

*Randall M Adams*  
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

\*

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V.

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CASE # CR-2000433

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TRAVIS MCMICHAEL,

\*

GREG MCMICHAEL, &

\*

WILLIAM BRYAN

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STATE'S REQUEST TO CHARGE

COMES NOW the State of Georgia before the trial of the above-styled case and requests that, in addition to the general charges given in criminal cases (including pattern charges 1.10.10, 1.10.20, 1.20.10, 1.20.30, 1.30.10, 1.31.10, 1.31.40, 1.31.42, 1.31.45, 1.31.90, 1.40.10, 1.60.10, 1.70.10, 1.70.11, 1.70.20, 1.70.30, 1.70.40, 1.70.50, and 1.70.60), the jury be instructed in accordance with the law in the attached jury instructions.

The undersigned certifies that he has personally served counsel for Defendant with a copy of these requests to charge, prior to the trial of said case.

Respectfully submitted this 16th day of September 2020.

*/s/ Jesse Evans*

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JESSE EVANS

DEPUTY CHIEF ASSISTANT DISTRICT ATTORNEY

COBB JUDICIAL CIRCUIT

GEORGIA BAR # 252342

## Request to Charge # 1

### **2.10.10 Malice Murder; Defined**

A person commits murder when that person unlawfully and with malice aforethought, either express or implied, causes the death of another human being. Express malice is that deliberate intention unlawfully to take away the life of another human being, which is shown by external circumstances capable of proof. Malice may, but need not, be implied when no considerable provocation appears and when all of the circumstances of the killing show an abandoned and malignant heart. It is for the jury to decide whether or not the facts and circumstances of this case show malice.

To constitute murder, the homicide must have been committed with malice. Legal malice is not necessarily ill will or hatred, but it is the unlawful intention to kill without justification, excuse, or mitigation.

If a killing is done with malice, no matter how short a time the malicious intent may have existed, such killing constitutes murder.

Georgia law does not require premeditation, and no particular length of time is required for malice to be generated in the mind of a person. It may be formed in a moment, and instantly a mortal wound may be inflicted. Yet, if malice is in the mind of the accused at the time of the doing of the act or killing and moves the accused to do it, such is sufficient to constitute the homicide as murder.

(Citations omitted.)

## Request to Charge # 2

### **2.10.11 Premeditation; Defined**

*(This charge should be given only if a definition of premeditation is requested by the jury.)*

Premeditation, as the term is usually used, means a prior determination or plan to commit an act. Premeditation is not an element of the offense of murder and therefore need not be proven by the State to establish malice aforethought. However, any evidence of premeditation, or lack of it, may be considered by you insofar as it relates to the existence, or nonexistence, of malice at the time of the alleged killing.

(Citations omitted.)

## Request to Charge # 3

### **2.10.12 Motive**

Proof of particular motive is not essential to constitute the crime of murder. Evidence of motive, if any, is admitted for your determination as to whether or not it establishes the state of the defendant's mind at the time of the alleged homicide.

(Citations omitted.)

## Request to Charge # 4

### **2.10.20 Felony Murder; Defined**

A person (also) commits the crime of murder when, in the commission of a felony, that person causes the death of another human being (with or without malice.) Under the laws of Georgia, (*name offense: Aggravated Assault, False Imprisonment, and Criminal Attempt to Commit False Imprisonment*) ~~is a felony and is defined as follows~~ [are felony offenses as will be defined by this Court]: (*Give the statutory definition of that felony.*)

*(Note: In cases not involving malice murder, omit the words in parentheses)*

*(Note: Felony murder should not be charged when the indictment alleges only malice murder, unless the indictment also alleges facts showing how the murder was committed sufficient to put the defendant on notice of the underlying felony.)*

*(Note: If both malice murder and felony murder are charged, you must instruct the jury to make its verdict clear as to whether they are finding the defendant "guilty of malice murder" or "guilty of felony murder.")*

*(The following is a suggested charge to be used after charging both malice murder and felony murder.)*

~~If you find and believe beyond a reasonable doubt, under all of the evidence and the court's instructions, that the defendant is guilty of the offense of murder with malice aforethought, then you must specify such in your verdict, and the form of your verdict in that event would be, "We, the jury, find the defendant guilty of malice murder."~~

~~If you find and believe beyond a reasonable doubt, under all of the evidence and the court's instructions, that the defendant is guilty of the offense of felony murder, then you must specify such in your verdict, and the form of your verdict in that event would be, "We, the jury, find the defendant guilty of felony murder."~~

(Citations omitted, tailored to Indictment.)

