

FILED
NORMA NUNELA BARCOLEAU
DISTRICT CLERK

IN CRIMINAL DISTRICT COURT NO. 1 2019 DEC 12 PM 4:16
OF EL PASO COUNTY, TEXAS

EL PASO COUNTY, TEXAS

THE STATE OF TEXAS

VS.

ERIC DUVALL

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CAUSE NO. 20160D01661

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, Eric Duvall, is charged by indictment with the offense of Capital Murder, alleged to have been committed in El Paso County, Texas, on or about the 16th day of January, 2016. To this charge the Defendant has pleaded not guilty. I now give you the law that applies to this case.

I.

Our law provides that a person commits the offense of Capital Murder if the person intentionally commits murder in the course of committing or attempting to commit kidnapping.

A person commits the offense of Murder if the person intentionally or knowingly causes the death of an individual.

A person commits the offense of Kidnapping if the person intentionally or knowingly abducts another person.

II.

For your assistance I now give you the statutory definitions. All other words will have the meaning commonly understood, and I cannot define them for you.

"Abducts" means to restrain a person with intent to prevent his liberation by (1) secreting or holding him in a place where he is not likely to be found or (2) using or threatening to use deadly force.

"Restrain" means to restrict a person's movements without consent, so as to interfere substantially with the person's liberty, by moving the person from one place to another or by confining the person. Restraint is **"without consent"** if it accomplished by force, intimidation, or deception.

"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.

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury.

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

A person acts **knowingly**, or **with knowledge**, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. 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.

III.

You are instructed that you are the exclusive judges of the facts proved, of 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, which is herein given to you, and be governed thereby.

You are instructed that the Grand Jury indictment is not evidence of guilt. It is merely 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.

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. However, the prosecution does not have the burden of proving the Defendant guilty beyond all doubt.

IV.

Our law provides that a defendant may testify on 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.

V.

During the trial, you heard evidence that the Defendant may have committed wrongful act(s) or other offenses not charged in the Indictment. In the event you have a reasonable doubt as to whether the Defendant committed any such wrongful act(s) or other offenses after considering all of the evidence before you, you will not consider those acts or offenses for any purpose whatsoever.

Furthermore, even if you find such other wrongful act(s) or other offenses, if any, to have been committed beyond a reasonable doubt, you may only consider the evidence

as it may assist you, if it does assist you, in determining the Defendant's motive, opportunity, intent, preparation, plan, knowledge, absence of mistake, or lack of accident in committing the offense charged in the Indictment.

VI.

Our law provides that 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.

A person is criminally responsible for an offense committed by the conduct of another if, acting with the 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.

Furthermore, 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 carrying out the conspiracy.

A "**conspiracy**" is committed if, with intent to commit a felony offense, a person agrees with one or more persons to commit a felony offense and one or more of them performs an overt act in pursuance of said agreement.

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

Each party to the offense may be charged with the commission of the offense.

You are instructed that capital murder, murder, and kidnapping are felony offenses in the State of Texas.

Mere presence alone does not make a person a party to an offense.

VII.

CAPITAL MURDER

Now, if you find from the evidence beyond a reasonable doubt that on or about the 16th day of January, 2016, in El Paso County, Texas, the Defendant, Eric Duvall, did then and there intentionally cause the death of an individual, namely Michael Tapia, by shooting Michael Tapia with a firearm while in the course of committing or attempting to commit kidnapping, OR

If you find from the evidence beyond a reasonable doubt that on or about the 16th day of January, 2016, in El Paso County, Texas, the Defendant, Eric Duvall, with the intent to promote or assist the offense, did then and there solicit, encourage, direct, aid, or attempt to aid Tyler Hall to intentionally cause the death of an individual, namely Michael Tapia, by shooting Michael Tapia with a firearm while in the course of committing or attempting to commit kidnapping, OR

If you find from the evidence beyond a reasonable doubt that on or about the 16th day of January, 2016, in El Paso County, Texas, the Defendant, Eric Duvall, did then and there attempt to carry out a conspiracy to commit kidnapping with Tyler Hall, and in furtherance of their unlawful purpose, one of them intentionally caused the death of an individual, namely Michael Tapia, by shooting Michael Tapia with a firearm while in the course of committing or attempting to commit kidnapping, and the said offense was one that should have been anticipated by the Defendant, Eric Duvall, as a result of carrying out the conspiracy, THEN

You will find the Defendant, Eric Duvall, guilty of Capital Murder as charged in Count I of the Indictment. (VERDICT FORM A)

Unless you so find beyond a reasonable doubt or if you have a reasonable doubt thereof, you will next consider whether the Defendant is guilty of the lesser-included offense of Murder.

MURDER

Now, if you find from the evidence beyond a reasonable doubt that on or about the 16th day of January, 2016, in El Paso County, Texas, the Defendant, Eric Duvall, did then and there intentionally or knowingly cause the death of an individual, namely Michael Tapia, by shooting Michael Tapia with a firearm, OR

If you find from the evidence beyond a reasonable doubt that on or about the 16th day of January, 2016, in El Paso County, Texas, the Defendant, Eric Duvall, with the intent to promote or assist the offense, did then and there solicit, encourage, direct, aid, or attempt to aid Tyler Hall to intentionally or knowingly cause the death of an individual, namely Michael Tapia, by shooting Michael Tapia with a firearm, THEN

You will find the Defendant, Eric Duvall, guilty of Murder as a lesser-included offense. (VERDICT FORM B)

Unless you so find beyond a reasonable doubt or if you have a reasonable doubt thereof, you will acquit the Defendant and find him not guilty. (VERDICT FORM C)

VIII.

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 you have retired to your jury room, you should select one of your members as your presiding juror. 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 your verdict by signing the same as presiding juror.

Concerning manner of deliberations:

- (a) Do not let bias, prejudice or sympathy play any role in your deliberations.
- (b) In order to return a verdict, each juror must agree thereto.
- (c) Jurors have a duty to consult with one another to deliberate with a view of reaching an agreement, if it can be done without violence to individual judgment.

- (d) Each juror must decide the case for themselves, but only after an impartial consideration of the evidence with their fellow jurors.
- (e) In the course of deliberations, a juror should not hesitate to reexamine their own views and change their opinion if convinced it is erroneous.
- (f) No juror should surrender their honest conviction as to the weight or effect of the evidence solely because of the opinion of fellow jurors, or for the mere purpose of returning a verdict.

The presiding juror 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 a full, fair, and free exercise of the opinion of the individual jurors under the evidence admitted before you.

Suitable forms for your verdict are hereto attached. 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 cause and restrict your deliberations solely to the issue of whether the Defendant is guilty or not guilty.

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. He will deliver it to the court. Do not orally explain to the bailiff.

SIGNED this 12th day of December, 2019.



JUDGE DIANE NAVARRETE

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NORMA FAVELA BARCELONA
DISTRICT CLERK

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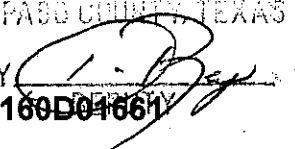
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BY 
CAUSE NO. 20160D01661

VERDICT OF THE JURY

Verdict Form A – Capital Murder

We the jury, find the Defendant, Eric Duvall, guilty of Capital Murder as charged in
Count I of the Indictment.


PRESIDING JUROR