

CAUSE NO. 21284

STATE OF TEXAS

VS.

JASON DELACERDA

IN THE 356th DISTRICT COURT  
OF  
HARDIN COUNTY, TEXAS

FILED FOR RECORD  
10:33 A.M.  
FEB 23 2018  
DANA HOGG, DISTRICT CLERK  
HARDIN COUNTY, TEXAS  
By Dep. *D. Hogg*

**JURY CHARGE**

LADIES AND GENTLEMEN OF THE JURY:

The defendant, JASON DELACERDA, stands charged by indictment with the offense of CAPITAL MURDER, alleged to have been committed in Hardin County, Texas, on or about AUGUST 17, 2011. The Defendant has entered a plea of not guilty to this indictment.

Our law requires that I submit the following charge to you in this case. This charge contains all of the law necessary to enable you to reach a verdict. If any evidence was presented to raise an issue, the law on that issue must be provided.

A person commits capital murder if he intentionally or knowingly causes the death of an individual under six years of age.

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

Our law provides that a person commits an offense of injury to a child if he intentionally or knowingly causes to a child serious bodily injury.

**DEFINITIONS**

“INDIVIDUAL” – means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

“CHILD” – means a person six (6) years of age or younger for the offense of capital murder.

“CHILD” – means a person fourteen (14) years of age or younger for the offense of causing serious bodily injury to a child.

“BODILY INJURY” – means physical pain, illness, or any impairment of physical condition

“SERIOUS BODILY INJURY” – means a 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.

“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 result of his conduct when he is aware that his conduct is reasonable certain to cause the result.

INJURED IN ONE COUNTY AND DYING IN ANOTHER - If a person receives an injury in one county and dies in another by reason of such injury, the offender may be prosecuted in the county where the injury was received or where the death occurred, or in the county where the dead body is found.

“PARTY TO AN 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 both. Each party to an offense may be charged with commission of the offense. All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

“CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER” - 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; or, having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

REPORT OF CHILD ABUSE OR NEGLECT - "Abuse" includes the following acts or omissions by a person: physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm; or, failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child.

PERSONS REQUIRED TO REPORT; TIME TO REPORT. A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report.

"PERSON RESPONSIBLE FOR A CHILD'S CARE, CUSTODY, OR WELFARE" means a person who traditionally is responsible for a child's care, custody, or welfare, including a parent, guardian, managing or possessory conservator, or foster parent of the child; a member of the child's family or household as defined by Chapter 71; or, a person with whom the child's parent cohabits.

"HOUSEHOLD" - means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

## GENERAL INSTRUCTIONS

1.

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 duty to determine what the facts are in this case. You must not consider the potential punishment that may result from your decision, but rather base your decision solely on the evidence presented in Court and the law provided in this charge. In evaluating the evidence, you must totally disregard what you believe is my opinion about any factual matter.

2.

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 on the State throughout the trial, and never shifts to the defendant.

3.

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, indicted 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.

4.

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 proves beyond all possible doubt or beyond a shadow of a doubt. It is required that the prosecution's proof excludes all "reasonable doubt" concerning the defendant's innocence.

5.

Our law provides that a defendant may testify in his own behalf if he elects to do so. Here, the Defendant elected not to testify. This is a right given to a defendant and that fact cannot be taken as a circumstance against him. You are instructed that you cannot and must not refer to nor allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever.

6.

You are entitled to consider all of the relevant facts and circumstances surrounding this offense and the previous relationship existing between Jason Delacerda and Breonna Loftin, together with all relevant facts and circumstances going to show the condition of the mind of Jason Delacerda at the time of the offense.

7.

Evidence may have been introduced in this case regarding the defendant having committed offenses other than the offense now alleged against him in this indictment. This evidence was admitted only for the purpose of assisting you, if it does, in proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. You cannot consider the testimony for any purpose unless you believe beyond a reasonable doubt that the defendant committed such other offenses, if any, were committed by him.

8.

You cannot question the bailiff concerning the testimony or the law, nor should you discuss this case in his presence. If any question about the law develops during your deliberation it must be reduced to writing, signed by your foreperson, and given to the bailiff. The question will then be answered by the Court as soon as possible, to the extent allowed by the law. Any physical exhibits admitted into evidence will be furnished to you by the bailiff upon your request.

9.

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.

10.

