

APPENDIX A



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-31,536-05

EX PARTE ROBERT ALAN FRATTA, Applicant

**ON APPLICATION FOR WRIT OF HABEAS CORPUS
IN CAUSE NO. 1195044 IN THE 230TH DISTRICT COURT OF
HARRIS COUNTY**

Per curiam.

ORDER

This is a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure article 11.071, § 5.¹

In June 2009, a jury convicted Applicant of the offense of capital murder for the death of his estranged wife. *See* TEX. PENAL CODE ANN. § 19.03(a). The jury answered the special issues submitted under Article 37.071 and the trial court, accordingly, set punishment at death. This Court affirmed Applicant's conviction and sentence on direct appeal and denied

¹ Unless otherwise specified, all references to Articles refer to the Texas Code of Criminal Procedure.

Appendix A

(over) →

habeas relief on his initial writ application pursuant to Article 11.071. *Fratta v. State*, No. AP-76,188 (Tex. Crim. App. Oct. 5, 2011) (not designated for publication); *Ex parte Fratta*, No. WR-31,536-04 (Tex. Crim. App. Feb. 12, 2014) (per curiam) (not designated for publication).

This Court received Applicant's subsequent post-conviction application for a writ of habeas corpus on June 4, 2021. Applicant, who is proceeding pro se, appears to challenge the legal sufficiency of the evidence to support his conviction for capital murder. Applicant also appears to argue that the guilt phase jury charge improperly authorized the jury to convict him of capital murder as a principal or a party. See TEX. PENAL CODE §§ 7.01 & 7.02.

We have reviewed the subsequent application and find that Applicant has failed to satisfy the requirements of Article 11.071, § 5(a). Accordingly, we dismiss the subsequent application as an abuse of the writ without considering the merits of the claims.

IT IS SO ORDERED THIS THE 30TH DAY OF JUNE, 2021.

Do Not Publish

APPENDIX B



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-31,536-04

EX PARTE ROBERT ALAN FRATTA

**ON APPLICATION FOR WRIT OF HABEAS CORPUS
IN CAUSE NO. 1195044 IN THE 230TH DISTRICT COURT
OF HARRIS COUNTY**

PER CURIAM.

ORDER

This is a post conviction application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071.

In June 2009, a jury convicted applicant of the offense of capital murder and returned affirmative answers to the punishment issues submitted under Article 37.071.¹ The trial

¹ Unless otherwise specified, all references to Articles refer to the Texas Code of Criminal Procedure.

Appendix B

court, accordingly, set punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Fratta v. State*, AP-76,188 (Tex. Crim. App. October 5, 2011) (not designated for publication), *cert. denied*, 132 S.Ct. 2714 (2012).

Applicant presents four allegations in his application in which he challenges the validity of his conviction and sentence. The trial court did not hold a live evidentiary hearing. As to all of these allegations, the trial court entered findings of fact and conclusions of law and recommended that relief be denied.

This Court has reviewed the record with respect to the allegations made by applicant. We agree with the trial judge's recommendation and adopt the trial judge's findings and conclusions. Based upon the trial court's findings and conclusions and our own review of the record, we deny relief.

IT IS SO ORDERED THIS THE 12TH DAY OF FEBRUARY, 2014.

Do Not Publish

APPENDIX C

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

No. WR-31,536-04

EX PARTE ROBERT ALAN FRATTA

ON APPLICATION FOR WRIT OF HABEAS CORPUS -
CAUSE No. 1195044 IN THE 230th DISTRICT COURT
OF HARRIS COUNTY, TEXAS

On 8/22/13 the trial court conducted a hearing, DISMISSED Fratta's attorneys, and DESIGNATED FRATTA AS FULLY PRO SE for the entire remainder of any and all State habeas filings and proceedings. (See records). Whereby now comes the Applicant, Robert Alan Fratta, and submits this subsequent application for writ of habeas corpus.

