

CAUSE NO. 1324624

P17

THE STATE OF TEXAS § IN THE 338TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
KENNETH RAY NELMS JR. § JULY TERM, A. D., 2013

Members of the Jury:

The defendant, Kenneth Ray Nelms Jr., stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 17th day of June, 2011, 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 burglary of a habitation. Burglary of a habitation is a felony.

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.

"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 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 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 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 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.

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 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.

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.

If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

By the term "conspiracy" as used in these instructions, is meant an agreement between two or more persons with intent, that they, or one or more of them, engage in conduct that would

constitute the offense. An agreement constituting a conspiracy may be inferred from acts of the parties.

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 habitation of Terrance Nelson, as alleged in this charge, but also that the defendant specifically intended to cause the death of Terrance Nelson, by shooting Terrance Nelson with a deadly weapon, namely a firearm; or you must find from the evidence beyond a reasonable doubt that the defendant, Kenneth Ray Nelms Jr., with the intent to promote or assist in the commission of the offense of burglary of habitation, if any, solicited, encouraged, directed, aided, or attempted to aid Barry Jones also known as Papa in shooting Terrance Nelson, if he did, with the intention of thereby killing Terrance Nelson; or you must find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, Kenneth Ray Nelms Jr., entered into an agreement with Barry Jones also known as Papa to commit the felony offense of burglary of a habitation of Terrance Nelson, as alleged in this charge, and pursuant to that agreement they did carry out their conspiracy, and while in the course of committing said conspiracy, Barry Jones also known as Papa intentionally caused the death of Terrance Nelson by shooting Terrance Nelson with a deadly weapon, namely a firearm, and the murder of Terrance Nelson was committed in furtherance of the conspiracy and was an offense that should

have been anticipated by the defendant as a result of carrying out the conspiracy, 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 17th day of June, 2011, in Harris County, Texas, the defendant, Kenneth Ray Nelms Jr., did then and there unlawfully, while in the course of committing or attempting to commit the burglary of habitation of Terrance Nelson, intentionally cause the death of Terrance Nelson, by shooting Terrance Nelson 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 June, 2011, in Harris County, Texas, Barry Jones also known as Papa, did then and there unlawfully, while in the course of committing or attempting to commit the burglary of habitation of Terrance Nelson, intentionally cause the death of Terrance Nelson by shooting Terrance Nelson with a deadly weapon, namely a firearm, and that the defendant, Kenneth Ray Nelms Jr., with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Barry Jones also known as Papa to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that the defendant, Kenneth Ray Nelms Jr., and Barry Jones also known as Papa entered into an agreement to commit the felony offense of burglary of habitation of Terrance Nelson, and pursuant to that agreement, if any, they did carry out their conspiracy and that in Harris County, Texas, on or about the 17th day of June, 2011,

while in the course of committing such burglary of habitation, Barry Jones also known as Papa intentionally caused the death of Terrance Nelson by shooting Terrance Nelson with a deadly weapon, namely a firearm, and the murder of Terrance Nelson was committed in furtherance of the conspiracy and was an offense that should have been anticipated by the defendant as a result of carrying out the conspiracy, 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 June, 2011, in Harris County, Texas, the defendant, Kenneth Ray Nelms Jr., did then and there unlawfully, while in the furtherance of the commission or attempted commission of the felony of burglary of habitation of Terrance Nelson, or in immediate flight from the commission or attempted commission of the felony of burglary of habitation of Terrance Nelson, commit an act clearly dangerous to human life, to-wit: by shooting Terrance Nelson with a deadly weapon, namely a firearm, that caused the death of Terrance Nelson; or

If you find from the evidence beyond a reasonable doubt that on or about the 17th day of June, 2011, in Harris County, Texas, Barry Jones also known as Papa, did then and there unlawfully, while in the furtherance of the commission or attempted commission of the felony of burglary of habitation of Terrance

