

CAUSE NO. 1072921R

THE STATE OF TEXAS

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§

IN THE CRIMINAL DISTRICT COURT

VS.

NUMBER THREE OF
FILED

STEPHEN LANCE HEARD

THOMAS A. WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

COURT'S CHARGE

NOV 13 2007

MEMBERS OF THE JURY:

TIME 9:17 AM
BY EB DEPUTY

The Defendant, STEPHEN LANCE HEARD, stands charged in Count One of the indictment with the offense of capital murder, alleged to have been committed on or about the 29th day of November, 2005, in Tarrant County, Texas. To this charge, the Defendant, STEPHEN LANCE HEARD, has pled not guilty. You are instructed that the law applicable to this case is as follows:

I.

You are instructed that our law provides that a person commits the offense of capital murder if he intentionally or knowingly causes the death of an individual, knowing that the individual was then and there a peace officer acting in the lawful discharge of an official duty.

II.

“Individual” means a human being who has been born and is alive.

A police officer is a peace officer.

A deadly weapon is anything manifestly designed 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.

A firearm is a deadly weapon.

"Firearm" means 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.

"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.

III.

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.

A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

IV.

VOLUNTARY INTOXICATION

Voluntary intoxication does not constitute a defense to the commission of a crime.

"Intoxication" means disturbance of mental or physical capacity resulting from the

introduction of any substance into the body.

V.

EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS

You are instructed that if there is testimony before you regarding the Defendant having committed crimes, wrongs or acts other than the offenses alleged 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 bad acts, if any were committed, and even then you may only consider the same in determining the issue of motive and intent of the Defendant, if any, in connection with the offense alleged against him in the indictment in this case and for no other purpose.

VI.

SELF-DEFENSE

On the issue of self defense as to each of the offenses which you are called upon to consider as set forth in the Court's Charge, you are instructed as follows:

Upon the law of self defense you are instructed that a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

A person is justified in using deadly force against another if he would be justified in using force against the other, if a reasonable person in the defendant's situation would not have retreated and when and to the degree he reasonably believes deadly force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly force.

The use of force against another is not justified to resist an arrest or search that the actor knows is being made by a peace officer, even though the arrest or search is unlawful, unless (1) if, before the actor offers any resistance, the peace officer uses or attempts to use greater force than necessary to make the arrest or search; and (2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's use or attempted use of greater force than necessary.

"Reasonable belief" means a belief that would be held by an ordinary and prudent person in the same circumstances as the actor.

"Deadly force" means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

For a defendant to be convicted of any of the offenses set out below, the state is required to disprove beyond a reasonable doubt that the defendant acted in self-defense.

VII.

COUNT ONE-CAPITAL MURDER

Now, bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, STEPHEN LANCE HEARD, in Tarrant County, Texas, on or about the 29th day of November, 2005, did then and there intentionally or knowingly cause the death of an individual, Henry Nava, by shooting him with a firearm, and the said Henry Nava was then and there a peace officer who was acting in the lawful discharge of an official duty and who the defendant knew was a peace officer, then you will find the defendant guilty of the offense of capital murder as charged in Count One, and so say by your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of Capital Murder and next consider whether he is guilty of the offense of Murder.

However, if you find from the evidence beyond a reasonable doubt that the defendant, STEPHEN LANCE HEARD, in Tarrant County, Texas, on or about the 29th day of November, 2005, did then and there cause the death of HENRY NAVA; but you further find from the evidence, or have a reasonable doubt thereof, that the defendant reasonably believed, as viewed from the standpoint of a reasonable and prudent person in the place of the defendant, that deadly force, when and to the degree used, if it was, was immediately necessary to protect himself against the use or attempted use of unlawful deadly force, if any, by the said HENRY NAVA, STEVE MYERS, and ERNEST TAMAYO, either acting individually or in any combination thereof; and that at such time a reasonable person in the defendant's situation would not have retreated, you will acquit the defendant and say by your verdict not guilty; however, if you believe from the evidence beyond a reasonable doubt the defendant resisted an arrest or search that the defendant knew was being made by a peace officer, even though the arrest or search was unlawful, you will find against the defendant's claim of self defense; unless you further find or have a reasonable doubt thereof, that before the defendant offered any resistance, if any, the peace officer used or attempted to use greater force than necessary to make the arrest or search; and you further find, or have a reasonable doubt thereof, that the defendant reasonably believed that force when and to the degree used, if it was, was immediately necessary to protect himself against the peace officer's use or attempted use of greater force than necessary, then the defendant's right of self defense would not be lessened, and you will decide the

issue of self defense in accordance with the law on that subject heretofore given you.