To be entitled to relief now, Fratta must show that: "by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt" (CCP Art. 11.071§5(a)(2)). That's readily accomplished by analyzing the evidence, indictment, jury charge, and U.S. Constitution; which this Court has not previously done in Fratta's case.

Fratta's indictment has 4 counts for which each is an entity unto itself, correctly applying facially complete SEPARATE CHARGES of capital murder under PC 19.03.

The 1st count charges 2 people; Fratta and Joseph Prystash. It says FRATTA SHOT FARAH FRATTA HIMSELF "and" additionally employed Prystash "to commit the murder." The evidence proved Fratta completely innocent of this

1.

RECORDER'S MEMORANDUM
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at the time of imaging.

Appendix C

FILED
Marilyn Burgess
District Clerk
APR 01 2014
Time: _____
By: _____
Harris County, Texas

charge - as he did not shoot Farah. A law of parties was lawfully added to this count and correctly worded in the jury charge (pages 4-5) to switch roles to PRYSTASH SHOOTING FARAH and Fratta employing Prystash and soliciting, encouraging, directing, aiding or attempting to aid him. Again the evidence proved Fratta completely innocent of this law of parties charge addition to this 1st count - as Prystash did not shoot Farah either. So this entire 1st count of the jury charge is ACQUITTAL FOR BOTH the indictment AND law of parties charges.

The 2nd indictment count also charges 2 people; Fratta and Howard Guidry. It says Fratta shot Farah himself and additionally employed Guidry to commit the murder. Again the evidence proved Fratta completely innocent of this charge - as he did not shoot Farah. A law of parties was lawfully added to this count and correctly worded in the jury charge (page 5) to switch roles to Guidry shooting Farah and Fratta employing Guidry and soliciting, encouraging, directing, aiding or attempting to aid him. Again the evidence proved Fratta completely innocent of this law of parties charge addition to this 2nd count - as Fratta never even knew of Guidry's existence and therefore DID NOT and COULD NOT employ and solicit, encourage, direct, aid or attempt to aid him. The evidence showed PRYSTASH to be the ONLY person to employ and solicit, encourage, direct, aid or attempt to aid Guidry. NOT FRATTA. (The evidence also pointed to Mary Gipp as having aided via allowing the use of her cell phone for a murder she said she knew was about to happen, but the State didn't charge her with any crime nor give immunity for it). So like the 1st count, this entire 2nd count of the jury charge is ACQUITTAL FOR BOTH the indictment AND law of parties charges.

The 3rd indictment count was rightfully thrown out due to NO EVIDENCE that Fratta ever shot Farah himself OR employed Guidry with any promise or

payment of a gun.

The 4th indictment count is completely unique. Unlike the 1st 3 counts, this 4th count CHARGES ONLY ONE PERSON; - FRATTA. Fratta is charged as the SOLE ACTOR of shooting Farah himself (same wording as the 1st 3 counts), but while also committing burglary by himself. The evidence proved Fratta COMPLETELY INNOCENT of this charge - as he did NOT shoot Farah OR commit any burglary. NO LAW OF PARTIES CAN BE ADDED TO THIS COUNT. Doing so SEVERELY VIOLATED NOTICE AND DUE PROCESS (as well as State laws). A law of "parties" can ONLY be added to indictment counts which charge MULTIPLE "parties". ANY actor(s) intended to be cited in a jury charge count must first be charged in the indictment count in some role. If 3 actors are intended, all 3 must be cited in each indictment count in order to be cited in any law of parties addition to those counts. In Fratta's case, the alleged shooter wasn't even mentioned in the indictment count. It's a black eye to our justice system and appalling to the general public how easily the State intentionally got a grand jury to sign off on charging Fratta of ACTING ALONE as THE SHOOTER AND BURGLAR even after telling them Fratta WASN'T EVEN AT THE SCENE, all the while knowing the trial judge would add a law of parties to that count to completely change the indictment. The law of parties is meant to SWITCH ROLES around amongst the parties/actors CHARGED IN THE INDICTMENT if the trial evidence so dictates. When only the defendant is charged in the indictment, he is NOT a "principle" actor. He is a SOLE actor and NO "accomplices" can be added to a jury charge. To be a "principle" actor, you MUST ALSO have "accomplices" charged in the indictment. The terms "principle" and "accomplice" go hand in hand. You can't have one without the other. (See Black's Law Dictionary, et al). You can indict the defendant as the "principle" actor, PLUS charge "accomplices" along with him; then the jury charge can change an accomplice to a principle, and

