

sent filed w/ Ct
on 11-11-09

at 6:35 pm
G/Sanchez

IN THE 346TH DISTRICT COURT
OF EL PASO COUNTY, TEXAS

THE STATE OF TEXAS

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VS.

FABIAN HERNANDEZ

Filed Nov A.D. 11 20 09
No. 200601A05825 6:35 o'clock P M
GILBERT SANCHEZ, Clerk, Dist. Courts
El Paso County, Texas
BY [Signature] DEPUTY

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

I.

The Defendant, FABIAN HERNANDEZ, stands charged by indictment with the offense of Capital Murder, alleged to have been committed in El Paso County, Texas, on or about the 3rd day of November 2006. To this charge the Defendant has pleaded not guilty.

II.

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

Our law provides that a person commits the offense of capital murder if the person intentionally or knowingly causes the death of more than one individual during the same criminal transaction.

Our law provides that a person commits the offense of manslaughter if he unlawfully and recklessly causes the death of an individual.

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.

A person acts **recklessly**, or is **reckless**, with respect to the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from

the actor's standpoint.

A **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 and intended use is capable of causing death and serious bodily injury.

The term **on or about** means any time anterior to the presentment of the indictment, and within the period of the statute of limitations.

IV.

CAPITAL MURDER

Now if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of November, 2006, in El Paso County, Texas, the Defendant, FABIAN HERNANDEZ, did then and there intentionally or knowingly cause the death of an individual, namely, RENEE URBINA HERNANDEZ, by shooting RENEE URBINA HERNANDEZ about the head with a firearm, and did then and there intentionally or knowingly cause the death of another individual, namely ARTURO FONSECA, by shooting ARTURO FONSECA about the head with a firearm and both murders were committed during the same criminal transaction, then you will find the Defendant guilty of Capital Murder as charged in the indictment. (**Verdict Form A**).

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant, FABIAN HERNANDEZ, of Capital Murder and next consider whether the defendant is guilty of Murder (**Verdict Form B**).

V.

You are instructed that the murder of one person and the manslaughter of another person, under the law, will not constitute capital murder; therefore, if you find that the death of one person, on the occasion in question was a murder as defined in this charge, but you find that the death of the other person was not a murder, or you have reasonable doubt thereof, you will acquit the defendant of capital murder and find him not guilty and next consider whether the defendant is guilty of murder or manslaughter as to each of the individuals, RENEE URBINA HERNANDEZ and ARTURO FONSECA.

VI.

MURDER

Now if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of November, 2006, in El Paso County, Texas, the Defendant, FABIAN HERNANDEZ, did then and there intentionally or knowingly cause the death of an individual, namely, RENEE URBINA

HERNANDEZ, by shooting RENEE URBINA HERNANDEZ about the head with a firearm, then you will find the Defendant guilty of Murder as charged in the indictment. **(Verdict Form C)**.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant, FABIAN HERNANDEZ, of Murder and next consider whether the defendant is guilty of Manslaughter **(Verdict Form D)**.

VII.

MURDER

Now if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of November, 2006, in El Paso County, Texas, the Defendant, FABIAN HERNANDEZ, did then and there intentionally or knowingly cause the death of an individual, namely, ARTURO FONSECA, by shooting ARTURO FONSECA about the head with a firearm, then you will find the Defendant guilty of Murder as charged in the indictment. **(Verdict Form E)**.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant, FABIAN HERNANDEZ, of Murder and next consider whether the defendant is guilty of Manslaughter **(Verdict Form F)**.

VIII.

MANSLAUGHTER

Now if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of November, 2006, in El Paso County, Texas, the Defendant, FABIAN HERNANDEZ, did then and there recklessly cause the death of an individual, namely, RENEE URBINA HERNANDEZ, by shooting RENEE URBINA HERNANDEZ about the head with a firearm, then you will find the defendant guilty of Manslaughter **(Verdict Form G)**.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant, FABIAN HERNANDEZ, of Manslaughter **(Verdict Form H)**.

IX.