## Request to Charge # 5

### **2.10.30 Murder; Felony, during Commission of**

*(The alleged felony in which the defendant was engaged must be charged.)*

If you find and believe beyond a reasonable doubt that the defendant committed the homicide alleged in this bill of indictment at the time the defendant was engaged in the commission of the felony of *(name offense: Aggravate Assault, False Imprisonment and/or Criminal Attempt to Commit False Imprisonment)*,\* then you would be authorized to find the defendant guilty of murder, whether the homicide was intended or not. ~~A person commits *(specific felony)* when *(define specific felony)*.~~ [The felony offenses of Aggravated Assault, False Imprisonment & Criminal Attempt to Commit False Imprisonment will be defined by this Court.] In order for a homicide to have been done in the commission of this particular felony, there must be some connection between the felony and the homicide. The homicide must have been done in carrying out the unlawful act and not collateral to it. It is not enough that the homicide occurred soon or presently after the felony was attempted or committed. (There must be such a legal relationship between the homicide and the felony so as to cause you to find that the homicide occurred before the felony was at an end or before any attempt to avoid conviction or arrest for the felony.) The felony must have a legal relationship to the homicide, be at least concurrent with it in part, and be a part of it in an actual and material sense. A homicide is committed in the carrying out of a felony when it is committed by the accused while engaged in the performance of any act required for the full execution of the felony.

*(Citations omitted, tailored to Indictment.)*

## Request to Charge # 6

### **2.20.21 Assault, Aggravated (Weapon); Statutory; Extended Definition**

A person commits the offense of aggravated assault when that person assaults another person (with a deadly weapon) [or] (with any object, device, or instrument that, when used offensively against a person, is likely to or actually does result in serious bodily injury).

To constitute such an assault, actual injury to the alleged victim need not be shown. It is only necessary that the evidence show beyond a reasonable doubt that the defendant (attempted to cause a violent injury to the alleged victim) [and/or] (intentionally committed an act that placed the alleged victim in reasonable fear of immediately receiving a violent injury).

The State must also prove as a material element of aggravated assault, as alleged in this case, that the assault was made with (a deadly weapon) [or] (an object, device, or instrument that, when used offensively against a person, is likely to or actually does result in serious bodily injury).

(Citations omitted, tailored to Indictment.)

Request to Charge # 7

**2.20.22 Aggravated Assault; Deadly Weapon; Firearm**

A firearm, when used as such, is a deadly weapon as a matter of law.

(Citations omitted.)

## Request to Charge # 8

### **2.20.23 Aggravated Assault; Deadly Weapon; Other Weapons**

*(Name implement: A Ford F-150 pickup truck)*, if and when used in making an assault upon another person, is not a deadly weapon per se but may or may not be a deadly weapon depending upon the manner in which it is used and the circumstances of the case.

You may or may not infer the (lethal) (serious injury-producing) character of the instrument in question from the nature and extent of the injury, if any, inflicted upon the person allegedly attacked.

Whether or not, under all of the facts and circumstances of this case, the *(name implement: Ford F-150 pickup truck)*, alleged in this bill of indictment to have been used in making an assault upon the alleged victim did, in fact, constitute a (deadly) weapon (likely to cause serious bodily injury) is a matter to be decided by the jury from the evidence in this case.

(Citations omitted, tailored to Indictment.)

## Request to Charge # 9

### **2.20.24 Aggravated Assault; Deadly Weapon; Proof of Capability**

In deciding whether the alleged instrument was a weapon capable of causing (death) (serious bodily injury), you may consider direct proof of the character of the weapon, any exhibition of it to the jury, evidence of the nature of any wound or absence of wound, or other evidence of the capabilities of the instrument.

