

P.16

CAUSE NO. 1408197

THE STATE OF TEXAS	§	IN THE 183RD DISTRICT COURT
VS.	§	OF HARRIS COUNTY, TEXAS
JUAN JIMENEZ	§	JULY TERM, A. D., 2015

Members of the Jury:

The defendant, Juan Jimenez, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 10th day of November, 2013, in Harris County, Texas. The defendant has pleaded not guilty.

A person commits the offense of murder if he:

- (1) intentionally or knowingly causes the death of an individual; or
- (2) intends to cause serious bodily injury and intentionally or knowingly commits an act clearly dangerous to human life that causes the death of an individual.

A person commits the offense of capital murder if he intentionally commits murder, as hereinbefore defined in paragraph (1), and the person intentionally commits the murder in the course of committing or attempting to commit the offense of burglary of a building or the offense of arson of a building.

Burglary of a building and arson of a building are felony offenses.

"In the course of committing" means conduct that occurs in an attempt to commit, during the commission, or in the immediate flight after the attempt or commission of an offense.

"Attempt" to commit an offense occurs if, with specific intent to commit an offense, a person does an act amounting to more than mere preparation that tends, but fails, to effect the commission of the offense intended

A person commits the offense of burglary of a building if, without the effective consent of the owner, he:

- (1) enters a building, or any portion of a building, not then open to the public, with intent to commit a felony, theft, or an assault; or
- (2) remains concealed, with intent to commit a felony, theft, or an assault, in a building, or
- (3) enters a building and commits or attempts to commit a felony, theft, or an assault

"Theft" means the unlawful appropriation of property with intent to deprive the owner of property. Appropriation of property is unlawful if it is without the owner's effective consent

"Enter" means to intrude any part of the body or any physical object connected with the body.

"Building" means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use

"Effective consent" means assent in fact, whether express or apparent, and includes consent by a person legally authorized to act for the owner. Consent is not effective if induced by deception or coercion

"Owner" means a person who has title to the property, possession of property, or a greater right to possession of the property than the defendant

"Possession" means actual care, custody, control, or management of the property.

"Property" as used herein means tangible or intangible personal property or documents, including money, that represents or embodies anything of value

A person commits the offense of arson if he starts a fire, regardless of whether the fire continues after ignition, with intent to destroy or damage any building,

- (1) When the person is reckless about whether the burning will endanger the life of some individual or the safety of the property of another,
- (2) knowing that it has located within it property belonging to another, or,
- (3) knowing that it is located on property belonging to another

"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 a 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

The definition of intentionally relative to the offense of capital murder is as follows

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.

The definitions of intentionally and knowingly relative to the offense of murder are as follow.

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

The definition of intentionally relative to the offenses of burglary of a building and arson of a building is as follows:

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

The definition of recklessly relative to the offense of arson of a building is as follows.

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 as viewed from the defendant's standpoint.

Before you would be warranted in finding the defendant guilty of capital murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant was in the course of committing or attempting to commit the felony offense of burglary of a building owned by Rosalinda Carrizales, as alleged in this charge, but also that the defendant specifically intended to cause the death of Rafael Almanza, by shooting Rafael Almanza with a deadly weapon, namely a firearm, or you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant was in the course of committing or attempting to commit the felony offense of arson of a building owned by Rosalinda Carrizales, as alleged in this charge, but also that the defendant specifically intended to cause the death of Rafael Almanza, by shooting Rafael Almanza with a deadly weapon, namely a firearm

Now, if you find from the evidence beyond a reasonable doubt that on or about the 10th day of November, 2013, in Harris County, Texas, the defendant, Juan Jimenez, did then and there unlawfully, while in the course of committing or attempting to commit the burglary of a building owned by Rosalinda Carrizales, intentionally cause the death of Rafael Almanza by shooting Rafael Almanza with a deadly weapon, namely a firearm; or

if you find from the evidence beyond a reasonable doubt that on or about the 10th day of November, 2013, in Harris County, Texas, the defendant, Juan Jimenez, did then and there unlawfully, while in the course of committing or attempting to commit the arson of a building owned by Rosalinda Carrizales, intentionally cause the death of Rafael Almanza by shooting Rafael Almanza with a deadly weapon, namely a firearm, then you will find the defendant guilty of capital murder as charged in the indictment

