

CAUSE NO. 1392161

THE STATE OF TEXAS	§	IN THE 184TH DISTRICT COURT
VS.	§	OF HARRIS COUNTY, TEXAS
ERICK EDUARDO HERNANDEZ	§	JANUARY TERM, A. D., 2015

Members of the Jury:

The defendant, Erick Eduardo Hernandez, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 17th day of June, 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.

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. Burglary is a felony.

"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.

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

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

- (1) enters a habitation with intent to commit a felony, theft, or an assault; or
- (2) enters a habitation 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.

"Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes: (a) each separately secured or occupied portion of the structure or vehicle and (b) each structure appurtenant to or connected with the structure or vehicle.

"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.

"Deadly weapon" means 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 or 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 offense of burglary 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.

All persons are parties to an offense who are guilty of acting together in the commission of the offense. 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 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. Mere presence alone will not constitute one a party to an offense.

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 habitation of Celestino Flores, as alleged in this charge, but also that the defendant specifically intended to cause the death of Celestino Flores, by stabbing Celestino Flores, with a deadly weapon, namely, an axe; or by stabbing Celestino Flores, with a deadly weapon, namely, a knife; or you must find from the evidence beyond a reasonable doubt that the defendant, Erick Eduardo Hernandez, with the intent to promote or assist in the commission of the offense of burglary, if any, solicited, encouraged, directed, aided or attempted to aid Terelle Johnson and/or Gregary Flores in stabbing Celestino Flores, if he did, with the intention of thereby killing Celestino Flores, and

unless you so find, then you cannot convict the defendant of the offense of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 17th day of June, 2013, in Harris County, Texas, the defendant, Erick Eduardo Hernandez, did then and there unlawfully, while in the course of committing or attempting to commit the burglary of a habitation of Celestino Flores, intentionally cause the death of Celestino Flores by stabbing Celestino Flores with a deadly weapon, namely, an axe; or

If you find from the evidence beyond a reasonable doubt that on or about the 17th day of June, 2013, in Harris County, Texas, Terelle Johnson and/or Gregary Flores, did then and there unlawfully, while in the course of committing or attempting to commit the burglary of a habitation of Celestino Flores, intentionally cause the death of Celestino Flores by stabbing Celestino Flores with a deadly weapon, namely, an axe, and that the defendant, Erick Eduardo Hernandez, with the intent to promote or assist the commission of the offense, solicited, encouraged, directed, aided or attempted to aid Terelle Johnson and/or Gregary Flores to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that on or about the 17th day of June, 2013, in Harris County, Texas, the defendant, Erick Eduardo Hernandez, did then and there unlawfully while in the course of committing or attempting to commit the burglary of a habitation of Celestino Flores,

intentionally cause the death of Celestino Flores by stabbing Celestino Flores with a deadly weapon, namely, a knife; or

If you find from the evidence beyond a reasonable doubt that on or about the 17th day of June, 2013, in Harris County, Texas, Terelle Johnson and/or Gregary Flores, did then and there unlawfully while in the course of committing or attempting to commit the burglary of a habitation of Celestino Flores, intentionally cause the death of Celestino Flores by stabbing Celestino Flores with a deadly weapon, namely, a knife, and that the defendant, Erick Eduardo Hernandez, with the intent to promote or assist the commission of the offense, solicited, encouraged, directed, aided or attempted to aid Terelle Johnson and/or Gregary Flores to commit the offense, if he did, 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 17th day of June, 2013, in Harris~~ County, Texas, the defendant, Erick Eduardo Hernandez, did then and there unlawfully, intentionally or knowingly cause the death of Celestino Flores, by stabbing Celestino Flores with a deadly weapon, namely, an axe; or

If you find from the evidence beyond a reasonable doubt that on or about the 17th day of June, 2013, in Harris County, Texas,

Terelle Johnson and/or Gregory Flores, did then and there unlawfully, intentionally or knowingly cause the death of Celestino Flores, by stabbing Celestino Flores with a deadly weapon, namely, an axe, and that the defendant, Erick Eduardo Hernandez, with the intent to promote or assist the commission of the offense, solicited, encouraged, directed, aided or attempted to aid Terelle Johnson and/or Gregory Flores to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that on or about the 17th day of June, 2013, in Harris County, Texas, the defendant, Erick Eduardo Hernandez, did then and there unlawfully, intentionally or knowingly cause the death of Celestino Flores, by stabbing Celestino Flores with a deadly weapon, namely, a knife; or

If you find from the evidence beyond a reasonable doubt that on or about the 17th day of June, 2013, in Harris County, Texas, Terelle Johnson and/or Gregory Flores, did then and there unlawfully, intentionally or knowingly cause the death of Celestino Flores, by stabbing Celestino Flores with a deadly weapon, namely, a knife, and that the defendant, Erick Eduardo Hernandez, with the intent to promote or assist the commission of the offense, solicited, encouraged, directed, aided or attempted to aid Terelle Johnson and/or Gregory Flores to commit the offense, if he did; or

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."

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.

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.

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.

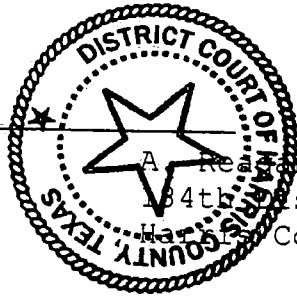
No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. ~~Any communication relative to the cause must be written,~~ prepared and signed by the Foreman and shall be submitted 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.

Alfred



Alfred Clark, Judge Presiding
184th District Court
Harris County, TEXAS

FILED
Chris Daniel
District Clerk

FEB 19 2015

Time: 10:35 AM *SPC*
Harris County, Texas

By _____
Deputy

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THE STATE OF TEXAS § IN THE 184TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
ERICK EDUARDO HERNANDEZ § JANUARY TERM, A. D., 2015

V E R D I C T

"We, the Jury, find the defendant, Erick Eduardo Hernandez, not guilty."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Erick Eduardo Hernandez, guilty of capital murder, as charged in the indictment."

FILED

Chris Daniel
District Clerk

FEB 19 2015

Foreman of the Jury

(Please Print) Foreman

Time: _____

Harris County, Texas

By _____

S. Lopez SNC
Deputy

"We, the Jury, find the defendant, Erick Eduardo Hernandez, guilty of murder."

Anthony Milligan

Foreman of the Jury

Anthony Milligan

(Please Print) Foreman



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this April 5, 2017

Certified Document Number: 64375464 Total Pages: 14

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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