CAUSE NO. 1247995

THE STATE OF TEXAS	§	IN THE 262ND DISTRICT COURT
VS.	§	OF HARRIS COUNTY, TEXAS
DARIUS LEMON	§	MAY TERM, A. D., 2010

Members of the Jury:

The defendant, Darius Lemon, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 14th day of August, 2008, in Harris County, Texas. The defendant has pleaded not guilty.

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 intentionally commits murder, as hereinbefore defined, in the course of committing or attempting to commit the offense of robbery. Robbery is a felony offense.

A person commits the offense of 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 the offense of robbery if, in the course of committing theft, and with intent to obtain or maintain control of property of another he intentionally or knowingly causes bodily injury to another.

A person commits the offense of aggravated robbery if he commits robbery, as hereinbefore defined, 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", as those terms are used herein, 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" as used herein 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 the offense of 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 the offense of murder are as follow:

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 the offenses of robbery and aggravated robbery are as follow:

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.

All persons are parties to an offense, who are guilty of acting together in the 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 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. Mere presence alone will not constitute one a party to an 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.

By the term "conspiracy" as used in these instructions, is meant an agreement between two or more persons with intent, 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.

Capital Murder

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 felony offense of robbery of Jesus Veliz, as alleged in this charge, you must also find from the evidence beyond a reasonable doubt that the defendant, Darius Lemon, with the intent to promote or assist in the commission of the offense of robbery, if any, solicited, encouraged, directed, aided, or attempted to aid Juan Garcia and/or Beatrice Vasquez and/or a person unknown in shooting Jesus Veliz, if he did, with the intention of thereby killing Jesus Veliz; or you must find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, Darius Lemon, entered into an agreement with Juan Garcia and/or Beatrice Vasquez and/or a person unknown to commit the felony offense of robbery of Jesus Veliz, as alleged in this charge, and pursuant to that agreement they did carry out their conspiracy, and while in the course of committing said conspiracy, Juan Garcia and/or Beatrice Vasquez and/or a person unknown intentionally caused the death of Jesus Veliz by shooting Jesus Veliz with a deadly weapon, namely a firearm, and the murder of Jesus Veliz was committed in furtherance of the conspiracy and was an offense that should have been anticipated by the defendant as a result of carrying out the conspiracy, and unless you so

Parties

find, then you cannot convict the defendant of the offense of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 14th day of August, 2008, in Harris County, Texas, Juan Garcia and/or Beatrice Vasquez and/or a person unknown, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Jesus Veliz, intentionally cause the death of Jesus Veliz by shooting Jesus Veliz with a deadly weapon, namely a firearm, and that the defendant, Darius Lemon, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Juan Garcia and/or Beatrice Vasquez and/or a person unknown to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that the defendant, Darius Lemon, and Juan Garcia and/or Beatrice Vasquez and/or a person unknown entered into an agreement to commit the felony offense of robbery of Jesus Veliz, and pursuant to that agreement, if any, they did carry out their conspiracy and that in Harris County, Texas, on or about the 14th day of August, 2008, while in the course of committing such robbery of Jesus Veliz, Juan Garcia and/or a person unknown intentionally caused the death of Jesus Veliz by shooting Jesus Veliz with a deadly weapon, namely a firearm, and the murder of Jesus Veliz was committed in furtherance of the conspiracy and was an offense that the defendant should have anticipated as a result of carrying out the conspiracy, 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 the 14th day of August, 2008, in Harris County, Texas, Juan Garcia and/or a person unknown, did then and there unlawfully, while in the furtherance of the commission or

attempted commission of the felony of robbery of Jesus Veliz, or in immediate flight from the commission or attempted commission of the felony of theft of a firearm or robbery of Jesus Veliz, commit an act clearly dangerous to human life, to-wit: by shooting Jesus Veliz with a deadly weapon, namely a firearm, that caused the death of Jesus Veliz, and that the defendant, Darius Lemon, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Juan Garcia and/or Beatrice Vasquez and/or a person unknown to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that the defendant, Darius Lemon, and Juan Garcia and/or Beatrice Vasquez and/or a person unknown entered into an agreement to commit the felony offense of theft of a firearm or robbery of Jesus Veliz, and pursuant to that agreement, if any, they did carry out their conspiracy and that in Harris County, Texas, on or about the 14th day of August, 2008, while in the course of committing such robbery of Jesus Veliz, Juan Garcia and/or a person unknown committed an act clearly dangerous to human life that caused the death of Jesus Veliz by shooting Jesus Veliz with a deadly weapon, namely a firearm, and that the murder of Jesus Veliz was committed in furtherance of the conspiracy and was an offense that the defendant should have anticipated as a result of carrying out the conspiracy, 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."

An accomplice, as the term is here used, means anyone connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime by unlawful act or omission on their part transpiring either before, at the time of, or after the commission of the offense, and whether or not they were present and participated in the commission of the crime. 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. Mere presence alone, however, will not constitute one a party to an offense.

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. The term "conduct" means any act or omission and its accompanying mental state.

You are instructed that a conviction cannot be had upon the testimony of an accomplice unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and 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.

Therefore, if you believe from the evidence beyond a reasonable doubt that an offense was committed and you further believe from the evidence that the witness, Kirstie Vasquez, was an accomplice, or you have a reasonable doubt whether he was or not, as that term is defined in the foregoing instructions, then you cannot convict the defendant upon the testimony of Kirstie Vasquez unless you further believe that there is other evidence in the case, outside of the testimony of Kirstie Vasquez tending to connect the defendant with the offense charged in the indictment, and then from all the evidence you must believe beyond a reasonable doubt that the defendant is 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.

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 excludes 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.

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, nor relate any matters not in evidence before you. You should not consider nor 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.

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 whether or not the defendant committed the crime as alleged in the indictment.

Following the arguments of counsel, you will retire to consider your verdict.

Don Stricklin, Judge Presiding
262nd District Court
Harris County, TEXAS

FILED
Loren Jackson
District Clerk

JUL 02 2010

Time: 2:06 pm
Harris County, Texas

By _____
Deputy

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DARIUS LEMON	§	MAY TERM, A. D., 2010

CHOOSE ONE

"We, the Jury, find the defendant, Darius Lemon, not guilty."

_____

Foreman of the Jury

_____

(Please Print) Foreman

"We, the Jury, find the defendant, Darius Lemon, guilty of capital murder, as charged in the indictment."

FILED
Loren Jackson
District Clerk
JUL 06 2010
Time: 3:36 pm
Harris County, Texas
By _____ Deputy

James A. Edwards

Foreman of the Jury

JAMES A. EDWARDS

(Please Print) Foreman

"We, the Jury, find the defendant, Darius Lemon, guilty of felony murder."

_____

Foreman of the Jury

_____

(Please Print) Foreman