the defendant to an accomplice so he'll still be convicted of the same offense as the principle actor even tho he played a lesser role than the principle. That's precisely what Fratta's jury charge did to the 1st and 2nd counts of the indictment, and that is lawful. The 1st count did not add Guidry to the jury charge law of parties because you CAN'T. Doing so is unlawful and unconstitutional because Guidry is not charged in this indictment count. The 2nd count did not add Prystash to the jury charge law of parties because you CAN'T. Doing so is unlawful and unconstitutional because Prystash is not charged in this indictment count. For the SAME reasons, you CAN'T ADD PRYSTASH OR GUIDRY TO THE 4th COUNT AT ALL since NEITHER is charged in this indictment count in any manner. ONLY the people CHARGED in EACH INDICIMENT COUNT can be charged in a law of parties addition TO THAT COUNT in a jury charge. Notice and Due Process DEMAND such.

That unconstitutional law of parties addition never should have been presented to the jurors. Yet instead, the jurors were INSTRUCTED during closing arguments to CONVICT Fratta on THAT LAW OF PARTIES ADDITION TO THE 4th COUNT. (See Tr. Vol. 30 at 41, et al), and IS what they convicted him on. "But for [THOSE 2] VIOLATION[S] of the United States Constitution [NOTICE and DUE PROCESS] NO rational juror could have found [Fratta] guilty" AT ALL, as proven above using the indictment 1st count and law of parties addition, indictment 2nd count and law of parties addition, and indictment 4th count wording ONLY.

Fratta has demonstrated this subsequent application satisfies the requirements of 11.071§5(a)(2). Being that no juror could have found Fratta guilty, Fratta meets the "innocence-gateway exception" (Aubin, 537 SW3d 39) and is entitled to relief. The facts herein prove the evidence to be legally insufficient. Per this Court's rulings in Gollihar, 46 SW3d 243; Planter, 9 SW3d 156; and Curry, 30 SW3d 394 (See also Malik, 953 SW2d 234); the relief MANDATED for a legal insufficiency of the evidence is A RULING OF ACQUITTAL

AND IMMEDIATE RELEASE FROM CONFINEMENT.

Fratta is now 64 years old, has been unlawfully confined for almost 26 years now (25 on Death Row), and hereby requests this Court to GRANT this application and Order said relief as quickly as possible.

Sincerely submitted,



Robert Alan Fratta, Applicant

Polunsky Unit, #999189

3872 FM 350 South

Livingston, TX 77351

Signed: 3/25/21

Mailed: 3/26/21

APPENDIX D

THERE IS NO ORDER DENYING REHEARING. Altho Fratta filed for rehearing twice,- the 2nd of which was filed by the TCCA on 8/16/21 and is attached as "Exhibit 2" of this Appendix D for its relevance for this Court to read in support of granting this petition,- as of 11/12/21 Fratta has still not received anything from the TCCA indicating any denial(s) whatsoever - as Fratta stated in his petition pages 2 and 6. Since Fratta is fully pro se in State Court proceedings and yet the TCCA is not communicating with him, Fratta can only conclude that NO DENIAL OF REHEARING HAS BEEN MADE by the TCCA. (See Texas Rules of Appellate Procedures, Rule 79.2(d)).

