INSTRUCTION. 19

Criminal homicide constitutes manslaughter if the defendant commits murder, but Special Mitigation is established. Special Mitigation generally involves a factor or set of factors that make a person less blameworthy for a criminal act. Special Mitigation exist when a person causes the death of another under the influence of extreme emotional distress for which there was a reasonable explanation or excuse. In this case, the defendant asserts that Special Mitigation exists because he caused the death of another under the influence of extreme emotional distress for which there was a reasonable explanation or excuse.

A person acts under the influence of extreme emotional distress when he is exposed to extremely unusual and overwhelming stress that would cause the average reasonable person in similar circumstances to experience a loss of self-control and be overborne by intense feelings such as passion, anger, distress, grief, excessive agitation, or other like emotions. The standard is not whether the defendant subjectively thought his reaction was reasonable. Rather, it is an objective standard, determined from the viewpoint of a reasonable person faced with the then-existing circumstances.

INSTRUCTION NO. 20

Although a building emotional reaction to a series of events may contribute to extreme emotional distress, an external triggering event is also required. However, the triggering event need not be contemporaneous with the Defendant's loss of self control.

INSTRUCTION NO. 21

In examining the reasonableness of the explanation or excuse offered by the defendant you should consider all the then-existing circumstances. "Then-existing circumstances" include more than just the triggering event. The phrase refers to the broader context of past experiences and emotions that give meaning to the defendant's reaction, that is to say, to the defendant's loss of self control.

INSTRUCTION NO. 22

I previously instructed you that the prosecution bears the burden of proving the defendant's guilt beyond a reasonable doubt. The defendant has raised the Special Mitigation of extreme emotional distress, and he has the burden of proving that Special Mitigation applies in this case. Unlike the State's burden, however, the defendant need only prove Special Mitigation by a preponderance of the evidence.

INSTRUCTION NO. 23

Proof by "a preponderance of the evidence" means that the defendant must persuade you that the facts supporting the Special Mitigation of extreme emotional distress are more likely to be true than not true. Another way of saying this is proof by the greater weight of the evidence, however slight. Weighing the evidence does not mean counting the number of witnesses nor the amount of testimony. Rather, it means evaluating the persuasive character of the evidence in support of Special Mitigation. In weighing the evidence you should consider all the evidence that applies to each fact, regardless of which side presented it. The weight to be given to each piece of evidence is for you to decide.

After weighing all of the evidence, if you decide that in this case the Special Mitigation claim of extreme emotional distress is more likely true than not true, then you must find that the defendant has carried his burden of proof and Special Mitigation has been established. On the other hand, if you conclude that the evidence supporting Special Mitigation is evenly balanced, then you must find that the defendant has not carried his burden of proof and has not established that the Special Mitigation of extreme emotional distress exists in this case.

INSTRUCTION NO. 24

As used in these instructions, extreme emotional distress does not include distress that is substantially caused by a defendant's own conduct. It also does not include conditions resulting from mental illness or mental defect. "Mental illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A "mental defect" may be present at birth, may be a result of subsequent injury, or may be a residual effect of a physical or mental disease including, but not limited to, conditions such as mental retardation.

INSTRUCTION NO. 25

In all criminal cases, and in this criminal case, the unanimous agreement of all jurors is required before a verdict can be reached. The jury's verdict(s) must be in writing. The foreperson will sign the verdict form(s) that correctly reflect the results of the jury's deliberations, and the verdict(s) must then be returned to the Court. The jury's general verdict in this case must reflect only one of the following choices:

- GUILTY of Murder;

  OR

- GUILTY of Manslaughter;

  OR

- NOT GUILTY.

In addition, in a Special Verdict form the foreperson will indicate the jury's decision regarding whether the defendant has proven the Special Mitigation of extreme emotional distress by a preponderance of the evidence. Your verdict on Special Mitigation must reflect only one of the following choices:

- A unanimous finding that the defendant proved the existence of special mitigation;

  OR

- A unanimous finding that the defendant did not prove the existence of special mitigation;

  OR

- A report that the jury is unable to agree unanimously whether the defendant proved Special Mitigation.

