

THE STATE OF TEXAS                   §    IN THE 232ND DISTRICT COURT  
VS.                                       §    OF HARRIS COUNTY, TEXAS  
FRANCISCO ARZATE                   §    JULY TERM, A. D., 2012

Members of the Jury:

A person commits murder if he intentionally or knowingly causes the death of an individual.

A person commits capital murder if he intentionally commits murder in the course of committing or attempting to commit burglary of a habitation.

"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 burglary of a habitation if, without the effective consent of the owner, he:

- (1) enters a habitation with intent to commit a felony, theft, or an assault; or
- (2) enters a habitation and commits or attempts to commit a felony, theft, or an assault.

"Theft" means the unlawful appropriation of property with intent to deprive the owner of property. Appropriation of

**RECORDER'S MEMORANDUM**  
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property is unlawful if it is without the owner's effective consent.

"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.

"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 deception or coercion.

"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.

"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 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 burglary of a habitation 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 burglary of a habitation of Guillermo Pineda Valdez, as alleged in this charge, but also that the defendant specifically intended to cause the death of Guillermo Pineda Valdez, by shooting Guillermo Pineda Valdez, 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 August 20, 2011, in Harris County, Texas, the defendant, Francisco Arzate, did then and there unlawfully, while in the course of committing or attempting to commit the burglary of a habitation of Guillermo Pineda Valdez, intentionally cause the death of Guillermo Pineda Valdez by shooting him with a

deadly weapon, namely 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."

The 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 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 exclude 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.

If you took notes during the trial, you may rely on your notes during your deliberations. You may discuss the contents of your notes with other jurors. You may not, however, show your notes to other jurors, and you should not permit other jurors to show their notes to you. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes.

Sometimes during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the Court and request that the Court read the portion of disputed testimony to you from the official transcript. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts.

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, or relate any matters not in evidence before you. You should not consider or mention any personal knowledge or information you may have about any fact or person connected with this case that 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 restrict your deliberations solely to the issue of guilt or innocence of the defendant.

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

Mary Lou Keel, Judge  
232nd District Court  
Harris County, TEXAS

**FILED**

Chris Daniel  
District Clerk

NOV 12 2012

Time:

10:07 AM

Harris County, Texas

By

*[Signature]*

CAUSE NO. 1317247

THE STATE OF TEXAS  
VS.  
FRANCISCO ARZATE

§ IN THE 232ND DISTRICT COURT  
§ OF HARRIS COUNTY, TEXAS  
§ JULY TERM, A. D., 2012

VERDICT

"We, the Jury, find the defendant, Francisco Arzate, not guilty."

\_\_\_\_\_  
Foreman of the Jury

\_\_\_\_\_  
(Please Print) Foreman

"We, the Jury, find the defendant, Francisco Arzate, guilty of capital murder, as charged in the indictment."

\_\_\_\_\_  
By \_\_\_\_\_  
Harris County, Texas

Time: Foreman of the Jury

\_\_\_\_\_  
R. Arzate

(Please Print) Foreman

**FILED**  
Chris Daniel  
District Clerk  
NOV 12 2012

**FILED**  
Chris Daniel  
District Clerk

NOV 12 2012

Time: 4:38 PM

By \_\_\_\_\_  
Deputy