Appendix D, Exhibit 1

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

No. WR-31,536-05

EX PARTE ROBERT ALAN FRATTA

REQUEST TO RECONSIDER 6/30/21 ORDER ON COURT'S OWN INITIATIVE
UNDER TRAP 79.2(d)

This Court has never answered the question of: Are Notice and Due Process violated when the State indicts an accused as the only party of an offense - but then adds other parties into the jury charge via a law of parties, or, must ALL partIES be charged in the indictment in some capacity in order to add a law of partIES to the jury charge? Fratta lawfully presented this issue in his 4/1/21 CCP 11.071§5(a)(2) subsequent writ, but on 6/30/21 this Court dismissed it as an abuse of writ without ruling on the merits of that important issue. Refusing to address this meritorious issue now is to knowingly and intentionally allow the State to CONTINUE applying this unconstitutional and unlawful practice, and that equates to a miscarriage of justice for Fratta AND ALL citizens of Texas. In its dismissal, several errors of fact and law were made:

I. The Court stated: "Applicant has failed to satisfy the requirements of Article 11.071, §5(a)." But that's incorrect. There are 3 parts to 5(a) and ONLY ONE of the 3 must be satisfied - as they are separated disjunctively by the word "or". Fratta clearly stated his writ was filed under the second part, or 5(a)(2). Under (a)(2) there are 2 requirements to meet:

Appendix D, Exhibit 2^{1.}

- 1) First there must be "a violation of the U.S. Constitution".
- 2) Secondly, it must be shown that: "by a preponderance of the evidence... no rational juror could have found [Fratta] guilty beyond a reasonable doubt."

II. The Constitutional Violations. Fratta didn't just cite "a" violation, but rather very clearly cited 2 violations; - NOTICE and DUE PROCESS (which equated to a 3rd violation of UNFAIR TRIAL and subsequent 4th violation of a LEGAL INSUFFICIENCY of the evidence. See 4/1/21 writ pages 3-4). In order to show the Court HOW the Constitutional violations of Notice and Due Process (and subsequent violations) occurred, Fratta had to give a breakdown of his indictment and jury charge, and did so. (4/1/21 writ pages 1-4).

III. The Evidence and Jurors. Section 5(a)(2) does NOT require Fratta to present "new" evidence, but rather that he address the "preponderance of the evidence" PRESENTED AT TRIAL. In order to show the Court how "no rational juror could have found [him] guilty beyond a reasonable doubt", Fratta gave a breakdown of that evidence presented at trial and showed that "rational" and "PROPERLY INSTRUCTED jurors would [NOT have found him guilty]." (See Schlup v. Delo, 513 U.S. at 329, and 4/1/21 writ pages 1-4).

IV. Innocence-Gateway Exception. Being that 5(a)(2) is considered the "Innocence-gateway Exception", Fratta showed his innocence under federal AND State law assessments. First Fratta showed he was convicted and upheld on the law of parties addition to the 4th count of his indictment. Then Fratta showed that addition violated Notice and Due Process and rendered his trial unfair and the evidence legally insufficient. Under the Jackson v. Virginia, 443 U.S. 307 "essential elements" analysis, this Court must omit that law of parties addition and rule Fratta innocent as charged in his indictment. Fratta

then showed the Court that applying its rulings in Gollihar, Planter, Curry and Malik will also prove innocence under State laws. (4/1/21 writ page 4). Under Malik's hypothetically correct jury charge, this Court must omit that law of parties addition to the last count and rule the evidence legally insufficient. Under Gollihar, etc, the relief MANDATED is acquittal and release. (4/1/21 writ pages 4-5).

V. This Court's Uncertainty. This Court demonstrated its uncertainty by twice using the words "appears to" in its brief assessment, which in itself shows the NECESSITY for reconsideration for the sake of certainty and accuracy in this important matter dealing with LIFE OR DEATH.