During your deliberations in this case, you must not consider facts that have been not been introduced into evidence or legal principles not contained in this charge. It is improper for any 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, including professional expertise, they must not mention this information to any other juror, nor consider it themselves in arriving at a verdict.

11.

You are the exclusive judges of the facts proven, the believability of the witnesses, and the weight to be given their testimony. However, you must be bound by and strictly follow the law contained in this charge. Your failure to follow the law could result in a mistrial being declared, and your deliberate violation of this charge could subject you to being held in contempt of Court.

After the attorney's present their arguments to you, you will retire, select a foreperson, and consider your verdict. The arguments are not evidence and you should give the arguments only the consideration you feel they deserve during your evaluation of the evidence. It is the duty of your foreperson to make certain that your deliberations are conducted in accordance with this charge. In arriving at your verdict, it is not proper to arrive at it by any system of averaging. Your verdict must be determined only by a full, fair and free exercise of the opinions of each juror based on the evidence and law presented. Your verdict must be unanimous. After you reach a unanimous decision, your foreperson should sign the appropriate verdict attached to the charge. In returning your verdict, it is your responsibility to make certain that justice is done in this case.

**CHARGE**

Now if you find from the evidence beyond a reasonable doubt that on or about the 17<sup>th</sup> day of August, 2011, in Hardin County, Texas, the defendant, JASON DELACERDA, either acting alone or as a party, as that term has been defined, did then and there, intentionally or knowingly cause the death of an individual, namely, Breonna Loftin, a child younger than six years of age, you will find the defendant GUILTY of CAPITAL MURDER.

Unless you so find, or if you have a reasonable doubt thereof, then you shall find the Defendant NOT GUILTY of CAPITAL MURDER.

You will next consider whether the defendant is guilty of the lesser included offense of INJURY TO A CHILD, CAUSING SERIOUS BODILY INJURY. Now if you find from the evidence beyond a reasonable doubt that on or about the 17<sup>th</sup> day of August, 2011, in Hardin County, Texas, the defendant, JASON DELACERDA, either acting alone or as a party, as that term has been defined, did then and there, intentionally or knowingly cause serious bodily injury to an individual, namely, Breonna Loftin, a child younger than fourteen years of age, you will find the defendant GUILTY of INJURY TO A CHILD, CAUSING SERIOUS BODILY INJURY.

You will next consider whether the defendant is guilty of the lesser included offense of INJURY TO A CHILD, CAUSING BODILY INJURY. Now if you find from the evidence beyond a reasonable doubt that on or about the 17<sup>th</sup> day of August, 2011, in Hardin County, Texas, the defendant, JASON DELACERDA, either acting alone or as a party, as that term has been defined, did then and there, intentionally or knowingly cause bodily injury to an individual, namely, Breonna Loftin, a child younger than fourteen years of age, you will find the defendant GUILTY of INJURY TO A CHILD, CAUSING BODILY INJURY.

SIGNED this 23<sup>rd</sup> day of February, 2018.

  
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JUDGE PRESIDING



CAUSE NO. 21284

STATE OF TEXAS

IN THE 356th DISTRICT COURT

VS.

OF

JASON DELACERDA

HARDIN COUNTY, TEXAS

VERDICT  
(Choose only one)

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3:00 P.M.

FEB 23 2018

DANA HOGG, DISTRICT CLERK  
HARDIN COUNTY, TEXAS  
By Deputy NO. 1109

WE, THE JURY, find the Defendant, JASON DELACERDA, NOT GUILTY.

Signed, Foreperson of the Jury

WE THE JURY, find the Defendant, JASON DELACERDA, GUILTY of CAPITAL MURDER, as alleged in the indictment.

Brenda Sims  
Signed, Foreperson of the Jury 2/23/18

WE THE JURY, find the Defendant, JASON DELACERDA, NOT GUILTY of CAPITAL MURDER, but GUILTY of the LESSER INCLUDED offense of intentionally or knowingly cause INJURY TO A CHILD, SERIOUS BODILY INJURY.

Signed, Foreperson of the Jury

WE THE JURY, find the Defendant, JASON DELACERDA, NOT GUILTY of CAPITAL MURDER, and NOT GUILTY of the LESSER INCLUDED offense of intentionally or knowingly cause INJURY TO A CHILD, SERIOUS BODILY INJURY but GUILTY of the LESSER INCLUDED offense of intentionally or knowingly cause INJURY TO A CHILD, BODILY INJURY.

Signed, Foreperson of the Jury