITREY DEMOND TURNER, guilty of the lesser included offense of Aggravated Robbery.

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FOREPERSON OF THE JURY

We, the Jury, find the Defendant, LITREY DEMOND TURNER, guilty of the lesser included offense of Robbery.

\_\_\_\_\_  
FOREPERSON OF THE JURY

We, the Jury, find the Defendant, LITREY DEMOND TURNER, guilty of the lesser included offense of Theft from a Person.

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FOREPERSON OF THE JURY

We, the Jury, find the Defendant, LITREY DEMOND TURNER, not guilty.

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FOREPERSON OF THE JURY