VI. Unlawful Combination of PC 7.02(a) and (b) in One Count. The law of parties wording applied to the 4th indictment count is an UNLAWFUL COMBINATION of Penal Code 7.02(a) AND (b). This Court NEEDS TO ANALYZE that law of parties addition to the last count on jury charge pages 5-6 and compare it to the wordings of PC 7.02(a) and (b). You'll see Fratta's jury charge COMBINES the elements of (a)(2) of: "solicits, encourages, directs, aids or attempts to aid" AND the elements of (b) by charging it was "PRYSTASH and/or GUIDRY" who caused the death of Farah Fratta "WHILE IN THE COURSE of committing or attempting to commit the BURGLARY OF A BUILDING". (Jury charge pages 5-6). Jury charge page 4 explains that Fratta ONLY had "intent to promote or assist in the commission of the offense of BURGLARY OF A BUILDING", but supposedly gets UPGRADED to capital murder by the UNintended AND UNSolicited, UNencouraged, UNdirected, UNAided and UNattempted aid to Prystash and/or Guidry to cause Farah's death. There's NO SUCH OFFENSE for capital murder, and elements of (a)(2) canNOT be combined with elements of (b). They are totally SEPARATE offense requirements. This intentional unlawful combination was designed to CONFUSE the jurors and added to making Fratta's trial UNFAIR. No matter how

this Court looks at that law of parties addition to that last count that Fratta was convicted and upheld on, it was BOTH unconstitutional AND unlawful and MUST BE OMITTED.

VII. Violations of 28 U.S.C. 2254 and 2244. This Court's refusal to rule on the merits of Fratta's writ issues violates 28 U.S.C. 2254 and 2244. Appellants MUST first EXHAUST Constitutional issues in State Court proceedings before the federal courts can accept them. Fratta has exercised all due diligence to get his meritorious issues of Notice, Due Process, Unfair Trial and legal insufficiency ruled on in State Courts in direct appeal, State habeas, and now via a subsequent writ. Yet the State Courts keep refusing to accept them, whereby DENYING Fratta "exhaustion" IN ADDITION TO State remedy. This is a fundamental miscarriage of justice which can finally be remedied now by this Court accepting and granting Fratta's 4/1/21 writ.

VIII. Violations of U.S. Constitution Article 1 Section 9 and/or the 1st Amendment. Article 1 Section 9 mandates: "The privilege of the writ of habeas corpus shall NOT be suspended..." The 1st Amendment mandates people have an absolute Right "to petition the government for a redress of grievances." This Court has repeatedly denied Fratta these Rights, - first in direct appeal, then in his initial habeas corpus proceedings, and again now. In Fratta's initial habeas corpus proceeding, his attorneys' filing did NOT meet Texas law requirements as it did NOT attack the conviction at all, but rather ONLY the punishment. This (and trial) Court ignored Fratta's filings to rule it a "non-application" and allow for a PROPER WRIT to be file. But instead, that grossly deficient non-application was accepted and ruled on. Fratta again duly and lawfully filed a writ of habeas corpus on 4/1/21, and this Court should uphold Fratta's Constitutional Rights now by reconsidering and accepting that writ on its own initiative.

IX. Requirements of CCP 11.071§5(a)(2) Fully Satisfied. Fratta's 4/1/21 writ, as proven herein above, fully satisfied the requirements of 11.071§5(a)(2). Yet this Court "appears to" have been bending over backwards to AVOID ruling on his MERITORIOUS ISSUES since his direct appeal in 2010 - because it would mean acquitting and releasing him. This Court ignored Fratta's complaints of ineffective assistance of appellate counsel in direct appeal AND denied Fratta's requests to file his direct appeal pro se. Forced to file a pro se brief in the interest of justice, Fratta cited the violations of Notice and Due Process under his insufficiency of the evidence and material variance claims - which this Court mandates be raised in direct appeal. But this Court refused to accept his brief. Then on page 2 of its Opinion denying his attorney's brief, this Court duly noted Fratta's pro se filings yet incredibly stated immediately afterwards that: "Fratta does NOT challenge the sufficiency of the evidence of guilt", and conducted NO sufficiency analysis on its own accord! Fratta again filed the issues in a motion AND in his proposed findings of fact and conclusions of law after painstakingly becoming pro se in State habeas proceedings. But again this Court (and trial court) ignored Fratta's legal insufficiency, Notice and Due Process claims. Now 11 years later, Fratta has properly and correctly filed the Notice and Due Process violations (with Unfair Trial and the legal insufficiency being direct results and the relief warranted under 11.071). But AGAIN this Court refused to accept these meritorious issues. And as of 8/8/21 - Fratta never even received a copy of the 6/30/21 Order from this Court even tho he's fully pro se and warrants direct communications. Additionally, this is Fratta's 2nd request for reconsideration. He mailed the first request within 15 days of the Order on 7/12/21. (See Polunsky Unit mailroom records as proof). But as of 8/6/21 it was not docketed or shown as received. So this is being mailed certified.