MANSLAUGHTER

Now if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of November, 2006, in El Paso County, Texas, the Defendant, FABIAN HERNANDEZ, did then and there recklessly cause the death of an individual, namely, ARTURO FONSECA, by shooting ARTURO FONSECA about the head with a firearm, then you will find the defendant guilty of

Manslaughter (Verdict Form I).

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant, FABIAN HERNANDEZ, of Manslaughter (**Verdict Form J**).

X.

You are instructed that you may consider all relevant facts and circumstances surrounding the killings, if any, or shooting, if any, and the previous relationships existing between the accused and the deceased persons, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the offense, if any.

If you find and believe beyond a reasonable doubt that the defendant is guilty of either capital murder or murder, but you have a reasonable doubt as to which offense he is guilty, then you must resolve that doubt in the Defendant's favor and find him guilty of the lesser offense of murder.

If you find and believe beyond a reasonable doubt that the defendant is guilty of some degree of homicide, that is capital murder, murder or manslaughter, but you have a reasonable doubt as to which of said offenses the defendant is guilty, then you should resolve that doubt in defendant's favor and find him guilty of the lesser offense of manslaughter only.

XI.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a privilege 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.

XII.

At times throughout the trial the Court has been called upon to pass on the question of whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inference from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence, nor does it pass on the credibility of the witness. As to the offer of evidence that has been rejected by the Court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has not right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion upon any matter of fact in this case, and if you have observed anything which you have interpreted or may interpret as the Court's opinion upon any matter of fact in this case, you must wholly disregard it.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed offenses or bad acts other than the offense alleged against him in the indictment in this case, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offenses or bad acts, if any were committed, and even then you may only consider the same in determining the motive, opportunity, intent, knowledge, plan or scheme, of the defendant, if any, in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

You are instructed that any statements of counsel made during the course of the trial or during argument, not supported by the evidence, or statements of law made by counsel not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

XIII.

You are instructed that 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 passing upon the innocence or guilt of this defendant.

During your deliberations in this case, you must not consider, discuss or relate any matters not in evidence before you. You should not consider or mention any personal knowledge or information you may have about any fact or person connected with this case, which is not shown by evidence.

After the attorneys have presented their summations, you will go to the jury room. You will then select one of your members as your Foreperson. It shall his/her duty to preside over your discussions of and deliberations upon the case, vote with you and, when you have unanimously agreed upon a verdict, to certify your verdict by signing the same as your presiding juror.

You will have this charge with you in the jury room, and you shall refer to it for guidance during your deliberations. Suitable forms for your verdict are attached hereto; your verdict must be in writing and signed by your presiding juror. Your sole duty at this time is to determine the guilt or innocence of the Defendant under the indictment in this case; and restrict your deliberations solely to the issue of whether the Defendant is guilty or not guilty. Do not let bias, prejudice or sympathy play any part in your deliberations.

After you have arrived at your verdict, you will notify the bailiff that you have reached your verdict.

You are the exclusive judges of the facts proved, the credibility of the witnesses, and of the weight to be given to the testimony, but you are bound to receive the law from the Court as it is given to you in this charge, and you are bound to be governed thereby.

You shall consider only the evidence and exhibits presented here in the courtroom through the witnesses who have testified. If you want to have the exhibits with you in the jury room for your deliberations, advise the bailiff. In deliberating on this case, you shall not talk to anyone except the members of the jury about it until you have been finally discharged from service on this jury.

If you want to communicate with the Court, explain what you want in writing and deliver your message, signed by your presiding juror, to the bailiff, who will deliver it to the Court. Do not orally explain to the bailiff what you want.

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 does not give rise to any inference of guilt at the 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 State 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.

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".

MANNER OF DELIBERATIONS

- a. In order to return a verdict, each juror must agree thereto.
- b. Jurors have a duty to consult with one another to deliberate with a view of reaching an agreement, if it can be done without abrogating individual judgment.
- c. Each juror must decide the case for himself or herself, but only after an impartial consideration of the evidence with his or her fellow jurors.
- d. In the course of deliberations, a juror should not hesitate to re-examine his or her own views and change his or her opinion if convinced it is erroneous.

