FILED
1/22/2018 9:30 AM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
SR DEPUTY

NO. F91-22107-Q

SR
FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
01/31/2018 9:06:06 AM
LISA MATZ
Clerk

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
v.	§	204th JUDICIAL DISTRICT
	§	
JAMES BERKELEY HARBIN II	§	DALLAS COUNTY, TEXAS

NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Defendant in the above-styled and numbered cause and gives this his Notice of Appeal from the judgment and conviction in this cause to the Court of Appeals for the Fifth District of Texas at Dallas, Texas.

Respectfully submitted,

/s/ Lawrence B. Mitchell

LAWRENCE B. MITCHELL
State Bar No. 14217500
11300 N. Central Expressway, Suite 408
Dallas, Texas 75243
Telephone: 214.870.3440
E-mail: judge.mitchell@gmail.com

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing Notice of Appeal will be delivered via e-mail to Assistant District Attorney Lori Ordiway at lori.ordiway@dallascounty.org Texas on the 22nd day of January, 2018.

/s/ Lawrence B. Mitchell

LAWRENCE B. MITCHELL

CASE NO. F-9122107-Q
INCIDENT NO./TRN:

THE STATE OF TEXAS	§	IN THE 204th JUDICIAL DISTRICT
	§	
V.	§	COURT
	§	
JAMES BERKELEY HARBIN II	§	DALLAS COUNTY, TEXAS
	§	
STATE ID NO.: TX04443092	§	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. Tammy Kemp	Date Judgment Entered:	12/14/2017
Attorney for State:	Jorge Solis	Attorney for Defendant:	Larry Mitchell

Offense for which Defendant Convicted:
MURDER

Charging Instrument: **INDICTMENT**	Statute for Offense: **19.02 Penal Code**
Date of Offense: **1/8/1991**	
Degree of Offense: **1ST DEGREE FELONY**	Plea to Offense: **NOT GUILTY**
Verdict of Jury: **GUILTY**	Findings on Deadly Weapon: **YES, A FIREARM**

Plea to 1st Enhancement Paragraph:	N/A	Plea to 2nd Enhancement/Habitual Paragraph:	N/A
Findings on 1st Enhancement Paragraph:	N/A	Findings on 2nd Enhancement/Habitual Paragraph:	N/A

Punishment Assessed by:	Date Sentence Imposed:	Date Sentence to Commence:
JURY	12/14/2017	12/14/2017

Punishment and Place of Confinement: **24 YEARS INSTITUTIONAL DIVISION, TDCJ**

THIS SENTENCE SHALL RUN **CONCURRENTLY.**

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

Fine:	Court Costs:	Restitution:	Restitution Payable to:
$ N/A	$ N/A	$ N/A	(see below) ☐ AGENCY/AGENT ☐ VICTIM

☐ **Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part hereof.**

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was **N/A** .

Time Credited:
If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.
From **1/8/1991** to **3/4/2015** From to From to
From to From to From to
If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.
N/A DAYS NOTES: **N/A**

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Dallas County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ **Jury**. Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court**. Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ **No Election**. Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, Institutional Division, TDCJ.** The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the Dallas County District Clerk Felony Collections Department. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **County Jail—Confinement / Confinement in Lieu of Payment**. The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of Dallas County, Texas on the date the sentence is to commence. Defendant shall be confined in the Dallas County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the Dallas County District Clerk Felony Collections Department. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY.** The Court **ORDERS** Defendant to proceed immediately to the Office of the Dallas County District Clerk Felony Collections Department. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.

☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

Deadly Weapon **The Court FINDS Defendant used or exhibited a deadly weapon, namely, a firearm, during the commission of a felony offense or during immediate flight therefrom or was a party to the offense and knew that a deadly weapon would be used or exhibited. TEX. CODE CRIM. PROC. art. 42.12 §3g**

X Tammy Kemp

Tammy Kemp
JUDGE PRESIDING

Clerk: S.RAYSON

*Thumbprint Certification attached.

