

CR26494

THE STATE OF TEXAS

VS.

MARIO LAVELL COCKERHAM

IN THE DISTRICT COURT OF

LIBERTY COUNTY, TEXAS

253<sup>RD</sup> JUDICIAL DISTRICT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, MARIO LAVELL COCKERHAM, stands charged by indictment with the offense of Capital Murder, alleged to have been committed on or about the 23<sup>rd</sup> day of March, 2007, in Liberty County, Texas. To this charge the defendant has pled not guilty.

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 and is provided.

You will note that the Indictment charges that the offenses were committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed before May 2, 2007.

You will also note that the indictment alleges that the offense was committed in a certain county. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the alleged county is where the injury occurred which caused the death, or where the death occurred or where the dead body was found.

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

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“Individual” means a human being who is alive.

A person commits the offense of capital murder if the person murders an individual under six years of age.

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.

Now, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about 23<sup>rd</sup> day of March, 2007, in Liberty County, Texas, the defendant, MARIO LAVELL COCKERHAM, did then and there intentionally or knowingly cause the death of an individual, namely, JENNA YVONNE ROSS, by suffocating the said JENNA YVONNE ROSS, and the said JENNA YVONNE ROSS was then and there an individual younger than six years of age, then you will find the defendant guilty of Capital Murder as charged in the indictment.

If you do not so find, or if you have a reasonable doubt thereof, you will find the defendant not guilty.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a privilege accorded a defendant, and in the event he elects not to testify, that fact cannot be taken as a circumstance against him. In this case, the defendant has elected not to testify, and you are instructed that you cannot and must not refer or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against the defendant.

The State has introduced evidence of extraneous crimes or bad acts other than the one charged in the indictment in this case. This evidence was admitted only for the purpose of assisting you, if it does, for the purpose of showing the defendant's opportunity, plan, and/or identity, if any. You cannot consider the testimony unless you find and believe beyond a reasonable doubt that the defendant committed these acts, if any, were committed.

You are instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense, if any.

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. If you have a reasonable doubt as to the defendant's guilt after considering all the evidence before you, and these instructions, you will find the defendant "not guilty."

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

You may also consider either direct or circumstantial evidence. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating either the guilt or innocence

of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It requires only that you weigh all of the evidence and be convinced of the defendant's guilt beyond a reasonable doubt before he can be convicted.

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. If you did take notes, 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.

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 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 using the appropriate form attached hereto, and dating and signing the same as Foreperson.

No one has any authority to communicate with you except the officer who has you in charge. 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.

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 Foreperson will certify thereto by filling in the appropriate form attached to this charge and dating and signing his or her name as Foreperson. You may retire to consider your verdict after the argument of counsel.

SIGNED this 17<sup>th</sup> day of April, 2009.

  
JUDGE PRESIDING

FILED  
at 11:22 O'clock A M,

APR 17 2009

MELODY GILMORE  
Clerk, District Court, Liberty County, Tex  
By: B. J. J. J. Deputy

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YOU WILL FIND ONE AND ONLY ONE OF THE FOLLOWING VERDICTS:

NO. CR26494

THE STATE OF TEXAS

IN THE DISTRICT COURT OF

VS.

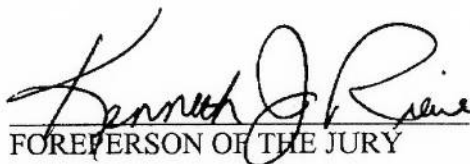
LIBERTY COUNTY, TEXAS

MARIO LAVELL COCKERHAM

253<sup>RD</sup> JUDICIAL DISTRICT

WE, THE JURY, find the defendant, MARIO LAVELL COCKERHAM, guilty of the offense of Capital Murder as alleged in the indictment.

Date: 4/13/09

  
FOREPERSON OF THE JURY

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NO. CR26494

THE STATE OF TEXAS

IN THE DISTRICT COURT OF

VS.

LIBERTY COUNTY, TEXAS

MARIO LAVELL COCKERHAM

253<sup>RD</sup> JUDICIAL DISTRICT

WE, THE JURY, find the defendant, MARIO LAVELL COCKERHAM, not guilty.

Date: \_\_\_\_\_

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

STATE OF TEXAS  
COUNTY OF LIBERTY

I, Melody Gilmore, District Clerk of Liberty County, Texas, do hereby certify that the foregoing is a true and correct copy of the original record, now in my lawful custody and possession, filed on 04-17-2009 as appears of record in my office.

Witness my official hand and seal of office, this  
04-17-2009

MELODY GILMORE DISTRICT CLERK  
Liberty County, Texas  
By: Kristy Jennings Deputy

**FILED**

at 3:35 O'clock P M,

**APR 17 2009**

MELODY GILMORE  
Clerk, District Court, Liberty County, Tex

By: Brendy Jarn Deputy

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