Nelson, or in immediate flight from the commission or attempted commission of the felony of burglary of habitation of Terrance Nelson, commit an act clearly dangerous to human life, to-wit: by shooting Terrance Nelson with a deadly weapon, namely a firearm, that caused the death of Terrance Nelson, and that the defendant, Kenneth Ray Nelms Jr., with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Barry Jones also known as Papa to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that the defendant, Kenneth Ray Nelms Jr., and Barry Jones also known as Papa entered into an agreement to commit the felony offense of burglary of habitation of Terrance Nelson, and pursuant to that agreement, if any, they did carry out their conspiracy and that in Harris County, Texas, on or about the 17th day of June, 2011, while in the course of committing such burglary of habitation, Barry Jones also known as Papa committed an act clearly dangerous to human life that caused the death of Terrance Nelson by shooting Terrance Nelson with a deadly weapon, namely a firearm, and that the murder of Terrance Nelson was committed in furtherance of the conspiracy and was an offense that should have been anticipated by the defendant as a result of carrying out the conspiracy, then you will find the defendant guilty of felony murder.

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 burglary of a habitation.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 17th day of June, 2011, in Harris County, Texas, the defendant, Kenneth Ray Nelms Jr., did then and there unlawfully, with intent to commit theft, enter a habitation owned by Terrance Nelson, a person having a greater right to possession of the habitation than the defendant, without the effective consent of Terrance Nelson, namely, without any consent of any kind; or

If you find from the evidence beyond a reasonable doubt that on or about the 17th day of June, 2011, in Harris County, Texas, Barry Jones also known as Papa, did then and there unlawfully, with intent to commit theft, enter a habitation owned by Terrance Nelson, a person having a greater right to possession of the habitation than the defendant, without the effective consent of Terrance Nelson, namely, without any consent of any kind, and that the defendant, Kenneth Ray Nelms Jr., with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Barry Jones also known as Papa to commit the offense, if he did, then you will find the defendant guilty of burglary of a habitation.

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 believe from the evidence beyond a reasonable doubt that the defendant is guilty of either felony murder on the one hand or burglary of a habitation 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 burglary of a habitation.

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."

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 further instructed that any evidence that any witness has been convicted in any case or cases was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the credibility of the witness and the weight to be given his or her testimony, and you will not consider the same for any other purpose.

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. 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.

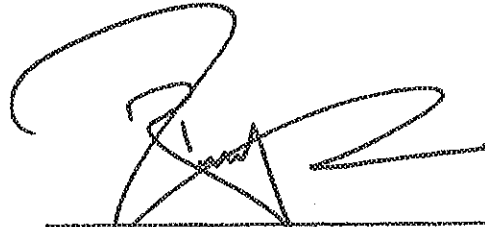
During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

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

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.



Brock Thomas, Judge
338th District Court
Harris County, TEXAS

FILED
Chris Daniel
District Clerk

AUG 02 2013

Time: 10:45 am
Harris County, Texas
By: [Signature]
Deputy

CAUSE NO. 1324624

THE STATE OF TEXAS

§ IN THE 338TH DISTRICT COURT

VS.

§ OF HARRIS COUNTY, TEXAS

KENNETH RAY NELMS JR.

§ JULY TERM, A. D., 2013

CHOOSE ONE

"We, the Jury, find the defendant, Kenneth Ray Nelms Jr., not guilty."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Kenneth Ray Nelms Jr., guilty of capital murder, as charged in the indictment."

Tracy Vest

Foreman of the Jury

Tracy Vest

(Please Print) Foreman

FILED
Chris Daniel
District Clerk
AUG 02 2013

Time: 2:20 pm
By: [Signature]
Deputy

"We, the Jury, find the defendant, Kenneth Ray Nelms Jr.,
guilty of felony murder."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Kenneth Ray Nelms Jr.,
guilty of burglary of a habitation."

Foreman of the Jury

(Please Print) Foreman