MISTAKE OF FACT

It is a defense to prosecution that the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense.

Although an actor's mistake of fact may constitute a defense to the offense charged, he may nevertheless be convicted of any lesser included offense of which he would be guilty if the fact were as he believed.

The burden is on the State to disprove mistake of fact beyond a reasonable doubt.

Therefore, if you believe from the evidence that the Defendant through mistake formed a reasonable belief that HENRY NAVA was not a peace officer acting in the lawful discharge of an official duty, then such would negate the kind of culpability required to convict him of the offense of capital murder, and if the State fails to disprove such a belief beyond a reasonable doubt, then you will find in favor of the Defendant on the issue of mistake of fact, and find the Defendant not guilty of the offense of capital murder.

In the event you find the defendant not guilty of capital murder, you will next consider murder as set out below.

VIII.

MURDER

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

Now, bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the Defendant, STEPHEN LANCE HEARD, on or about the 29th day of November, 2005, in Tarrant County, Texas, did intentionally or knowingly cause the death of an individual, HENRY NAVA, by shooting the said HENRY NAVA with a deadly weapon, to-wit: a firearm, then you will find the Defendant guilty of Murder.

Unless you so find and believe from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of Murder and next consider whether he is guilty of the offense of felony murder.

However, if you find from the evidence beyond a reasonable doubt that the defendant, STEPHEN LANCE HEARD, in Tarrant County, Texas, on or about the 29th day of November, 2005, did then and there cause the death of HENRY NAVA; but you further find from the evidence, or have a reasonable doubt thereof, that the defendant reasonably believed, as viewed from the standpoint of a reasonable and prudent person in the place of the defendant, that deadly force, when and to the degree used, if it was, was immediately necessary to protect himself against the use or attempted use of unlawful deadly force, if any, by the said HENRY NAVA, STEVE MYERS, and ERNEST TAMAYO, either acting individually or in any combination thereof; and that at such time a reasonable person in the defendant's situation would not have retreated, you will acquit the defendant and say by your verdict not guilty.

In the event you find the defendant not guilty of murder, you will next consider felony murder as set out below.

IX.

FELONY MURDER

A person commits the offense 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.

Now, bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, STEPHEN LANCE HEARD, in Tarrant County, Texas, on or about the 29th day of November, 2005, did then and there intentionally or knowingly commit or attempt to commit an act clearly dangerous to human life, namely, shoot a firearm, which caused the death of Henry Nava, and the said Defendant was then and there in the course of or immediate flight from the commission or attempted commission of a felony, to-wit: unlawful possession of firearm by a felon, then you will find the defendant guilty of the offense of felony murder, and so say by your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of felony murder and next consider whether he is guilty of the offense of manslaughter.

However, if you find from the evidence beyond a reasonable doubt that the defendant, STEPHEN LANCE HEARD, in Tarrant County, Texas, on or about the 29th day of November, 2005, did then and there cause the death of HENRY NAVA; but you further find from the evidence, or have a reasonable doubt thereof, that the defendant reasonably believed, as viewed from the

standpoint of a reasonable and prudent person in the place of the defendant, that deadly force, when and to the degree used, if it was, was immediately necessary to protect himself against the use or attempted use of unlawful deadly force, if any, by the said HENRY NAVA, STEVE MYERS, and ERNEST TAMAYO, either acting individually or in any combination thereof; and that at such time a reasonable person in the defendant's situation would not have retreated, you will acquit the defendant and say by your verdict not guilty.

In the event you find the defendant not guilty of felony murder, you will next consider manslaughter as set out below.

X.

MANSLAUGHTER

A person commits the offense of manslaughter if he recklessly causes the death of an individual.

A person acts recklessly or is reckless with respect to the result of his conduct when he is aware of but consciously disregards a substantial and an unjustifiable risk that the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the standpoint of the person so acting.

Before a person is deemed to be reckless there must actually be both a substantial and an unjustifiable risk that the result will occur, and that the person acting was actually aware of such risk and consciously disregarded it, and if you have a reasonable doubt as to any of such matters, then you would be bound to acquit the Defendant of Manslaughter.