(Citations omitted.)

Request to Charge # 10

**2.26.10 False Imprisonment**

O.C.G.A. §16-5-41

**16-5-41. False imprisonment.**

(a) A person commits the offense of false imprisonment when, in violation of the personal liberty of another, he arrests, confines, or detains such person without legal authority.

Request to Charge # 11

**2.01.10 Attempt; Statutory Definition**

A person commits criminal attempt to commit (*name offense: False Imprisonment*) when, with intent to commit False Imprisonment, that person performs any act that constitutes a substantial step toward the commission of the crime of False Imprisonment. (*Define crime attempted.*) O.C.G.A. §16-4-1

## Request to Charge # 12

### **1.42.10 Parties to Crime**

Every party to a crime may be charged with and convicted of commission of the crime.

A person is a party to a crime only if that person

directly commits the crime;

intentionally helps in the commission of the crime; [or]

intentionally advises, encourages, hires, counsels, or procures another to commit the crime; or

~~intentionally causes some other person to commit the crime under such circumstances that the other person is not guilty of any crime either in fact or because of legal incapacity.~~

(Citations omitted.)

## Request to Charge # 13

### **1.42.11 Principal, Failure to Prosecute; Other Involved Persons**

Any party to a crime who did not directly commit the crime may be prosecuted for commission of the crime upon proof that the crime was committed and that the person was a party to it, even though the person alleged to have directly committed the crime has not been prosecuted or convicted, has been convicted of a different crime or degree of crime, is not amenable to justice, or has been acquitted.

O.C.G.A. §16-2-21

## Request to Charge # 14

### **2.02.20 Conspiracy (Additional Instructions) (Culpability)**

*(Charge on culpability by conspiracy is okay even when defendant is not indicted for conspiracy. Edge v. State, 275 Ga. 311(6) (2002).)*

A conspiracy is an agreement between two or more persons to do an unlawful act, and the existence of a conspiracy may be established by proof of acts and conduct, as well as by proof of an express agreement. When persons associate themselves in an unlawful enterprise, any act done by any party to the conspiracy to further the unlawful enterprise is considered to be the act of all the conspirators. However, each person is responsible for the acts of others only insofar as such acts are naturally or necessarily done to further the conspiracy. Whether or not a conspiracy existed in this case is a matter for you to determine.

## Request to Charge # 15

### **2.02.30 Conduct and Presence of Parties**

Presence, companionship, and conduct before and after the commission of the alleged offense may be considered by you in determining whether or not such circumstances, if any, give rise to an inference of the existence of a conspiracy.

*(Note: See 1.43.30, Mere Presence; Guilt by, and 1.43.31, Mere Association; Guilt by.)*

(Citations omitted.)

## Request to Charge # 16

### **2.02.40 Admission of Coconspirator**

If the existence of a conspiracy has been shown beyond a reasonable doubt by evidence other than by the declarations of any of the alleged coconspirators, then any admissions or statements made by one or more of the conspirators during and in furtherance of the alleged conspiracy may be considered by the jury against all of the conspirators. Should you determine that there was no conspiracy or if you are not satisfied beyond a reasonable doubt that a conspiracy existed at the time a particular declaration was made, that the defendant on trial was not a party to a conspiracy, that the existence of a conspiracy has been shown only by the declarations of coconspirators, that the alleged admissions by coconspirators were not made during and in furtherance of the alleged conspiracy, or that no admissions were made to a third party by an alleged coconspirator, then you are to disregard any testimony as to any alleged admissions made out of the presence of the defendant by an alleged coconspirator.

O.C.G.A. §24-3-5 *Wall v. State*, 153 Ga. 309(2) (1922) *Hutchins v. State*, 229 Ga. 804(1) (1972) *Sanders v. State*, 67 Ga. App. 706(2) (1942) *Gunter v. State*, 243 Ga. 651, 659 (1979)

Request to Charge # 17

**1.31.93(B) Statement by One Defendant at Joint Trial (*GIVE ONLY IF APPLICABLE*)**

Any out-of-court statement made by one of the defendants on trial in this case after the alleged criminal act has ended may be considered only against the person who made the statement and only if you find that such statement was freely and voluntarily made. If you find that an out-of-court statement was made to the police freely and voluntarily by a defendant on trial in this case, then you are to consider the statement only as against the particular defendant who made it.

