

NO. 2005-CR-7974A

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 144TH JUDICIAL DISTRICT
EMANUEL FONZIE § BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, Emanuel Fonzie, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 20th day of November, 2000, 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 commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration.

A person also commits capital murder when such person intentionally commits the murder in the course of committing or attempting to commit the offense of burglary.

II.

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

"Remuneration" includes the idea of a reward given or received because of some act.

"In the course of committing" an offense means conduct that

occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of the 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.

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.

A person commits the offense of burglary if, without the effective consent of the owner, the person enters a habitation with intent to commit murder.

V.

"Effective consent" means assent in fact, whether express or apparent, and includes consent by a person legally authorized to act for the owner.

"Owner" means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the defendant.

By the term "enter," as used above, is meant to intrude any part of the body or any physical object connected with the body

into the habitation.

A "habitation" means a structure that is adapted for the overnight accommodation of persons, and includes each separately secured or occupied portion of the structure, and each structure appurtenant to or connected with the structure.

VI.

For the offense of burglary, 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.

For the offense of burglary, 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. For the offense of burglary, 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.

VII.

Our law provides a person is criminally responsible as a party to an offense if the offense is committed by his own conduct, or by the conduct of another for which he is criminally responsible, or by both. Each party to an offense may be charged with commission of the offense.

Mere presence alone will not make a person 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.

VIII.

You are instructed that an accomplice witness, as the term is hereinafter used, means any person connected with the crime charged, as a party thereto, as defined in paragraph VII.

You are instructed that a conviction cannot be had upon the testimony of an accomplice witness unless the jury first believes that the accomplice witness' testimony is true and that it shows the defendant is guilty of the offense charged against him, and even then you cannot convict unless the accomplice witness' 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.

The witness, Jeremy Farr, is an accomplice, if an offense was committed, and you cannot convict the defendant upon his testimony unless you first believe that the portion of his testimony that ascribes guilt to the defendant is true and shows that the defendant is guilty as charged, and then you cannot convict the defendant upon said testimony unless you further believe that there is other evidence in the case, outside of the evidence of the said accomplice tending to connect the defendant with the offense committed, if you find that an offense was committed, 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, and then from all of the evidence you must believe beyond a reasonable doubt that the defendant is guilty of the offense charged against him.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 20th day of November, 2000, in Bexar County, Texas, Jeremy Farr, did intentionally or knowingly cause the death of an individual, namely: Derrick Tolliver, by shooting Derrick Tolliver with a deadly weapon, namely: a firearm, for remuneration or the promise of remuneration, namely: United States Currency, and that the defendant, Emanuel Fonzie, acting with the intent to promote or assist in the commission of the offense of capital murder, did solicit, encourage, direct, aid or attempt to aid Jeremy Farr in the commission of the offense of capital murder,

Or, if you find from the evidence beyond a reasonable doubt that on or about the 20th day of November, 2000, in Bexar County, Texas, the defendant, Emanuel Fonzie, did intentionally or knowingly cause the death of an individual, namely: Derrick Tolliver, by employing Jeremy Farr to murder Derrick Tolliver for remuneration or the promise of remuneration, to-wit: United States Currency, and pursuant to the agreement, Jeremy Farr did intentionally or knowingly cause the death of Derrick Tolliver by shooting Derrick Tolliver with a deadly weapon, namely: a firearm;

Or, if you find from the evidence beyond a reasonable doubt that on or about the 20th day of November, 2000, in Bexar County, Texas, Jeremy Farr, did intentionally cause the death of an individual, namely: Derrick Tolliver, by shooting Derrick Tolliver with a deadly weapon, namely: a firearm, and Jeremy Farr was in the course of committing or attempting to commit the

offense of Burglary of a Habitation of Derrick Tolliver, and Emanuel Fonzie, acting with the intent to promote or assist in the commission of the offense of capital murder, did solicit, encourage, direct, aid or attempt to aid Jeremy Farr in the commission of the offense of capital murder; 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, 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 so to do. 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.

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

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 is intended.

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 whether this 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.

You are instructed that you are not to let bias, prejudice, or sympathy play any part in reaching a verdict in this case.

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.

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 by that law.

In order to return a verdict, each juror must agree to that verdict, but jurors have a duty to consult each other and to deliberate with a view to reaching unanimous agreement, if that can be done without violence to individual judgment.

Each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors.

In the course of deliberations, a juror should not hesitate to re-examine his own views and change his opinion if convinced it is erroneous. However, no juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.

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."

Suitable forms for your verdict are attached to the charge for your convenience if you care to use them, but they are not intended to suggest to you in any way what your verdict should be, and you may or may not, as you see fit, make use of them. At any rate, your verdict must be in writing and signed by your presiding juror. Your only duty at this time is to determine whether the defendant is guilty under the indictment in this cause, and you must restrict your deliberations to the issue of whether the defendant is guilty or not guilty, and nothing else. After you have retired to the jury room, no one has any authority to communicate with you except the officer who has you in charge. Do not attempt to talk to the officer, or anyone else concerning any question you may have; instead address your question to the Court in writing. If you want to communicate with the Court, notify the bailiff. Any communication relative to the case must be written, prepared by the presiding juror, and submitted to the Court through the bailiff.

Respectfully submitted,



Judge CATHERINE TORRES - STAHL
144th Judicial District
Bexar County, Texas

NO. 2005-CR-7974A

THE STATE OF TEXAS

§

IN THE DISTRICT COURT

VS.

§

144TH JUDICIAL DISTRICT

EMANUEL FONZIE

§

BEXAR COUNTY, TEXAS

VERDICT FORM

We, the Jury, find the defendant, Emanuel Fonzie, guilty capital murder as charged in the indictment.

Maia J. Lamy

PRESIDING JUROR

NO. 2005-CR-7974A

THE STATE OF TEXAS

§

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§

144TH JUDICIAL DISTRICT

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§

BEXAR COUNTY, TEXAS

VERDICT FORM

We, the Jury, find the defendant, Emanuel Fonzie, not
guilty.

PRESIDING JUROR