INSTRUCTION NO. 26

The defendant, DENNIS WAYNE LAMBDIN, is charged with committing Murder on August 17, 2009, in Salt Lake County, State of Utah. You cannot convict the defendant of this offense unless, based on the evidence, you find each of the following elements beyond a reasonable doubt:

1. That the defendant, DENNIS WAYNE LAMBDIN;

2.A. Intentionally or knowingly caused the death of Touch Choun;

OR

B. Intending to cause serious bodily injury to Touch Choun, committed an act clearly dangerous to human life that caused the death of Touch Choun; AND

3. The defendant and Touch Choun were cohabitants.

After you carefully consider all the evidence in this case, if you are convinced that the State has proved the elements of Murder beyond a reasonable doubt, consider Instruction No. 27. If, on the other hand, you are not convinced that the State has proven all the foregoing elements of Murder beyond reasonable doubt, you must find the defendant NOT GUILTY.

INSTRUCTION NO. 27

If the jury finds from all the evidence and beyond a reasonable doubt that the State has proved the elements of Murder, the jurors must then consider whether the defendant has proved the Special Mitigation of extreme emotional distress. In order to establish that Special Mitigation applies, the defendant must prove all of the following elements by a preponderance of the evidence:

1. That when the defendant, DENNIS WAYNE LAMBDIN, caused the death of Touch Choun,

2. He was under the influence of extreme emotional distress; AND

3. There was a reasonable explanation or excuse for the extreme emotional distress.

If the evidence convinces you that the defendant has proved Special Mitigation by a preponderance of the evidence, you must find the defendant GUILTY of Manslaughter. If, on the other hand, the defendant has not proved Special Mitigation by a preponderance of the evidence, you must find the defendant GUILTY of Murder. If the jury cannot make a unanimous finding as to the existence of Special Mitigation, the jury shall report that determination as well. The jury's findings regarding Special Mitigation must be entered in the Special Verdict form provided.

INSTRUCTION NO. 28

As you deliberate, you must determine whether the defendant is guilty of murder, guilty of manslaughter, or not guilty of either offense. The law does not require you to make these determinations in any particular order. However, you cannot find the defendant guilty of both murder and manslaughter. In other words, you can only return one general verdict: guilty of murder, guilty of manslaughter, or not guilty of either offense.

IN THE DISTRICT COURT OF SALT LAKE COUNTY
SALT LAKE DEPARTMENT, STATE OF UTAH

JAN 11 2013

STATE OF UTAH,	:	VERDICT
Plaintiff(s),	:	
vs.		Case No. 091906736
DENNIS WAYNE LAMBDIN,	:	
		JUDGE LINDBERG
Defendant(s),	:	

On the count of murder (domestic violence) we, the jurors, unanimously find the defendant,

Count I: MURDER (DOMESTIC VIOLENCE)

☒ GUILTY of MURDER, OR

☐ GUILTY of MANSLAUGHTER, OR

☐ NOT GUILTY

Dated this 11TH day of JANUARY, 2013.

FOREPERSON

Filed 01.11.13, 2013

Clerk of the Court

By Deputy Clerk of the Court

JAN 11 2013

IN THE DISTRICT COURT OF SALT LAKE COUNTY
SALT LAKE DEPARTMENT, STATE OF UTAH

STATE OF UTAH,	:	SPECIAL VERDICT
Plaintiff(s),	:	
vs.	:	Case No. 091906736
DENNIS LAMBDIN,	:	
		JUDGE LINDBERG
Defendant(s),	:	

As to the presence of special mitigation, we, the jury empaneled in the above entitled action, make the following finding:

SPECIAL MITIGATION

_____ Unanimously find that special mitigation was **PROVED** by a preponderance of the evidence; OR

__X__ Unanimously find that special mitigation was **NOT PROVED** by a preponderance of the evidence; OR

_____ The jury was unable to agree unanimously on whether special mitigation was proved by a preponderance of the evidence.

Dated this 11TH day of JANUARY, 2013.

FOREPERSON

Filed 01.11.13, 2013

Clerk of the Court

By Deputy Clerk of the Court