Fratta closes as he opened. This Court has never addressed the Notice

and Due Process issues, and to refuse to address them now is to knowingly and intentionally allow the State to continue its practice of indicting people as sole actors - then adding other actors via a law of parties addition to the jury charge just to get convictions in unfair trials. That is UNCONSTITUTIONAL. Rule it such now by accepting and granting Fratta's 4/1/21 subsequent writ and his long overdue relief of acquittal and release due to the legal insufficiency of the evidence.

Submitted by:



Robert Alan Fratta, Applicant

Polunsky Unit, #999189

3872 FM 350 South

Livingston, TX 77351

Mailed/Filed: 8/9/21

APPENDIX E

REID - IV

D

THE STATE OF TEXAS
VS.

D.A. LOG NUMBER: 1461156
CJIS TRACKING NO.: 9001859518-D001
BY: CGM DA NO: 050951500
AGENCY: HCDA
O/R NO: 9411092168
ARREST DATE: 04/21/1995

ROBERT ALAN FRATTA

SPN: 01456938
DOB: WM 02/22/1957
DATE PREPARED: 12/03/2008

NCIC CODE: 0906 10

RELATED CASES: H. GUIDRY, J. PRYSTASH

FELONY CHARGE: CAPITAL MURDER
CAUSE NO: 1195044
HARRIS COUNTY DISTRICT COURT NO: 230
FIRST SETTING DATE:

BAIL: \$
PRIOR CAUSE NO: 712409

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

~~The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas ROBERT ALAN FRATTA, hereafter styled the Defendant, heretofore on or about NOVEMBER 9, 1994, did then and there unlawfully intentionally and knowingly cause the death of FARAH FRATTA, hereafter styled the Complainant, by shooting the Complainant with a deadly weapon, namely, a firearm, and the Defendant did employ JOSEPH PRYSTASH to commit the murder for remuneration and the promise of remuneration, namely, a motor vehicle.~~

~~It is further presented that in Harris County, Texas, ROBERT ALAN FRATTA, hereafter styled the Defendant, heretofore on or about NOVEMBER 9, 1994, did then and there unlawfully, intentionally and knowingly cause the death of FARAH FRATTA, hereafter styled the Complainant, by shooting the Complainant with a deadly weapon, namely, a firearm, and the Defendant did employ HOWARD GUIDRY to commit the murder for remuneration and the promise of remuneration, namely, money.~~

~~It is further presented that in Harris County, Texas, ROBERT ALAN FRATTA, hereafter styled the Defendant, on or about NOVEMBER 9, 1994, did then and there unlawfully, intentionally and knowingly cause the death of FARAH FRATTA, hereafter styled the Complainant, by shooting the Complainant with a deadly weapon, namely, a firearm, and the Defendant did employ HOWARD GUIDRY to commit the murder for remuneration and the promise of remuneration, namely, a firearm.~~

A It is further presented that in Harris County, Texas, ROBERT ALAN FRATTA, hereafter styled the Defendant, on or about NOVEMBER 9, 1994, did then and there unlawfully while in the course of committing and attempting to commit the burglary of a building owned by FARAH FRATTA, intentionally cause the death of FARAH FRATTA by shooting the Complainant with a deadly weapon, namely, a firearm.

→ This is the Count Fratta was convicted (+ upheld) on. As you can see, he is the ONLY actor charged, + he argues NO law of parties can be added to this count. Yet it was. (see Jury Charge pages 5 + 6 in Appendix F).

AGAINST THE PEACE AND DIGNITY OF THE STATE.

