

original

CAUSE NO. 1882877

THE STATE OF TEXAS § IN THE 482ND DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
JIMMY EARL THOMAS § AUGUST TERM, A. D., 2024

Members of the Jury:

The defendant, JIMMY EARL THOMAS, stands charged by indictment with the offense of Capital Murder, alleged to have been committed on or about the August 30, 2024, in Harris County, Texas. The defendant has pleaded not guilty.

Definition- Offense of Capital Murder

A person commits the offense of murder if he 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 the course of committing or attempting to commit the offense of burglary. Burglary is a felony.

Definition- Terms

"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 if, without the effective consent of the owner, he:

(1) enters a habitation or a building with intent to commit a felony, or an assault; or

(2) enters a habitation or a building and commits or attempts to commit a felony, or an assault.

"Assault" means a person (1) intentionally or knowingly causes bodily injury to another; or (2) intentionally or knowingly threatens another with imminent bodily injury.

"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.

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

"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.

A firearm is a deadly weapon.

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

Definitions- Mental States

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 definition of intentionally relative to 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.

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

Application- Offense of Capital Murder

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 Erica Nicole Epps, as alleged in this charge, but also that the defendant specifically intended to cause the death of Erica Nicole Epps, by shooting Erica Nicole Epps, with a deadly weapon, namely a firearm, 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 August 30, 2024, in Harris County, Texas,

the defendant, JIMMY EARL THOMAS, did then and there unlawfully, while in the course of committing or attempting to commit the burglary of Erica Nicole Epps, intentionally cause the death of Erica Nicole Epps, by shooting Erica Nicole Epps with a deadly weapon, namely a firearm, then you will find the defendant guilty of capital murder, as charged in the indictment.

Definition - Transferred Intent

Furthermore, a person is criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated, or risked is that:

- 1) a different offense was committed; or
- 2) a different person was injured, harmed, or otherwise affected.

Application - Transferred Intent

Therefore, if you believe from the evidence beyond a reasonable doubt that the Defendant, JIMMY EARL THOMAS, did then and there unlawfully, while in the course of committing or attempting to commit the burglary of Erica Nicole Epps, did then and there desire, contemplate, or risk to intentionally cause the death of another, but instead did cause the death of Erica Nicole Epps, you will find the defendant guilty of capital murder, as charged in the indictment.

Unless you find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and you will next consider whether the defendant is guilty of Felony Murder.

Definition- Offense- Felony Murder

A person commits the offense of felony murder if he commits a felony, other than manslaughter, and in the course of or in

furtherance of the commission, or in immediate flight from the commission, he commits an act clearly dangerous to human life that causes the death of an individual.

Application- Indicted Offenses- Felony Murder

Now, if you find from the evidence beyond a reasonable doubt that on or about August 30, 2024, in Harris County, Texas, the defendant, JIMMY EARL THOMAS, did then and there unlawfully, commit or attempt to commit the felony offense of Burglary, and while in the course of, furtherance of the commission, the attempted commission, and the immediate flight from commission or attempted commission of said felony did commit or attempt to commit an act clearly dangerous to human life, to-wit: by shooting Erica Nicole Epps with a deadly weapon, namely, a firearm that caused the death of Erica Nicole Epps, hereinafter the Complainant then you will find the defendant guilty of felony murder, as charged.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either Capital Murder on the one hand or Felony 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 Felony Murder.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

Constitutional Rights-5th Amendment

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.

Extraneous Acts (404)

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.

Testimony

Certain testimony will be read back to you by the court reporter if you request. You must follow these rules to request that testimony be read back to you. The court will allow testimony to be read back to the jury only if the jury, in a writing signed by the foreperson: (1) states that it is requesting that testimony be read back; (2) states that it has a disagreement about a specific statement of a witness or a particular point in dispute; and (3) identifies the name of the witness who made the statement. The court will then have the court reporter read back only that part of the statement that is in disagreement.

Constitutional Rights

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 Foreperson. 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 Foreperson.

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. Statements made by the lawyers are not evidence. The questions asked by the attorneys are not evidence. Evidence consists of the testimony of the witnesses and materials admitted into evidence.

Nothing the judge has said or done in this case should be considered by you as an opinion about the facts of this case or influence you to vote one way or the other. You should give terms their common meanings, unless you have been told in these instructions that the terms are given special meanings. In that case, of course, you should give those terms the meanings provided in these instructions.

While you should consider only the evidence, you are permitted to draw reasonable inferences from the testimony and exhibits that are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence.

You are to render a fair and impartial verdict based on the evidence admitted in the case under the law that is in these

instructions. Do not allow your verdict to be determined by bias or prejudice.

You may, if you wish, examine exhibits. If you wish to examine an exhibit, the foreperson will inform the court and specifically identify the exhibit you wish to examine. Only exhibits that were admitted into evidence may be given to you for examination.

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 Foreperson 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 is to determine whether the State of Texas has proven each element of the offense alleged in the indictment beyond a reasonable doubt.

Your verdict must be by a unanimous vote of all members of the jury.

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

Veronica M. Nelson

Veronica M. Nelson, Judge
482nd District Court
Harris County, TEXAS

FILED
Marilyn Burgess
District Clerk

SEP 03 2026

Time: 10:25 am
Harris County, Texas
By: [Signature]
Deputy