- e. No juror should surrender his or her honest conviction as to the weight or effect of the evidence only because of the opinion of fellow jurors, or for the mere purpose of returning a verdict.
- f. If the jury is unable to reach a verdict, it will be necessary for the Court to declare a mistrial and discharge the Jury. The case will still be pending, and it is reasonable to assume that the case will be tried again before another jury at some future time. Any such future jury will be empanelled in the same way this jury has been empanelled, and will likely hear the same evidence, which has been presented to this jury. The questions to be determined by that jury will be the same as the questions confronting you and there is no hope that the next jury will find those questions any easier to decide than you have found them.

The Foreperson or any other juror who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

In arriving at your verdict, it will not be proper to fix the same by lot, chance, or any other method than by full, fair and free exercise of the opinion of the individual jurors under the evidence admitted before you.

JUDGE ANGIE JUAREZ BARILL
346TH District Court

Filed Nov. A.D. 11 20 09
AT 6:35 o'clock P M
GILBERT SANCHEZ, Clerk, Dist. Courts
El Paso, County, Texas

IN THE 346TH DISTRICT COURT
OF EL PASO COUNTY, TEXAS
By _____ DEPUTY

THE STATE OF TEXAS

VS.

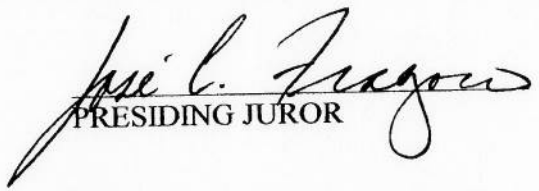
FABIAN HERNANDEZ

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No. 20060D05825

VERDICT FORM A

We, the Jury, find the Defendant, FABIAN HERNANDEZ, guilty of the offense of Capital Murder of RENEE URBINA HERANDEZ and ARTURO FONSECA as charged in the indictment.


PRESIDING JUROR

VERDICT FORM B

We, the Jury, find the Defendant, FABIAN HERNANDEZ, not guilty of Capital Murder of RENEE URBINA HERNANDEZ and ARTURO FONSECA.

PRESIDING JUROR

IN THE 346TH DISTRICT COURT
OF EL PASO COUNTY, TEXAS

THE STATE OF TEXAS

VS.

FABIAN HERNANDEZ

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No. 20060D05825

VERDICT FORM C

We, the Jury, find the Defendant, FABIAN HERNANDEZ, guilty of the offense of Murder of RENEE URBINA HERNANDEZ as charged in the indictment.

PRESIDING JUROR

VERDICT FORM D

We, the Jury, find the Defendant, FABIAN HERNANDEZ, not guilty of Murder of RENEE URBINA HERNANDEZ.

PRESIDING JUROR

VERDICT FORM E

We, the Jury, find the Defendant, FABIAN HERNANDEZ, guilty of the offense of Murder of ARTURO FONSECA as charged in the indictment.

PRESIDING JUROR

VERDICT FORM F

We, the Jury, find the Defendant, FABIAN HERNANDEZ, not guilty of Murder of ARTURO FONSECA.

PRESIDING JUROR

IN THE 346TH DISTRICT COURT
OF EL PASO COUNTY, TEXAS

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THE STATE OF TEXAS

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VS.

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No. 20060D05825

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FABIAN HERNANDEZ

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VERDICT FORM G

We, the Jury, find the Defendant, FABIAN HERNANDEZ, guilty of the offense of Manslaughter of RENEE URBINA HERNANDEZ as charged in the indictment.

PRESIDING JUROR

VERDICT FORM H

We, the Jury, find the Defendant, FABIAN HERNANDEZ, not guilty of Manslaughter of RENEE URBINA HERNANDEZ.

PRESIDING JUROR

VERDICT FORM I

We, the Jury, find the Defendant, FABIAN HERNANDEZ, guilty of the offense of Manslaughter of ARTURO FONSECA as charged in the indictment.

PRESIDING JUROR

VERDICT FORM J

We, the Jury, find the Defendant, FABIAN HERNANDEZ, not guilty of Manslaughter of ARTURO FONSECA.

PRESIDING JUROR