FILED

Loren Jackson
District Clerk

DEC 11 2008

Time:

By

Harris County, Texas

Deputy

FOREMAN

263RD

John Van Osdel

FOREMAN OF THE GRAND JURY

RECORDER'S MEMORANDUM

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at the time of imaging

INDICTMENT

: 00002

IMAGED

Appendix E

APPENDIX F

CR II

CAUSE NO. 1195044

THE STATE OF TEXAS	§	IN THE 230TH DISTRICT COURT
VS.	§	OF HARRIS COUNTY, TEXAS
ROBERT ALAN FRATTA	§	MAY TERM, A. D., 2009

Members of the Jury:

The defendant, Robert Alan Fratta, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 9th day of November, 1994, 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:

(1) employs another to commit the murder for remuneration or the promise of remuneration; or

(1) he commits the murder in the course of committing or attempting to commit the felony offense of burglary of a building.

"Remuneration" means payment by one person to another in compensation for a specific service or services rendered pursuant to an agreement.

A person commits the offense of burglary 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 or theft; or

(2) enters a building and commits or attempts to commit a felony or theft.

"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.

"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.

"Theft" is the unlawful appropriation of property with intent to deprive the owner of said property and without the owner's effective consent.

"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 title to the property, possession of the property, whether lawful or not, 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 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 definitions of intentionally and knowingly relative to the offenses of capital murder and 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 building 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.

Before you would be warranted in finding the defendant guilty of capital murder, you must find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, Robert Alan Fratta, intentionally employed Joseph Prystash and/or Howard Guidry to kill Farah Fratta; and the defendant, Robert Alan Fratta, paid or promised to pay Joseph Prystash and/or Howard Guidry to kill Farah Fratta, as alleged in the indictment; and Joseph Prystash and/or Howard Guidry agreed to kill Farah Fratta pursuant to such employment by the defendant, Robert Alan Fratta; and that Joseph Prystash and/or Howard Guidry did then and there kill Farah Fratta by shooting Farah Fratta with a

deadly weapon, namely, a firearm, pursuant to such agreement for remuneration by the defendant, Robert Alan Fratta and that the defendant, with intent to promote or assist the commission of the offense of murder of Farah Fratta, solicited, encouraged, directed, aided or attempted to aid Joseph Andrew Prystash and/or Howard Guidry in shooting Farah Fratta with the specific intention of thereby killing Farah Fratta; 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 Farah Fratta, as alleged in this charge, but also that the defendant specifically intended to cause the death of Farah Fratta, by shooting Farah Fratta, with a deadly weapon, namely, a firearm; or you must find from the evidence beyond a reasonable doubt that the defendant, Robert Alan Fratta, with the intent to promote or assist in the commission of the offense of burglary of a building, if any, solicited, encouraged, directed, aided, or attempted to aid Joseph Andrew Prystash and/or Howard Guidry in shooting Farah Fratta, if he did, with the intention of thereby killing Farah Fratta. If you have a reasonable doubt as to the existence of any of the foregoing elements, then you cannot convict the defendant of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that in Harris County, Texas, on or about the 9th day of November, 1994, the defendant, Robert Alan Fratta, did then and there unlawfully, intentionally, or knowingly cause the death of Farah Fratta, by shooting Farah Fratta with a deadly weapon, namely a firearm, and the defendant did employ Joseph Prystash to commit the murder for remuneration or the promise of remuneration, namely, a motor vehicle; or if you find from the evidence beyond a reasonable doubt that in Harris County, Texas, on or about the 9th day of November, 1994, Joseph Andrew Prystash did then and there unlawfully, intentionally, or knowingly cause the death of Farah Fratta, by shooting Farah Fratta with a deadly weapon, namely a firearm, and the defendant did employ Joseph

Indictment
Count 1

Indictment
Count 1
(continued)

Prystash to commit the murder for remuneration or the promise of remuneration, namely, a motor vehicle, and that the defendant, Robert Alan Fratta, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Joseph Andrew Prystash to commit the offense, if he did; or

