

THE STATE OF TEXAS § IN THE 179TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
HENRY EUGENE BURLESON § JANUARY TERM, A. D., 2016

Members of the Jury:

The defendant, Henry Eugene Burleson, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 6th day of July, 2013, 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, and the person intentionally commits the murder in the course of committing or attempting to commit the offense of robbery or the offense of burglary of a building.

Robbery and burglary of a building are felony offenses.

"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 robbery if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain or maintain control of property of another, he:

(1) intentionally or knowingly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

"In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in the immediate flight after the attempt or commission of theft.

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

"Appropriate" and "appropriation" means 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 represents or embodies 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.

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

- (1) enters a building or any portion of a building not then open to the public, with intent to commit a felony, theft, or an assault; or
- (2) enters a building and commits or attempts to commit a felony, theft, or an assault.

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

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

A person commits an assault if the person:

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

"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 and knowingly relative to the offenses of murder and assault 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 definitions of intentionally and knowingly relative to the offenses of robbery and burglary of a building 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.

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 robbery of Mario Martinez, as alleged in this charge, but also that the defendant specifically intended to cause the death of Mario Martinez, by shooting Mario Martinez, with a deadly weapon, namely, a firearm; or

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 building owned by Mario Martinez, as alleged in this charge, but also that the defendant specifically intended to cause the death of Mario Martinez, by shooting Mario Martinez, 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 in Harris County, Texas, the defendant Henry Eugene Burleson, heretofore on or about the 6th day of July, 2013, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Mario Martinez, intentionally cause the death of Mario Martinez by shooting Mario Martinez with a deadly weapon, namely, a firearm; or

If you find from the evidence beyond a reasonable doubt that in Harris County, Texas, the defendant, Henry Eugene Burleson, on or about the 6th day of July, 2013, did then and there unlawfully while in the course of committing or attempting to commit the burglary of a building owned by Mario Martinez, intentionally cause the death of Mario Martinez by shooting Mario Martinez 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."

An accomplice, as the term is here used, means anyone connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime by unlawful act or omission on their part transpiring either before, at the time of, or after the commission of the offense, and whether or not they were present and participated in the commission of the crime. 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. Mere presence alone, however, will not constitute one a party to an offense.

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. The term "conduct" means any act or omission and its accompanying mental state.

You are instructed that a conviction cannot be had upon the testimony of an accomplice unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

Therefore, if you believe from the evidence beyond a reasonable doubt that an offense was committed and you further believe from the evidence that the witness, Diamond Webb, was an accomplice, or you have a reasonable doubt whether she was or

not, as that term is defined in the foregoing instructions, then you cannot convict the defendant upon the testimony of Diamond Webb unless you further believe that there is other evidence in the case, outside of the testimony of Diamond Webb tending to connect the defendant with the offense charged in the indictment, and then from all the evidence you must believe beyond a reasonable doubt that the defendant is 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.

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 Presiding Juror. 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 Presiding Juror.

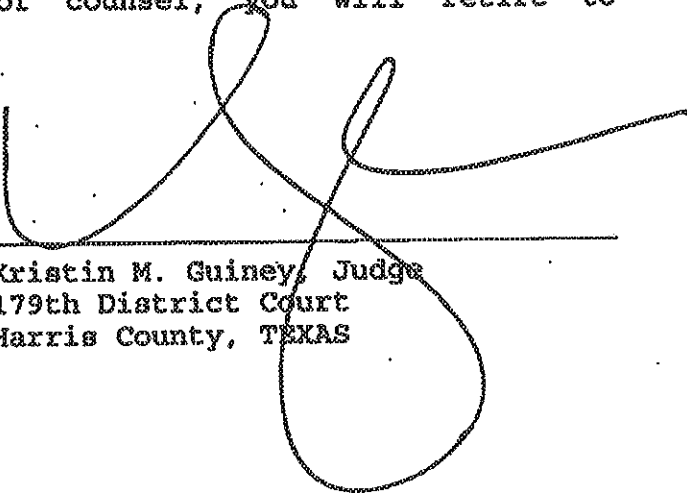
During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

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 and prepared by the Presiding Juror 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 whether the defendant is guilty or not guilty of the charge for which he is

under indictment in this cause and restrict your deliberations solely to the issue of whether the defendant is guilty or not guilty.

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



Kristin M. Guiney, Judge
179th District Court
Harris County, TEXAS

FILED
Chris Daniel
Clerk

MAY 09 2016

12:46 PM

By 

CAUSE NO. 1397455

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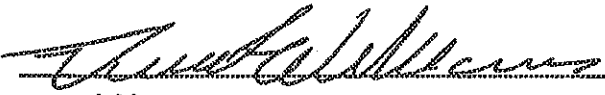
V E R D I C T

"We, the Jury, find the defendant, Henry Eugene Burleson, not guilty."

Presiding Juror

(Please Print) Presiding Juror

"We, the Jury, find the defendant, Henry Eugene Burleson, guilty of capital murder, as charged in the indictment."



Presiding Juror

DAVID WILLIAMS

(Please Print) Presiding Juror