

THE STATE OF TEXAS                   §    IN THE 209TH DISTRICT COURT  
VS.                                       §    OF HARRIS COUNTY, TEXAS  
SELVIN CANALES CHIRINOS           §    AUGUST TERM, A. D., 2009

Members of the Jury:

The defendant, Selvin Canales Chirinos, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 17th day of April, 2007, 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, as hereinbefore defined, in the course of committing or attempting to commit the offense of kidnapping. Kidnapping is a felony offense.

A person commits the offense of felony murder if he commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

A person commits the offense of kidnapping if he intentionally or knowingly abducts another person.

A person commits the offense of aggravated kidnapping if he intentionally or knowingly abducts another person and uses or exhibits a deadly weapon during the commission of the offense.

The term "abduct" means to restrain a person with intent to prevent his liberation by:

- (A) secreting or holding him in a place where he is not likely to be found; or
- (B) using or threatening to use deadly force.

The term "restrain" means to restrict a person's movements without consent, so as to interfere substantially with his

liberty, by moving him from one place to another or by confining him.

Restraint is "without consent" if it is accomplished by force, intimidation, or deception.

"Consent" means assent in fact, whether express or apparent.

"Deadly force" means force that is intended or known by the person acting to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

"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.

"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 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.

The definitions of intentionally or knowingly relative to the offense of kidnapping are as follow:

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.

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.

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.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 17th day of April, 2007, in Harris County, Texas, the defendant, Selvin Canales Chirinos, did then and there unlawfully, while in the course of committing or attempting to commit the kidnapping of Moises Mejia, intentionally cause the death of Moises Mejia by shooting Moises Mejia with a deadly weapon, namely a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 17th day of April, 2007, in Harris County, Texas, Brujo and/or Primo also known as Cousin and/or Gustavo and/or an unknown person, did then and there unlawfully, while in the course of committing or attempting to commit the kidnapping of Moises Mejia, intentionally cause the death of Moises Mejia by

shooting Moises Mejia with a deadly weapon, namely a firearm, and that the defendant, Selvin Canales Chirinos, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Brujo and/or Primo also known as Cousin and/or Gustavo and/or an unknown person 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 felony murder.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 17th day of April, 2007, in Harris County, Texas, the defendant, Selvin Canales Chirinos, did then and there unlawfully, while in the furtherance of the commission or attempted commission of the felony of kidnapping of Moises Mejia, or in immediate flight from the commission or attempted commission of the felony of kidnapping of Moises Mejia, commit an act clearly dangerous to human life, to-wit: by shooting Moises Mejia with a deadly weapon, namely a firearm, that caused the death of Moises Mejia; or

If you find from the evidence beyond a reasonable doubt that on or about the 17th day of April, 2007, in Harris County, Texas, Brujo and/or Primo also known as Cousin and/or Gustavo and/or an unknown person, did then and there unlawfully, while in the furtherance of the commission or attempted commission of the felony of kidnapping of Moises Mejia, or in immediate flight from the commission or attempted commission of the felony of kidnapping of Moises Mejia, commit an act clearly dangerous to human life, to-wit: by shooting Moises Mejia with a deadly weapon, namely a firearm, that caused the death of Moises Mejia, and that the defendant, Selvin Canales Chirinos, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Brujo and/or Primo also known as Cousin and/or Gustavo and/or an

unknown person to commit the offense, if he did, then you will find the defendant guilty of felony murder.

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.

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 instructed that a statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion.

No oral statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless:

(1) An electronic recording, which may include audio, motion picture, videotape, or other visual recording, is made of the statement;

(2) Prior to the statement but during the recording the accused is given the following warning:

(a) he has the right to remain silent and not make any statement at all and that any statement he makes may be used against him at his trial;

(b) any statement he makes may be used as evidence against him in court;

(c) he has the right to have a lawyer present to advise him prior to and during any questioning;

(d) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning;

(e) he has the right to terminate the interview at any time; and

(f) the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) the recording device was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered, and;

(4) all voices on the recording are identified.

