

CAUSE NO. 1544492

THE STATE OF TEXAS § IN THE 230TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
DERRICK KEVIN METCALF § JANUARY TERM, A. D., 2019

Members of the Jury:

The defendant, Derrick Kevin Metcalf, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 24th February, 2017, 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 employs another to commit the murder for remuneration or the promise of remuneration.

"Remuneration" means payment by one person to another in compensation for a specific service or services rendered pursuant to an agreement.

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.

Before you would be warranted in finding the defendant guilty of capital murder, you must find from the evidence beyond a

reasonable doubt that on the occasion in question the defendant, Derrick Kevin Metcalf, intentionally employed David Galindo to kill Rose Hunt; and the defendant, Derrick Kevin Metcalf, paid or promised to pay David Galindo to kill Rose Hunt, as alleged in the indictment; and David Galindo agreed to kill Rose Hunt pursuant to such employment by the defendant, Derrick Kevin Metcalf, and if you have a reasonable doubt as to the existence of any of the foregoing elements, then you cannot convict the defendant of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that in Harris County, Texas, on or about the 24th February, 2017, the defendant, Derrick Kevin Metcalf, did then and there unlawfully, intentionally or knowingly cause the death of Rose Hunt, by employing David Galindo for remuneration or the promise of remuneration, to-wit: cash money, by shooting Rose Hunt with a deadly weapon, namely a firearm, then you will find the defendant guilty 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.

You are further instructed that any evidence that any witness has committed any crime was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the credibility of the witness and the weight to be given his/her testimony, and you will not consider the same for any other purpose.

An accomplice, as the term is here used, means anyone connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime by unlawful act or omission on their part transpiring either before, at the time of, or after the commission of the offense, and whether or not they were present and participated in the commission of the crime. 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. Mere presence alone, however, will not constitute one a party to an offense.

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. The term "conduct" means any act or omission and its accompanying mental state.

You are instructed that a conviction cannot be had upon the testimony of an accomplice unless the jury first believes that the accomplice's testimony is true and that it shows the defendant is guilty of the offense charged against him, and even then you cannot convict unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

Therefore, if you believe from the evidence beyond a reasonable doubt that an offense was committed and you further believe from the evidence that the witness, Justin Odom, was an accomplice, or you have a reasonable doubt whether he was or not, as that term is defined in the foregoing instructions, then you cannot convict the defendant upon the testimony of Justin Odom, unless you further believe that the testimony of Justin Odom is true and that it shows the defendant is guilty as charged in the indictment; and even then you cannot convict the defendant unless you further believe that there is other evidence in the case, outside of the testimony of Justin Odom tending to connect the defendant with the offense charged in the indictment, and then from all the evidence you must believe beyond a reasonable doubt that the defendant is guilty.

The witness, Daizy Costello, is an accomplice, if an offense was committed, and you cannot convict the defendant upon his testimony unless you first believe that the testimony of Daizy Costello is true and that it shows the defendant is guilty as charged in the indictment; and even then you cannot convict the defendant unless you further believe that there is other evidence in the case, outside of the testimony of Daizy Costello tending to connect the defendant with the offense committed, if you find that an offense was committed, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission, and then from all of the evidence you must believe beyond a reasonable doubt that the defendant is guilty of the offense charged against him.

You are further instructed that one or more accomplices cannot corroborate each other; but such corroborative evidence, if any, must be from some other source than said accomplices.

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 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 signing the same as Foreperson.

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.

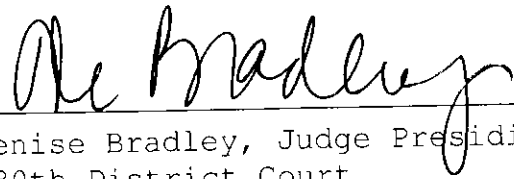
No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written, prepared and signed by the Foreperson and shall be submitted 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.

Your verdict must be by a unanimous vote of all members of the jury.

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

A handwritten signature in cursive script, reading "Denise Bradley", written over a horizontal line.

Denise Bradley, Judge Presiding
230th District Court
Harris County, TEXAS

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DERRICK KEVIN METCALF § JANUARY TERM, A. D., 2019

V E R D I C T

"We, the Jury, find the defendant, Derrick Kevin Metcalf, not guilty."

Foreperson of the Jury

(Please Print) Foreperson

"We, the Jury, find the defendant, Derrick Kevin Metcalf, guilty of capital murder, as charged in the indictment."

[Signature]

Foreperson of the Jury

Vincent A. Hanak

(Please Print) Foreperson

FILED
Marilyn Burgess
District Clerk
JAN 29 2019
Time: 1534
By: [Signature]
Deputy
Harris County, Texas