*(Note: See 2.02.40, Admission of Coconspirator)*

(Formerly 1.33.10 Confession by One Defendant at Joint Trial, Citations omitted.)

## **Request to Charge # 18**

### **BRUTON CHARGE**

Members of the jury, this Court is responsible for determining the admissibility of certain evidence. Sometimes, audio and/or video recordings cannot be played for you for legal reasons. You are to make no inferences for or against any party in this case about the fact as the law requires that certain recordings are unable to be played by the parties to this case.

**1.31.30 Expert Witness**

*(Use only if applicable.)*

Testimony has been given in this case by certain witnesses who are termed experts. Expert witnesses are those who because of their training and experience possess knowledge in a particular field that is not common knowledge or known to the average citizen. The law permits expert witnesses to give their opinions based upon that training and experience.

You are not required to accept the testimony of any witnesses, expert or otherwise. Testimony of an expert, like that of all witnesses, is to be given only such weight and credit as you think it is properly entitled to receive.

O.C.G.A. §§24-7-702–24-7-705, 24-7-707

*McCoy v. State*, 237 Ga. 118 (1976)

*Columbia County v. Doolittle*, 270 Ga. 490 (1999)

*OR substitute 11th Cir. PJI, p. 33, as follows:*

When scientific, technical, or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter. But that does not mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

O.C.G.A. §§24-7-702–24-7-705, 24-7-707

## Request to Charge # 20

### **1.31.90 Single Witness; Corroboration**

The testimony of a single witness, if believed, is sufficient to establish a fact. Generally, there is no legal requirement of corroboration of a witness, provided you find the evidence to be sufficient.

*Note: Johnson v. State, 296 App. 112(1) (except for cases of treason, perjury, statutory rape, and terroristic threats)*

Request to Charge # 21

**1.70.11 Sympathy**

Your verdict should be a true verdict based upon your opinion of the evidence according to the laws given you in this charge. You are not to show favor or sympathy to one party or the other. It is your duty to consider the facts objectively without favor, affection, or sympathy to either party.

O.C.G.A. §15-12-138

In deciding this case, you should not be influenced by sympathy or prejudice (because of race, creed, color, religion, national origin, sexual preference, local or remote residence, economic (or corporate) status) for or against either party.

**IN THE EVENT ANY DEFENDANT ASSERTS THE AFFIRMATIVE DEFENSE  
OF JUSTIFICATION AS ANTICIPATED, THE STATE WOULD FURTHER  
REQUEST THE FOLLOWING JURY CHARGES ALSO BE GIVEN**

Request to Charge # 22

**3.00.00 Affirmative Defense; Definition; Burden of Proof**

An affirmative defense is a defense that admits the doing of the act charged but seeks to justify, excuse, or mitigate it. Once an affirmative defense (~~other than that of insanity\*~~) is raised, the burden is on the State to disprove it beyond a reasonable doubt. O.C.G.A. §§16-1-3, 16-3-28

## Request to Charge # 23

### **3.01.10 Justification; Generally**

The fact that a person's conduct is justified is a defense to prosecution for any crime based on that conduct. The defense of justification can be claimed

a) when the person's conduct is justified under O.C.G.A. §§16-3-21, 16-3-23, 16-3-24, 16-3-25, 16-3-26;

b) when the person's conduct is in reasonable fulfillment of his or her duties as a government officer or employee;

c) when the person's conduct is the reasonable discipline of a minor by his or her parent or a person *in loco parentis*;

d) when the person's conduct is reasonable and is performed in the course of making a lawful arrest;

e) when the person's conduct is justified for any other reason specified under the laws of this state; or

f) in all other instances based on similar reason and justice as those enumerated in this charge.

