

CAUSE NO. 1547641

THE STATE OF TEXAS § IN THE 338TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
KENNETH JONES § JULY TERM, A. D., 2019

Members of the Jury:

The defendant, Kenneth Jones, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 26th day of March, 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 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.

You are instructed that it is your duty to consider the evidence of all relevant facts and circumstances surrounding the deaths and the previous relationship, if any, existing between the accused and Christopher Beatty and the accused and Gary Wayne Rusher Jr. 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.

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 person's use or attempted use of unlawful force. The use of force against another is not justified:

- (1) In response to verbal provocation alone, or
- (2) if the defendant provoked the victim's use or attempted use of unlawful force, unless,

- a. the defendant abandons the encounter, or clearly communicates to the victim his intent to do so reasonably believing he cannot safely abandon the encounter, and

b. the victim nevertheless continues or attempts to use unlawful force against the defendant.

A person is justified in using deadly force against another if he would be justified in using force against the other in the first place, as above set out, and when he reasonably believes that such deadly force is immediately necessary:

(1) to protect himself against the other person's use or attempted use of unlawful deadly force, or

(2) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

A person's belief that deadly force was immediately necessary is presumed to be reasonable if the person:

(1) knew or had reason to believe that the other person against whom the force was used:

(a) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the person's habitation, vehicle, or place of business or employment;
or

(b) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the person from his habitation, vehicle, or place of business or employment;
or

(c) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

(2) did not provoke the other person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

With regard to the presumption of the necessity of deadly force, you are further instructed that:

(1) the presumption applies unless the state proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist;

(2) if the state fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed fact exists;

(3) even though the jury may find that the presumed fact does not exist, the state must prove beyond a reasonable doubt each of the elements of the offense charged; and

(4) if the jury has a reasonable doubt as to whether the presumed fact exists, the presumption applies and the jury must consider the presumed fact to exist.

A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal

activity at the time the deadly force is used is not required to retreat before using deadly force. In determining whether the defendant's belief that deadly force was immediately necessary was a reasonable belief, you may not consider the defendant's failure to retreat unless you find one of the following circumstances to be true beyond a reasonable doubt:

(1) The defendant did not have a right to be present at the location where the deadly force was used; or

(2) The defendant provoked the person against whom the deadly force was used; or

(3) The defendant was engaged in criminal activity at the time the deadly force was used.

A person is justified in using deadly force against another if he would be justified in using force against the other in the first place, as above set out, and when he reasonably believes that such deadly force is immediately necessary to protect a third person against the other person's use or attempted use of unlawful deadly force.

A person who has a right to use deadly force to defend himself or a third person against one alleged attacker also has a right to use deadly force to defend himself or a third person against a second or subsequent perceived attacker who is with the first attacker if he reasonably believes that either himself or the third person is in immediate danger of death or serious bodily injury at

the hands of either the first attacker or the second subsequent attacker.

The threat of force is justified when the use of force is justified. A threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the defendant's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force.

In determining the existence of real or apparent danger, you should consider all the facts and circumstances in evidence before you; all relevant facts and circumstances surrounding the use of force or deadly force, if any; the previous relationship existing between the defendant or third person or persons being defended and the alleged injured party or the other person or persons with the alleged injured party; 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, including any and all threats previously communicated to the defendant or the third person from the alleged injured party or the other person or persons with the alleged injured party. In considering such circumstances, you should place yourselves in the defendant's position at that time and view them from his standpoint alone.

By the term "reasonable belief" as used herein is meant a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

By the term "deadly force" as used herein is meant force that is intended or known by the persons using it to cause, or in the

manner of its use or intended use is capable of causing, death or serious bodily injury.

When a person, or the third person, is attacked with unlawful deadly force, or he reasonably believes he, or the third person, is under attack or attempted attack with unlawful deadly force by one or more persons, and there is created in the mind of such person a reasonable expectation or fear of death or serious bodily injury to himself or the third person at the hands of such assailants, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, viewed from his standpoint at the time, to protect himself or the third person from such attack or attempted attack. And it is not necessary that there be an actual attack or attempted attack, as a person has a right to defend his life and person, or the life and person of the third person, from apparent danger as fully and to the same extent as he would had the danger been real, provided that he acted upon a reasonable apprehension of danger, as it appeared to him from his standpoint at the time, and that he reasonably believed such deadly force was immediately necessary to protect himself, or the third person, against the use or attempted use of unlawful deadly force by his assailants.

You are instructed that conduct of a person is justified if that person reasonably believes the conduct is immediately necessary to avoid imminent harm, and the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary

standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct.

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

The term "reasonable belief" means a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

By the term "ordinary standards of reasonableness" is meant the standards that an ordinary and prudent person would apply to the circumstances that the defendant faced.

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 credibility of the defendant.

