

NO. 2010-CR-11019

THE STATE OF TEXAS                   §           IN THE DISTRICT COURT  
VS.                                       §           226TH JUDICIAL DISTRICT  
ERIC CERVERA                         §           BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, Eric Cervera, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 30<sup>th</sup> day of July, 2010, in Bexar County, Texas. The defendant has pleaded not guilty.

I.

Our law provides that a person commits the offense of murder if he intentionally or knowingly causes the death of an individual.

A person commits capital murder when such person murders an individual under six years of age.

II.

"Individual" means a human being who has been born and is alive.

"Deadly weapon" means 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.

### III.

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.

IV.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 30<sup>th</sup> Day of July, 2010, in Bexar County, Texas, the defendant, Eric Cervera, did intentionally or knowingly cause the death of an individual, namely, Jerrmiah Estabrook, by striking Jerrmiah Estabrook with a deadly weapon, namely, an object unknown to the grand jurors, that in the manner of its use or intended use was capable of causing death or serious bodily injury, or by striking Jerrmiah Estabrook with the hand of Eric Cervera or by striking Jerrmiah Estabrook with an object unknown to the grand jury or by striking Jerrmiah Estabrook against an object unknown to the grand jury and Jerrmiah Estabrook was an individual younger than six years of age, then you will find the defendant guilty of capital murder as charged in the indictment.

If you do not so find beyond a reasonable doubt, if you have a reasonable doubt thereof, or you are unable to agree, you will next consider whether the defendant is guilty of the lesser included offense of murder.

V.

Our law provides that a person commits the offense of murder if he intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or if he commits a felony, other than manslaughter, and in the course of and in furtherance of the commission, he commits an act clearly dangerous to human life that causes the death of an individual.

Injury to a child is a felony offense.

VI.

"Individual," "deadly weapon," "bodily injury," and "serious bodily injury," as defined in Paragraph II, apply and have the same meaning here.

VII.

Our law provides that a person commits the offense of injury to a child if he intentionally or knowingly, by act or omission, causes serious bodily injury to a child.

VIII.

A person "attempts" to commit an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

IX.

Our law provides that a person who has a legal or statutory duty to act or has assumed care, custody, or control of a child commits the offense of injury to a child by omission if he intentionally or knowingly by omission causes serious bodily injury to that child.

The actor has assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for a child.

X.

"Omission" means failure to act.

"Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

"Child" means a person 14 years of age or younger.

XI.

"Intentionally" and "knowingly, as defined in Paragraph III, apply and have the same meaning here.

XII.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 30<sup>th</sup> Day of July, 2010, in Bexar County, Texas, the defendant, Eric Cervera, with intent to cause serious bodily injury to an individual, Jerrmiah Estabrook, did commit an act clearly dangerous to human life, to wit: by striking Jerrmiah Estabrook with a deadly weapon, namely, an object unknown to the grand jurors, that in the manner of its use or intended use was capable of causing death or serious bodily injury, or by striking Jerrmiah Estabrook with the hand of Eric Cervera or by striking Jerrmiah Estabrook with an object unknown to the grand jury or by striking Jerrmiah Estabrook against an object unknown to the grand jury, thereby causing the death of Jerrmiah Estabrook;

Or, if you find from the evidence beyond a reasonable doubt that on or about the 30<sup>th</sup> Day of July, 2010, in Bexar County, Texas, the defendant, Eric Cervera, did commit or attempt to commit a felony, to wit: injury to a child, and in the course of and in furtherance of the commission or attempted commission of the felony of injury to a child, Eric Cervera did commit an act clearly dangerous to human life, to wit: by striking Jerrmiah Estabrook with a deadly weapon, namely, an object unknown to the grand jurors, that in the manner of its use or intended use was capable of causing death or serious bodily injury, or by striking Jerrmiah Estabrook with the hand of Eric Cervera or by

striking Jerrmiah Estabrook with an object unknown to the grand jury or by striking Jerrmiah Estabrook against an object unknown to the grand jury, thereby causing the death of Jerrmiah Estabrook,

Then, you will find the defendant guilty of murder.

If you do not so find beyond a reasonable doubt, if you have a reasonable doubt thereof, or you are unable to agree, you will next consider whether the defendant is guilty of the lesser included offense of injury to a child.