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether the defendant is guilty of the lesser offense of murder.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 10th day of November, 2013, in Harris County, Texas, the defendant, Juan Jimenez, did then and there unlawfully, intentionally or knowingly cause the death of Rafael Almanza, by shooting Rafael Almanza with a deadly weapon, namely a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 10th day of November, 2013, in Harris County, Texas, the defendant, Juan Jimenez, did then and there unlawfully intend to cause serious bodily injury to Rafael Almanza, and did cause the death of Rafael Almanza by intentionally or knowingly committing an act clearly dangerous to human life, namely, by shooting Rafael Almanza with a deadly weapon, namely, a firearm, then you will find the defendant guilty of murder.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder on the one hand or murder on the other hand, but you have a reasonable doubt as to which of said offenses 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 have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge you will acquit the defendant and say by your verdict "Not Guilty "

An accomplice, as the term is here used, means anyone connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime by unlawful act or omission on their part transpiring either before, at the time of, or after the commission of the offense, and whether or not they were present and participated in the commission of the crime. A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both. Mere presence alone, however, will not constitute one a party to an offense.

A person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. The term "conduct" means any act or omission and its accompanying mental state.

If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

By the term "conspiracy" as used in these instructions, is meant an agreement between two or more persons with intent, that they, or one or more of them, engage in conduct that would

constitute the offense. An agreement constituting a conspiracy may be inferred from acts of the parties.

You are instructed that a conviction cannot be had upon the testimony of an accomplice unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission. Motive and opportunity evidence is insufficient on its own to corroborate accomplice-witness testimony, but both may be considered in connection with other evidence that tends to connect the accused to the crime.

Therefore, if you believe from the evidence beyond a reasonable doubt that an offense was committed and you further believe from the evidence that the witness, Ruben Pineda, was an accomplice, or you have a reasonable doubt whether he was or not, as that term is defined in the foregoing instructions, then you cannot convict the defendant upon the testimony of Ruben Pineda unless you further believe that there is other evidence in the case, outside of the testimony of Ruben Pineda tending to connect the defendant with the offense charged in the indictment, and then from all the evidence you must believe beyond a reasonable doubt that the defendant is guilty.

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

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 motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident of the defendant, if any, in connection with the offense, if any, alleged against him in the indictment and for no other purpose.

You are further instructed that any evidence that any witness has been convicted in any case or cases was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the credibility of the witness and the weight to be given his or her testimony, and you will not consider the same for any other purpose

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.

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



A Reagan Clark, Judge Presiding
183rd District Court
Harris County, TEXAS

FILED
Chris Daniel
District Clerk
AUG 19 2015
Time: 1:57PM
Harris County, Texas
By: AD
Deputy

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THE STATE OF TEXAS

§ IN THE 183RD DISTRICT COURT

VS

§ OF HARRIS COUNTY, TEXAS

JUAN JIMENEZ

§ JULY TERM, A. D , 2015

CHOOSE ONE

"We, the Jury, find the defendant, Juan Jimenez, not guilty "

Foreman of the Jury

(Please Print) Foreman

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

FILED

Chris Daniel
District Clerk

AUG 18 2015

Time:

4:02 PM

Harris County, Texas

By

[Signature]
Deputy

8-19-2015

[Signature]

Foreman of the Jury

STEPHAN HUDSON

(Please Print) Foreman

"We, the Jury, find the defendant, Juan Jimenez, guilty of murder."

Foreman of the Jury

(Please Print) Foreman