Therefore, even if you believe from the evidence beyond a reasonable doubt that the defendant did illegally possess a firearm, but you further believe, or you have a reasonable doubt thereof, that, at the time of such conduct, the defendant reasonably believed that it was immediately necessary to avoid imminent harm, to-wit: fear of death or serious bodily injury to himself or of ASIA OLIVER JONES or HARVEY JONES or JACQUELINE BROWN from the use of unlawful deadly force at the hands of GARY WAYNE RUSHER, JR. or CHRISTOPHER BEATTY or other persons with GARY WAYNE

RUSHER, JR. or CHRISTOPHER BEATTY, or any of them, and that the desirability and urgency of avoiding that harm clearly outweighed, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing such conduct, you will find the defendant's possession of the firearm was lawful.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 26th day of March, 2017, in Harris County, Texas, the defendant, Kenneth Jones, did then and there unlawfully, during the same criminal transaction, intentionally or knowingly cause the death of Christopher Beatty, by shooting Christopher Beatty with a deadly weapon, namely a firearm and intentionally or knowingly cause the death of Gary Wayne Rusher Jr., by shooting Gary Wayne Rusher Jr., with a deadly weapon, namely a firearm, then you will find the defendant guilty of capital murder, as charged in the indictment, unless you find in the defendant's favor on the issue of self-defense as applied in the following paragraphs.

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."

Now, if you find from the evidence beyond a reasonable doubt that on the occasion in question the defendant that the defendant, KENNETH JONES, did then and there cause the death of Christopher Beatty and Gary Wayne Rusher Jr. as alleged, but you further believe, or you have a reasonable doubt thereof, that, at the time of such conduct, the defendant reasonably believed such conduct was immediately necessary to avoid imminent harm, to-wit:

, and that the desirability and urgency of avoiding that harm clearly outweighed, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing such conduct, you will find the defendant not guilty.

But if you believe beyond a reasonable doubt that, at the time and place in question, the defendant did not believe that such conduct was immediately necessary to avoid imminent harm, or that the desirability and urgency of avoiding the harm did not clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing such conduct, you will find against the defendant on this defense.

Therefore, if you find from the evidence beyond a reasonable doubt that the defendant, KENNETH JONES, did then and there cause the death of GARY WAYNE RUSHER, JR. and CHRISTOPHER BEATTY, as alleged, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct, or both of GARY WAYNE RUSHER, JR. or CHRISTOPHER BEATTY or other persons with him, or any of them, it reasonably appeared to the defendant that his life or person, or the life or person of ASIA OLIVER JONES or HARVEY JONES or JACQUELINE BROWN, was in danger and there was created in his mind a reasonable expectation or fear of death or serious bodily injury to himself or of ASIA OLIVER JONES or HARVEY JONES or JACQUELINE BROWN from the use of unlawful deadly force at the hands of GARY WAYNE RUSHER, JR. or CHRISTOPHER BEATTY or other persons with GARY WAYNE RUSHER, JR. or CHRISTOPHER BEATTY, or any of them, and that acting under such apprehension and reasonably believing that the use of deadly force

on his part was immediately necessary to protect himself or ASIA OLIVER JONES or HARVEY JONES or JACQUELINE BROWN against GARY WAYNE RUSHER, JR. or CHRISTOPHER BEATTY's use or attempted use of unlawful deadly force or against the use or attempted use of unlawful deadly force by those persons with GARY WAYNE RUSHER, JR. or CHRISTOPHER BEATTY, or any of them, he shot GARY WAYNE RUSHER, JR. and CHRISTOPHER BEATTY, then you should acquit the defendant on the issue of self-defense and on the issue of defense of a third person; or if you have a reasonable doubt as to whether or not the defendant was acting in self-defense or in defense of ASIA OLIVER JONES or HARVEY JONES or JACQUELINE BROWN on said occasion and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict, NOT GUILTY.

If you find from the evidence beyond a reasonable doubt that at the time and place in question the defendant did not reasonably believe that he or ASIA OLIVER JONES or HARVEY JONES or JACQUELINE BROWN was in danger of death or serious bodily injury, or that the defendant, under the circumstances as viewed by him from his standpoint at the time, did not reasonably believe that the degree of force actually used by him was immediately necessary to protect himself or ASIA OLIVER JONES or HARVEY JONES or JACQUELINE BROWN against GARY WAYNE RUSHER, JR. or CHRISTOPHER BEATTY's use or attempted use of unlawful deadly force or against the use or attempted use of unlawful deadly force by those persons with GARY WAYNE RUSHER, JR. or CHRISTOPHER BEATTY, or any of them, then you should find against the defendant on the issue of self-defense and on the issue of defense of a third person.

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.

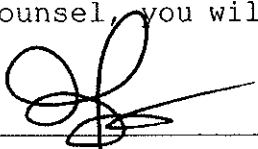
No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written, prepared and signed by the Foreman and shall be submitted to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

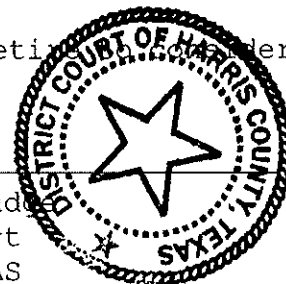
restrict your deliberations solely to the issue of guilt or innocence of the defendant.

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

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



Ramona Franklin, Judge
338th District Court
Harris County, TEXAS



FILED

Marilyn Burgess
Clerk of Court

NOV 20 2019 5:24 PM
Time: _____
By: _____
Harris County, Texas
Deputy

CAUSE NO. 1547641

THE STATE OF TEXAS § IN THE 263RD DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
KENNETH JONES § JULY TERM, A. D., 2019

VERDICT

"We, the Jury, find the defendant, Kenneth Jones, not guilty."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Kenneth Jones, guilty of capital murder, as charged in the indictment."

Paul B. Philbrick

Foreman of the Jury

(Please Print) Foreman