XIII.

"Bodily injury" and "serious bodily injury," as defined in Paragraph II, apply and have the same meaning here.

XIV.

The provisions and terms described in Paragraphs VII through XI apply and have the same meaning here.



XV.

Now, if you believe from the evidence beyond a reasonable doubt that on or about the 30<sup>th</sup> Day of July, 2010, in Bexar County, Texas, the defendant, Eric Cervera, did intentionally or knowingly by omission cause serious bodily injury to Jerrmiah Estabrook, a child who was fourteen (14) years of age or younger, and Eric Cervera, having assumed care, custody, or control of Jerrmiah Estabrook, did fail to obtain or provide proper medical care for Jerrmiah Estabrook;

Or, if you believe from the evidence beyond a reasonable doubt that on or about the 30<sup>th</sup> Day of July, 2010, in Bexar County, Texas, the defendant, Eric Cervera, did intentionally or knowingly cause serious bodily injury to Jerrmiah Estabrook, a child who was fourteen (14) years of age or younger, by striking Jerrmiah Estabrook with a deadly weapon, namely, an object unknown to the grand jurors, that in the manner of its use or intended use was capable of causing death or serious bodily injury, or by striking Jerrmiah Estabrook with the hand of Eric Cervera or by striking Jerrmiah Estabrook with an object unknown to the grand jury or by striking Jerrmiah Estabrook against an object unknown to the grand jury;

Then you will find the defendant guilty of the offense of injury to a child.

If you do not so believe, or if you have a reasonable doubt thereof, you will find the defendant not guilty.

Our law provides 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 or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

Written statements made by a witness to investigators or other officers or police reports made by officers and tendered by the prosecution to the defense for purposes of cross-examination are not part of the evidence unless introduced in evidence. Many times statements and reports may be marked with an exhibit number but are neither offered nor received in evidence. I can send only statements and reports received in evidence to the jury room.

The Grand Jury Indictment is not evidence of guilt. It is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence, nor can it be considered by you in determining whether the defendant is guilty or not guilty.

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.

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 a person 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 instructed that you are not to let, bias, prejudice, or sympathy play any part in your deliberations. You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given the testimony but the law of the case you must receive from the Court as contained in these instructions, and be governed thereby. You must disregard any comment or statement made by the Court during the trial or in these instructions which may seem to indicate an opinion with respect to any fact, item of evidence or verdict to be reached in this case. No such indication was intended.

After argument of counsel, you will retire to the jury room, select your own Presiding Juror and proceed with your deliberations. After you have reached a unanimous verdict the

Presiding Juror will certify thereto by filling in the appropriate forms attached to this charge and signing his or her name as Presiding Juror. The forms are not intended to suggest to you what your verdict should be.

Your sole duty at this time is to determine whether the defendant is guilty under the indictment in this cause; and restrict your deliberations to the issue of whether the defendant is guilty or not guilty, and nothing else. If the Jury wishes to communicate with the Court, they shall notify the bailiff. Any communication relative to the case must be written, prepared by the Presiding Juror and shall be submitted to the Court through the bailiff.

Respectfully submitted,



SID L. HARLE  
226th Judicial District  
Bexar County, Texas

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|-------------------------------------|
| <b>FILED</b>                        |
| ____ O'CLOCK ____ M                 |
| SEP 19 2011                         |
| District Clerk, Bexar County, Texas |
| BY <i>Jonas Samays</i>              |
| DEPUTY                              |

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VS.                                       §           226TH JUDICIAL DISTRICT  
ERIC CERVERA                         §           BEXAR COUNTY, TEXAS

VERDICT FORM

We, the Jury, find the defendant, Eric Cervera, not guilty.

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PRESIDING JUROR

VERDICT FORM

We, the Jury, find the defendant, Eric Cervera, guilty of capital murder as charged in the indictment.

  
PRESIDING JUROR

VERDICT FORM

We, the Jury, find the defendant, Eric Cervera, guilty of murder.

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PRESIDING JUROR

VERDICT FORM

We, the Jury, find the defendant, Eric Cervera, guilty of injury to a child.

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PRESIDING JUROR

Ladies and gentlemen of the jury:

In response to your note, you have all the evidence. Please continue your deliberations.



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Sid L. Harle, Judge Presiding  
226th District Court