

FILED
AT 1:50 O'CLOCK P M

MAR 08 2015

CAUSE NUMBER CR-0183-16-E

LAURA HINOJOSA, CLERK
District Courts, Hidalgo County
By *[Signature]*

THE STATE OF TEXAS *
VS *
RODRIGO EUGENIO REYES *

IN THE *
OF *
By *
HIDALGO COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, RODRIGO EUGENIO REYES, stands charged by indictment with the offense of Capital Murder, alleged to have been committed in Hidalgo County, Texas, on or about January 19, 2015, and to this charge the defendant has pled "Not Guilty."

1.

Our law provides that a person commits the offense of Murder when the person intentionally or knowingly causes the death of an individual.

A person commits the offense of Capital Murder when such person intentionally commits the Murder in the course of committing or attempting to commit the felony offense of burglary of a habitation.

Our law provides that a person commits the offense of burglary of a habitation when, without the effective consent of the owner of the habitation, the person enters a habitation and attempts to commit theft, or assault or a felony. Under the Texas Penal Code, burglary of a habitation is considered a second degree felony.

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

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

"Theft" is the unlawful appropriation of property with intent to deprive the owner of said property.

Our law provides that a person commits the offense of assault if the person:

- (1) intentionally or knowingly causes bodily injury to another; or
- (2) intentionally or knowingly threatens another with imminent bodily injury.

“Bodily Injury” means physical pain, illness, or any impairment of the physical condition, including death.

“Appropriate” and “appropriation” mean to acquire or otherwise exercise control over property other than real property. Appropriation of property is unlawful if it is without the owner's effective consent.

“Property” means tangible or intangible personal property or a document, including money that represent or embody anything of value.

“Deprive” means to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner.

“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 force, threats, deception or coercion.

“Owner” means a person who has a greater right to possession of the property than the defendant.

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

“ Attempt” to commit an offense occurs if, with the 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.

2.

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 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.

3.

Now if you find from the evidence beyond a reasonable doubt that on or about the 19th day of January, 2015, in Hidalgo County, Texas, the Defendant, RODRIGO EUGENIO REYES did then and there intentionally cause the death of an individual, namely Ernesto Avitia, by shooting him with a firearm and the Defendant was then and there in the course of committing or attempting to commit the offense of burglary of a habitation of Ernesto Avitia, who was the owner of said habitation, then you will find the Defendant, RODRIGO EUGENIO REYES, guilty of CAPITAL MURDER.

Unless you so find beyond a reasonable doubt or if you have a reasonable doubt thereof, you will acquit the Defendant of CAPITAL MURDER and next consider whether he is guilty of the lesser included offense of MURDER.

4.

If you find from the evidence beyond a reasonable doubt that on or about JANUARY 19, 2015, in Hidalgo County, Texas, the Defendant, RODRIGO EUGENIO REYES, did then and there intentionally or knowingly cause the death of Ernesto Avitia by shooting him with a firearm, but you have a reasonable doubt as to whether the Defendant was then and there engaged in the commission of burglary of habitation or attempted burglary of habitation of Ernesto Avitia at the time of the said killing, if any, then you will find the Defendant, RODRIGO EUGENIO REYES, guilty of Murder, but not Capital Murder.

OR

If you find from the evidence beyond a reasonable doubt that on or about JANUARY 19, 2015, in Hidalgo County, Texas, the Defendant, RODRIGO EUGENIO REYES, did then and there knowingly cause the death of Ernesto Avitia by shooting him with a firearm, but you have a reasonable doubt as to whether the murder of Ernesto Avitia was with intent or intentionally committed, as the terms "with intent and intentionally" have been defined herein, then you will find the Defendant guilty of Murder, but not Capital Murder, regardless of whether you find from the evidence beyond a reasonable doubt that Defendant was then and there in the course of committing or attempting to commit the offense of Burglary of Habitation.

You are instructed that if you find from the evidence beyond a reasonable doubt that the Defendant is guilty of Capital Murder or of Murder under these instructions, but you have a reasonable doubt as to which offense he is guilty, then you should resolve that doubt in favor of the Defendant and, in such event, you will find the Defendant, RODRIGO EUGENIO REYES, guilty of MURDER.

Unless you unanimously find from the evidence beyond a reasonable doubt that the Defendant is guilty of Capital Murder, and unless you unanimously find from the evidence beyond a reasonable doubt that the defendant is guilty of Murder, as defined herein, or if you have a reasonable doubt thereof, you will acquit the Defendant of Capital Murder and Murder, and say by your verdict "Not Guilty".

5.

You are instructed that the Defendant may be convicted of only one of the offenses defined in these instructions, to wit: Capital Murder or Murder, and that the defendant can be convicted only as to that offense, if any, which is proved beyond a reasonable doubt.

6.

You are instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship existing between the accused and the deceased, if any, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the shooting in question, if any.

7.

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 the Defendant.

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 issue 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 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 Defendant 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. You will be governed by the law you shall receive in these written instructions.

When you retire to the jury room, you should first select one of your members as Presiding Juror. It is the Presiding Juror's 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 thereto, and signing the same as Presiding Juror.

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

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.

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. However, no juror should surrender his or her honest conviction as to the weight or effect of the evidence solely because of the opinion of his or her fellow jurors, or for the mere purpose of returning a verdict.

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 should not discuss or consider punishment for the offense charged for any purpose. You must concern yourselves solely with the question of guilt or innocence of the Defendant under these written instructions without regard to any possible punishment imposed by law for the offense charged.

During your deliberations, you are instructed that you should not consider the remarks, rulings or actions of the presiding judge during this trial as any indication of the Court's opinion as to the guilt or innocence of the Defendant. The remarks, rulings and actions of the presiding judge were upon matters of the law only and were not upon the facts which you and you alone, must determine.

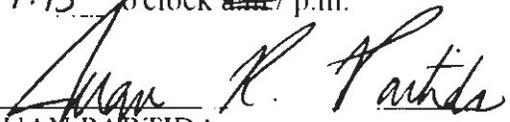
While you are deliberating, no one has authority to communicate with you except the officer who has you in charge being the Bailiff. However, after you have retired, you may communicate with the Court as to any questions you may have, but that communication must be in writing through the officer of the Court.

When you have reached a verdict you will notify the bailiff in writing, as to reaching a verdict, but not what the verdict is.

Do not let bias, prejudice, or sympathy play any part in your deliberations.

Your verdict must be unanimous, and after you have reached a unanimous verdict, the Presiding Juror will certify thereto by signing the appropriate form attached to this charge.

Filed on this the 8th day of March, 2016, at 1:15 o'clock ~~am~~ p.m.


JUAN PARTIDA
JUDGE PRESIDING
273th DISTRICT COURT
HIDALGO COUNTY, TEXAS