

CAUSE NO. 1085785

THE STATE OF TEXAS                   §    IN THE 177TH DISTRICT COURT  
VS.                                       §    OF HARRIS COUNTY, TEXAS  
GUSTAVO DE JESUS LOPEZ             §    NOVEMBER TERM, A. D., 2007

Members of the Jury:

The defendant, Gustavo De Jesus Lopez, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 10th day of January, 2006, 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 commits murder, as hereinbefore defined, and the person intentionally or knowingly causes the death of more than one person during the same criminal transaction.

"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.

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.

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.

You are instructed that it is your duty to consider the evidence of all relevant facts and circumstances surrounding the deaths, if any, of Concepcion Vasquez and Felix Valdez together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the alleged offense.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 10th day of January, 2006, in Harris County, Texas, the defendant, Gustavo De Jesus Lopez, did then and there unlawfully, during the same criminal transaction, intentionally or knowingly cause the death of Concepcion Vasquez by shooting Concepcion Vasquez with a deadly weapon, namely, a firearm, and intentionally or knowingly cause the death of Felix Valdez by shooting Felix Valdez with a deadly weapon, namely, a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 10th day of January, 2006, in Harris County, Texas, Jose Herrera and/or another unknown person or persons, did then and there unlawfully, during the same criminal transaction, intentionally or knowingly cause the death of Concepcion Vasquez by shooting Concepcion Vasquez with a deadly weapon, namely, a firearm, and intentionally or knowingly cause the death of Felix Valdez by shooting Felix Valdez with a deadly weapon, namely, a firearm, and that the defendant, Gustavo De Jesus Lopez, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Jose Herrera and/or the other unknown person or persons to commit

the offense, if he did, 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, you will acquit the defendant and say by your verdict "Not Guilty."

You are further instructed that if there is any evidence before you in this case regarding the defendant's committing an alleged offense or offenses other than the offense alleged against him in the indictment in this case, you cannot consider such evidence for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offense or offenses, if any, and even then you may only consider the same in determining the motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident of the defendant, if any, in connection with the offense, if any, alleged against him in the indictment and for no other purpose.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a right 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 to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

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

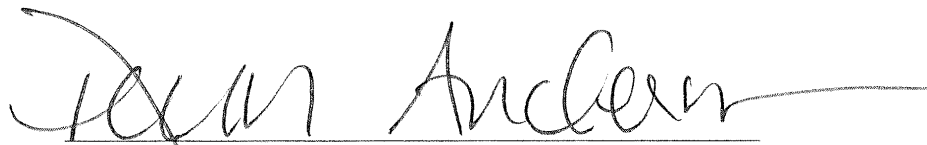
using the appropriate form attached hereto and signing the same as Foreman.

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.

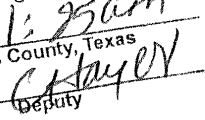
No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written, prepared and signed by the Foreman and shall be submitted to 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 the guilt or innocence of the defendant under the indictment in this cause and restrict your deliberations solely to the issue of guilt or innocence of the defendant.

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

  
Devon Anderson, Judge  
177th District Court  
Harris County, TEXAS

**FILED**  
Theresa Chang  
District Clerk

NOV 07 2007  
Time: 11:50am  
Harris County, Texas  
By:   
Deputy

*[Faint, illegible text and markings at the bottom of the page, possibly bleed-through or a stamp.]*

CAUSE NO. 1085785

THE STATE OF TEXAS                    §    IN THE 177TH DISTRICT COURT  
VS.    §    OF HARRIS COUNTY, TEXAS  
GUSTAVO DE JESUS LOPEZ               §    NOVEMBER TERM, A. D., 2007

V E R D I C T

"We, the Jury, find the defendant, Gustavo De Jesus Lopez,  
not guilty."

\_\_\_\_\_  
Foreman of the Jury

\_\_\_\_\_  
(Please Print) Foreman

"We, the Jury, find the defendant, Gustavo De Jesus Lopez,  
guilty of capital murder, as charged in the indictment."

*William A. May*  
\_\_\_\_\_  
Foreman of the Jury  
*WILLIAM A MAY*  
\_\_\_\_\_  
(Please Print) Foreman

**FILED**

Theresa Chang  
District Clerk

NOV 07 2007

Time: *2:11 PM*  
Harris County, Texas  
By: *[Signature]*  
Deputy