

CAUSE NO. 1231154

THE STATE OF TEXAS § IN THE 248TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
OMAR JAVIER TORRES § AUGUST TERM, A. D., 2011

Members of the Jury:

The defendant, Omar Javier Torres, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 19th day of May, 2008, in Harris County, Texas. The defendant has pleaded not guilty.

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 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.

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

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

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

"Enter" means to intrude any part of the body, or any physical object connected to the body.

"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.

"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, deception or fraud.

"Owner" means a person who has title to the property, possession of the property, or a greater right to possession of the property than the defendant.

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

A person commits the offense of assault if the person intentionally or knowingly causes bodily injury to another.

"Deadly weapon" means a firearm or 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 and knowingly relative to the offense of assault are 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.

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.

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, as alleged in this charge, but also that the defendant specifically intended to cause the death of Jose Viera-Romero, by shooting Jose Viera-Romero, 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 19th day of May, 2008, in Harris County, Texas, the defendant, Omar Javier Torres, did then and there unlawfully, while in the course of committing or attempting to commit burglary, intentionally cause the death of Jose Viera-Romero by shooting with a deadly weapon, namely a firearm, 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, you will acquit the defendant and say by your verdict "Not Guilty."

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.

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

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V E R D I C T

"We, the Jury, find the defendant, Omar Javier Torres, not guilty."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Omar Javier Torres, guilty of capital murder, as charged in the indictment."

FILED
Chris Daniel
District Clerk
AUG 15 2011
Harris County, Texas
Deputy

Donna Stevens

Foreman of the Jury

DONNA STEVENS

(Please Print) Foreman