O.C.G.A. §16-3-20

Request to Charge # 24

**3.10.10 Justification; Use of Force in Defense of Self or Others**

A person is justified in threatening or using force against another person when, and to the extent that, he/she reasonably believes that such threat or force is necessary to defend himself/herself or a third person against the other's imminent use of unlawful force. A person is justified in using force that is intended or likely to cause death or great bodily harm only if that person reasonably believes that such force is necessary to prevent death or great bodily injury to himself/herself or a third person or to prevent the commission of a forcible felony.

O.C.G.A. §16-3-21 (*Consider 3.10.13, No Duty to Retreat to Be Justified*)

The State has the burden of proving beyond a reasonable doubt that the defendant was not justified.

A person is not justified in using force if that person initially provokes the use of force against himself/herself with the intent to use such force as an excuse to inflict bodily harm upon the assailant; is attempting to commit, is committing, or is fleeing after the commission or attempted commission of a felony (*define arguable felony*); or was the aggressor or was engaged in a combat by agreement, unless the person withdraws from the encounter and effectively communicates his/her intent to withdraw to the other person and the other person still continues or threatens to continue the use of unlawful force.

O.C.G.A. §§16-3-20, 16-3-21

(Citations omitted)

Request to Charge # 25

**3.10.12 Reasonable Beliefs; Doctrine of**

In applying the law of self-defense, a defendant is justified to (kill) (use force against) another person in defense of self or others. The standard is whether the circumstances were such that they would excite (not merely the fears of the defendant but) the fears of a reasonable person. For the (killing) (use of force) to be justified under the law, the accused must truly have acted under the influence of these fears and not in a spirit of revenge.

What the facts are in this case is a matter solely for you, the jury, to determine given all of the circumstances of this case.

(Citations omitted)

Request to Charge # 26

**3.16.10 Justification; Threats, Menaces Causing Reasonable Belief of Danger**

To justify a homicide, it is not essential that there be an actual assault made upon the defendant. Threats accompanied by menaces, though the menaces do not amount to an actual assault, may in some instances be sufficient to arouse a reasonable belief that one's life is in imminent danger or that one is in imminent danger of great bodily injury or that a forcible felony is about to be committed upon one's person.

Provocation by threats or words alone will in no case justify the homicide (or be sufficient to free the accused from the crime of murder) (or to reduce it to manslaughter) when the killing is done solely in resentment of the provoking words.

Whether or not the killing, if there was a killing, was done under circumstances that would be justifiable (or was done solely as a result of, and in resentment of, threats or provoking words alone) is a matter for you, the jury, to determine.

If you believe that the defendant was justified (under the instructions that the court has given you), then it would be your duty to acquit the defendant.

(Citations omitted)

Request to Charge # 27

**3.16.20 Excessive Force**

The use of excessive or unlawful force while acting in self-defense is not justifiable, and the defendant's conduct in this case would not be justified if you find that the force used exceeded that which the defendant reasonably believed was necessary to defend against the victim's use of unlawful force, if any.

**3.16.30 Revenge for Prior Wrong**

A person has the right to defend himself/herself, but a person is not justified in deliberately assaulting another person (not to prevent any impending wrong, but) solely in revenge for a past or previous wrong, regardless of how serious the past or previous wrong might have been, when the episode involving the previous wrong has ended. Such person is not justified in acting out of revenge by deliberately seeking out and assaulting the alleged wrongdoer.

If you find from the evidence in this case that the defendant used force against the alleged victim named in this indictment in order to prevent an impending wrong that the defendant reasonably believed was about to be committed by such other person and that the defendant reasonably believed that such force was necessary in order to prevent such impending wrong (death or great bodily injury to the defendant, or to prevent the commission of a forcible felony), then that use of force would be justified, and it would be your duty to acquit the defendant.

On the other hand, if you believe beyond a reasonable doubt from the evidence in this case that the defendant used force against the alleged victim named in the indictment (in the way and manner alleged in the indictment) for the sole purpose of avenging a past or previous wrong, regardless of how serious such previous wrong may have been, and not for the purpose of preventing an impending wrong (death or great bodily injury to the defendant, or to prevent the commission of a forcible felony), then you would be authorized to convict the defendant.

(Citations omitted)