Indictment
Count 2

(Indictment
Count 3 was
thrown out for
no evidence)

If you find from the evidence beyond a reasonable doubt that in Harris County, Texas, on or about the 9th day of November, 1994, the defendant, Robert Alan Fratta, did then and there unlawfully, intentionally or knowingly cause the death of Farah Fratta, by shooting Farah Fratta with a deadly weapon, namely, a firearm, and the defendant did employ Howard Guidry to commit the murder for remuneration or the promise of remuneration, namely, money; or if you find from the evidence beyond a reasonable doubt that in Harris County, Texas, on or about the 9th day of November, 1994, Howard Guidry did then and there unlawfully, intentionally or knowingly cause the death of Farah Fratta, by shooting Farah Fratta with a deadly weapon, namely, a firearm, and the defendant did employ Howard Guidry to commit the murder for remuneration or the promise of remuneration, namely, money, and that the defendant, Robert Alan Fratta, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Howard Guidry to commit the offense, if he did; or

Indictment
Count 4

Unconstitutional
(+ unlawful)
Law of Parties
addition

If you find from the evidence beyond a reasonable doubt that in Harris County, Texas, on or about the 9th day of November, 1994, the defendant, Robert Alan Fratta, did then and there unlawfully, while in the course of committing or attempting to commit the burglary of a building owned by Farah Fratta, intentionally cause the death of Farah Fratta by shooting Farah Fratta with a deadly weapon, namely, a firearm; or if you find from the evidence beyond a reasonable doubt that in Harris County, Texas, on or about the 9th day of November, 1994, Joseph Andrew Prystash and/or Howard Guidry did then and there unlawfully, while in the course of committing or attempting to commit the burglary of a building owned by Farah Fratta,

Law of Parties
addition
(continued)

intentionally cause the death of Farah Fratta by shooting Farah Fratta with a deadly weapon, namely, a firearm, and that the defendant, Robert Alan Fratta, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Joseph Andrew Prystash and/or Howard Guidry 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, you will acquit the defendant of capital murder and next consider whether the defendant is guilty of the lesser offense of murder.

You are instructed that you may consider all relevant facts and circumstances surrounding the death, if any, and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense, if any.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 9th day of November, 1994, in Harris County, Texas, the defendant, Robert Alan Fratta, did then and there unlawfully, intentionally or knowingly cause the death of Farah Fratta, by shooting Farah Fratta with a deadly weapon, namely, a firearm; or if you find from the evidence beyond a reasonable doubt that on or about the 9th day of November, 1994, in Harris County, Texas, Joseph Andrew Prystash and/or Howard Guidry, did then and there unlawfully, intentionally or knowingly cause the death of Farah Fratta, by shooting Farah Fratta with a deadly weapon, namely, a firearm, and that the defendant, Robert Alan Fratta, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Joseph Andrew Prystash and/or Howard Guidry to commit the offense, if he did, then you will find the defendant guilty of murder.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of 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 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 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."

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Robert Alan Fratta - Petitioner

vs.

The State of Texas - Respondent

PROOF OF SERVICE

I, Robert Alan Fratta, do swear or declare that on November 15th, 2021 I will have mailed copies of my corrections and complete In Forma Pauperis forms to counsel for the Respondent - Kim Ogg, Harris County District Attorney - 1201 Franklin Street, Ste. 600 - Houston, TX 77002, by depositing an envelope containing all said documents with 1st class postage prepaid and mailed via this TDCJ prison mail system.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 13th, 2021



No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

Robert Alan Fratta — **PETITIONER**
(Your Name)

VS.

The State of Texas — **RESPONDENT(S)**

PROOF OF SERVICE

I, Robert Alan Fratta, do swear or declare that on this date, September 27th, 20 21, as required by Supreme Court Rule 29 I have served the enclosed **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS** and **PETITION FOR A WRIT OF CERTIORARI** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Kim Ogg, Harris County District Attorney

1201 Franklin Street, Ste. 600

Houston, TX 77002

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26th, 2021


(Signature)