

FILED

JUN 28 2013

Tonna Trumble Hitt
Tonna Trumble Hitt
Clerk District Court, Hood County, Texas

CAUSE NO. CR12234

STATE OF TEXAS

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IN THE DISTRICT COURT

VS.

OF HOOD COUNTY, TEXAS

GORDON RAY LEWIS

355TH JUDICIAL DISTRICT

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, GORDON RAY LEWIS, stands charged by indictment with the offense of capital murder alleged to have been committed on or about the 17th day of January, 2012, in Hood County, Texas. The defendant has pleaded not guilty.

1.

A person commits the offense of murder if he intentionally or knowingly causes the death of an individual; intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or 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 capital murder when such person intentionally commits the murder in the course of committing or attempting to commit the offense of robbery.

2.

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



3.

A "firearm" includes any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

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

"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.

"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.

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

"Theft" is the unlawful appropriation of the corporeal personal property of another with the intent to deprive such person of said 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" as used herein means tangible or intangible personal property or documents, including money, that represents or embodies anything of value.

"Deprive" as used herein 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 or force or threats.

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

4.

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.

5.

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:

- a. 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
- b. 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.

"Conspiracy" is committed if, with intent that a felony be committed, a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and he or one or more of them performs an overt act in pursuance of the agreement.

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

You are instructed that capital murder, murder and robbery are felony offenses in the State of Texas.

Each party to an offense may be charged with the commission of the offense.

Mere presence alone will not constitute one a party to an offense.

6.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 17th day of January, 2012, in Hood County, Texas, GORDON RAY LEWIS, Defendant, either acting alone or with Justin Wade Ragan and/or Kimberly Danielle Milwicz as a party to the offense, if any, as herein above defined, did then and there intentionally cause the death of an individual, Ormond Gene Sabin, by shooting Ormond Gene Sabin with a firearm, and the defendant was then and there in the course of committing or attempting to commit the offense of robbery of Ormond Gene Sabin, then you will find the defendant 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 find the defendant not guilty of capital murder and next consider whether he is guilty of the lesser offense of murder.

7.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 17th day of January, 2012, in Hood County, Texas, GORDON RAY LEWIS, Defendant, either acting alone or with Justin Wade Ragan and/or Kimberly Danielle Milwicz as a party to the offense, if any, as herein above defined, did then and there commit or attempt 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, did commit or attempt to commit an act clearly dangerous to human life by shooting Ormond Gene Sabin with a firearm that caused the death of Ormond Gene Sabin, then you will find the defendant 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 find the defendant not guilty of murder and next consider whether he is guilty of the lesser offense of robbery.

8.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 17th day of January, 2012, in Hood County, Texas, GORDON RAY LEWIS, Defendant, either acting alone or with Justin Wade Ragan and/or Kimberly Danielle Milwicz as a party to the offense, if any, as herein above defined, did then and there intentionally or knowingly, while in the course of committing theft of property and with intent to obtain or maintain control of said property, cause bodily injury to Ormond Gene Sabin by shooting Ormond Gene Sabin with a firearm, then you will find the defendant guilty of the lesser offense of robbery.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty of robbery.

9.

If you find from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder or murder or robbery but you have a reasonable doubt as to which offense he is guilty, then you must resolve that doubt in the defendant's favor and find him guilty of the lesser offense.

If you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge, then you shall acquit the defendant and say by your verdict "Not Guilty".

For your guidance in arriving at a verdict in this case, you are also instructed as follows:

(a) You are instructed that 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.

(b) In all criminal cases 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.

(c) 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".

(d) You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be respecting any matter of fact involved in this case. If you have observed anything which you may interpret as the Court's opinion upon any matter of fact in this case, you must wholly disregard it. You should not attempt to satisfy what you may think or fancy to be the opinion of any person connected with the trial of this case, but your verdict, whatever it may be, must be the result of your deliberate judgment based solely upon the law as given you in the charge by the Court and the evidence submitted under my rulings.

(e) You are instructed that you should not question the bailiff concerning the testimony or the law of the case, nor should you discuss the case in his presence. If you have any questions, you should reduce them to writing, have them signed by the presiding juror, and present them to me.

(f) You are instructed that any statements of counsel made during the course of the trial or during argument, not supported by the evidence, or statements made by counsel, not in harmony with the law as stated to you by me in these instructions, are to be wholly disregarded.

(g) You are instructed that the indictment in this case is not any evidence of the defendant's guilt nor is the fact that he was arrested; and no juror should permit himself to be to any extent influenced against the defendant because of said indictment or his arrest.

(h) You are instructed that it is the purpose of the law to try a case solely on the law and the evidence. You can only consider facts and circumstances in evidence, and you must not consider or receive from any source facts or circumstances that have not been introduced by testimony before you. It is not proper for any juror to discuss or to mention to any other juror anything which he may have heard or read on the outside of the case. If any juror should discover that he has any outside information or has heard anything concerning the parties to the case, or any of the witnesses, or anything concerning the case, such juror should not impart such outside information to any other juror, nor should he consider the same himself in arriving at a verdict.

(i) You are instructed that in a criminal case, the law permits the defendant to testify on his own behalf. However, the same law provides that the defendant's failure to testify may not be considered as a circumstance against him. You will not consider the failure of the defendant to testify as a circumstance against him. You will not, in your retirement to consider your verdict, allude to, comment on, or in any manner refer to the fact that the defendant has not testified.

(j) You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge.

After the argument of counsel, you will retire, select one of your number as the presiding juror and consider your verdict and as you find, so say, and write your verdict on a separate piece of paper. Your verdict must be unanimous, must be in writing, and signed by the presiding juror.


JUDGE PRESIDING

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Tenna Trumble Hitt
Clerk District Court, Hood County, Texas

FORMS OF VERDICT:

We, the Jury, find the defendant, GORDON RAY LEWIS, not guilty.

PRESIDING JUROR

We, the Jury, find the defendant, GORDON RAY LEWIS, guilty of capital murder as alleged in the indictment.



PRESIDING JUROR

Michael Ford

We, the Jury, find the Defendant, GORDON RAY LEWIS, guilty of the lesser offense of murder.

PRESIDING JUROR

We, the Jury, find the Defendant, GORDON RAY LEWIS, guilty of the lesser offense of robbery.

PRESIDING JUROR

*Received at 11:15am
this June 28, 2013.*

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Donna Trumble Hitt
Tonna Trumble Hitt
Clerk District Court, Hood County, Texas

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*Paul Walther
District Judge*