So in this case, if you find from the evidence, or if you have a reasonable doubt thereof, that prior to the time the defendant gave the alleged oral statement or oral confession to X. Avila, if he did give it, the said X. Avila did not warn the defendant in the respects outlined above, or as to any one of such requirements, then you will wholly disregard the alleged oral confession and not consider it for any purpose nor any

evidence obtained as a result thereof; if, however, you find beyond a reasonable doubt that the aforementioned warning was given the defendant prior to his having made such oral statement, if he did make it, still, before you may consider such oral statement as evidence in this case, you must find from the evidence beyond a reasonable doubt that prior to and during such oral statement, if any, the defendant knowingly, intelligently and voluntarily waived the rights hereinabove set out in the said warning, and unless you so find, or if you have a reasonable doubt thereof, you will not consider the oral statement or oral confession for any purpose whatsoever or any evidence obtained as a result of same.

A person is nevertheless 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
- (1) a different person or property was injured, harmed, or otherwise affected.

Now, if you believe from the evidence beyond a reasonable doubt that in Harris County, Texas, on or about the 17th day of April, 2007, the defendant, Selvin Canales Chirinos, acting alone or with Brujo and/or Primo also known as Cousin and/or Gustavo and/or an unknown person as a party to the offense, as that term is hereinbefore defined, did then and there, while in the course of committing or attempting to commit the offense of kidnapping, unlawfully and intentionally shoot a firearm at Salvador Ayala and/or Victor Gonzalez and/or Jose Guidos and/or an unknown person, intending that death would occur to Salvador Ayala and/or Victor Gonzalez and/or Jose Guidos and/or an unknown person, but instead, missed Salvador Ayala and/or Victor Gonzalez and/or Jose Guidos and/or an unknown person and hit Moises Mejia, causing the death of Moises Mejia with the use of a deadly weapon, namely a firearm, then you will find the defendant guilty of capital murder, as charged in the indictment.



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.

You are instructed that in receiving evidence from a witness given in a foreign language, you are to rely on the translation given by the official court interpreter and not to attempt to translate the testimony yourself.

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 or forelady. 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 or Forelady.

No one has any authority to communicate with you except the officer who has you in charge. 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.

After you have retired, you may communicate with this Court in writing through the officer who has you in charge. 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.

After you have reached a unanimous verdict, the foreman or forelady will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as Foreman or Forelady. Following the arguments of counsel, you will retire to consider your verdict.



Michael T. McSpadden, Judge  
209th District Court  
Harris County, TEXAS

**FILED**

Loren Jackson  
District Clerk

OCT 22 2009

Time: 10:56 A.M.

Harris County, Texas

By   
Deputy

CAUSE NO. 1234856

THE STATE OF TEXAS § IN THE 209TH DISTRICT COURT  
VS. § OF HARRIS COUNTY, TEXAS  
SELVIN CANALES CHIRINOS § AUGUST TERM, A. D., 2009

CHOOSE ONE

"We, the Jury, find the defendant, Selvin Canales Chirinos, not guilty."

\_\_\_\_\_  
Foreman or Forelady of the Jury

"We, the Jury, find the defendant, Selvin Canales Chirinos, guilty of capital murder, as charged in the indictment."

OCT 22 2009

**FILED**

Loren Jackson  
District Clerk

Julia E. Cosby  
Foreman or Forelady of the Jury

OCT 22 2009

Time: 2:46 pm

Harris County, Texas

By: [Signature]

Deputy

"We, the Jury, find the defendant, Selvin Canales Chirinos, guilty of felony murder."

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Foreman or Forelady of the Jury

HARRIS COUNTY CLERK  
CLERK OF DISTRICT COURT  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

HARRIS COUNTY CLERK  
CLERK OF DISTRICT COURT  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

CLERK