Now, bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the Defendant, STEPHEN LANCE HEARD, on or about the 29th day of November, 2005, in Tarrant County, Texas, did recklessly cause the death of HENRY NAVA, by shooting the said HENRY NAVA with a deadly weapon, to-wit: a firearm, then you will find the Defendant guilty of Manslaughter.

Unless you so find and believe from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant say by your verdict, "not guilty."

However, if you find from the evidence beyond a reasonable doubt that the defendant, STEPHEN LANCE HEARD, in Tarrant County, Texas, on or about the 29th day of November, 2005, did then and there cause the death of HENRY NAVA; but you further find from the evidence, or have a reasonable doubt thereof, that the defendant reasonably believed, as viewed from the standpoint of a reasonable and prudent person in the place of the defendant, that deadly force, when and to the degree used, if it was, was immediately necessary to protect himself against the use or attempted use of unlawful deadly force, if any, by the said HENRY NAVA, STEVE MYERS, and ERNEST TAMAYO, either acting individually or in any combination thereof; and that at such time a reasonable person in the defendant's situation would not have retreated, you will acquit the defendant and say by your verdict not guilty.

XI.

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.

XII.

All persons are presumed 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.

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 the Defendant and say by your verdict "not guilty".

XIII.

The indictment in this case is no evidence whatsoever of the guilt of the Defendant. It is a mere pleading necessary in order to bring this case into court for trial and you will consider it for no

purpose at all.

XIV.

It is your duty to consult with one another and to deliberate in an effort to reach a verdict based on these instructions if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are the judges of the facts. Your sole duty is to decide whether the State has proved the Defendant guilty beyond a reasonable doubt.

You are instructed that your verdict must be unanimous.

You are the exclusive judges of the facts proven, of the credibility of the witnesses, and of the weight to be given to their testimony, but you are bound to receive the law from the Court, which is given herein, and be governed thereby.

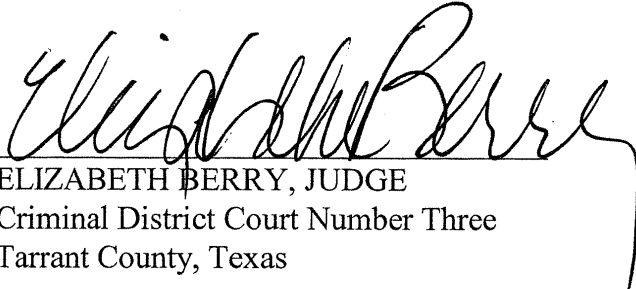
You must decide the issues in the case solely on the testimony and exhibits admitted into evidence before you. You must not consider any fact or evidence learned by you outside the courtroom. You also may not consider any fact or evidence that you were instructed to disregard during trial.

You must not tell other jurors matters of your own personal or professional knowledge or those of other persons, nor relate to them any special knowledge you may have about any facts or person connected with this case that is not a part of the evidence you heard during the trial.

You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against the state or the defendant in this case, for each is entitled to the same fair and impartial consideration.

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 reached a unanimous verdict, to certify to your verdict by using one of the attached forms and signing the same as your Foreperson.

If the jury wishes to communicate with the Court pertaining to this case, such communication must be in writing and signed by the Foreperson and handed to the Bailiff. Please ring the buzzer in the jury room and wait for the Bailiff who will be in attendance. 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.



ELIZABETH BERRY, JUDGE
Criminal District Court Number Three
Tarrant County, Texas

Verdict of the Jury
PLEASE ANSWER ONE VERDICT ONLY

CAPITAL MURDER

We, the Jury, find the Defendant, STEPHEN LANCE HEARD, guilty of the offense of capital murder, as alleged in the indictment.



FOREPERSON

-OR-

MURDER

We, the Jury, find the Defendant, STEPHEN LANCE HEARD, guilty of the offense of murder.

FOREPERSON

-OR-

FELONY MURDER

We, the Jury, find the Defendant, STEPHEN LANCE HEARD, guilty of the offense of felony murder.

THOMAS A. WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

NOV 13 2007

FOREPERSON

TIME 3:35
BY [Signature] DEPUTY

-OR-

MANSLAUGHTER

We, the jury, find the Defendant, STEPHEN LANCE HEARD, guilty of the offense of manslaughter.

FOREPERSON

-OR-

NOT GUILTY

We, the Jury, find the Defendant, STEPHEN LANCE HEARD, not guilty.

FOREPERSON