Right Thumbprint*

FORM 3
1/1/86

TDC

NO. F-91-22107-UQ ST 174/106

THIS CASE IS ON APPEAL

THE STATE OF TEXAS IN THE 204th DISTRICT

VS. COURT OF

JAMES BERKELEY HARBIN II DALLAS COUNTY, TEXAS

JUDGMENT ON JURY VERDICT OF GUILTY
PUNISHMENT FIXED BY COURT OR JURY -- NO PROBATION GRANTED

JANUARY TERM, A.D., 1991

JUDGE PRESIDING: RICHARD MAYS DATE OF JUDGMENT: 4/29/91

ATTORNEY FOR STATE: GARY SMART ATTORNEY FOR DEFENDANT: MATT FRY

OFFENSE CONVICTED OF: MURDER

DEGREE: 1st DATE OFFENSE COMMITTED: 1/8/91

CHARGING INSTRUMENT: INDICTMENT/~~INFORMATION~~ PLEA: NOT GUILTY

JURY VERDICT GUILTY OF MURDER FOREMAN: DONALD ALLAN SHAHAN

PLEA TO ENHANCEMENT PARAGRAPH(S) NA FINDINGS ON ENHANCEMENT: NA

FINDINGS ON USE OF DEADLY WEAPON: The Jury finds that defendant herein used or exhibited a deadly weapon during the commission of said offense, to-wit: a firearm.

PUNISHMENT ASSESSED BY: JURY

DATE SENTENCE IMPOSED: 4/29/91 COSTS: YES/~~NO~~

PUNISHMENT AND PLACE OF CONFINEMENT: LIFE CONFINEMENT IN TEXAS DEPARTMENT OF CORRECTIONS AND A FINE OF $ -0- DATE TO COMMENCE: 4/29/91

TIME CREDITED: 1/8/91 to 4/29/91

RESTITUTION/REPARATION: ~~YES~~/NO

CONCURRENT UNLESS OTHERWISE SPECIFIED.

On this day, set forth above, the above styled and numbered cause came to trial. The State of Texas and Defendant appeared by and through the above named attorneys and announced ready for trial. Defendant appeared in person in open court. Where Defendant was not represented by counsel, Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel. Where shown above that the charging instrument was by information instead of indictment, the Defendant did, with the consent and approval of his attorney, of the attorney for the State, and the Court, waive his right to prosecution by indictment and agree to be tried on an affidavit and information; all such waivers, agreements and consents being in writing and filed in the papers of this cause prior to the Defendant entering his plea herein, and Defendant in open court was duly arraigned, and entered the above shown plea. Where shown above that Defendant entered a plea of guilty, Defendant was admonished by the Court of the consequences of the said plea and Defendant persisted in entering said plea, and it plainly appearing to the Court that Defendant is mentally competent and said plea is free and voluntary, the said plea was accepted by the Court and is now entered of record as the plea herein of Defendant. Thereupon a jury was duly selected, impaneled and sworn, who, having heard the charging instrument, as shown above presented, and Defendant's plea thereto, and having heard the evidence submitted, and having been duly charged by the Court as to their duty to determine the guilt or innocence of the Defendant and after having heard the arguments of counsel, retired in charge of the proper officer to consider of their verdict, and afterward were brought into open Court, by the proper officer, Defendant and his counsel being present, and in due form of law returned into open Court the above shown verdict, which was received and accepted by the Court, and is here and now entered upon the minutes of the Court.

(Continued)

And when shown above that the charging instrument contains enhancement paragraph(s), which were not waived or dismissed, the Court, after hearing the Defendant's plea to said paragraph(s) as set out above and after hearing further evidence on the issue of punishment, the Court, or jury, makes its finding as set out above; if true, the Court, or jury, is of the opinion and finds Defendant has been heretofore convicted of said offense(s) alleged in the said enhancement paragraph(s) as may be shown above.

When it is shown above the Defendant is guilty of the offense set forth and charged above, IT IS CONSIDERED by the Court that said Defendant is adjudged to be guilty of the offense set forth above, and that Defendant committed the offense on the date set forth above as charged in the instrument shown above, and that Defendant was previously convicted when shown above in the manner above, and that said Defendant be punished as has been determined, said punishment being assessed by the above shown assessor of punishment, as elected in writing by Defendant, and be confined in the place of confinement shown above for the term of time set forth above, and when said punishment is assessed as other than death or life, that the State of Texas do have and recover of the said Defendant all costs in this prosecution expended including any fine shown for which let execution issue. The Court further makes its finding as to deadly weapon as set forth above based upon the jury's verdict or the findings of the Court when punishment fixed by the Court.

THEREUPON the said Defendant was asked by the Court whether he had anything to say why said sentence should not be pronounced against him, and he answered nothing in bar thereof, and it appearing to the Court that Defendant is mentally competent and understanding of the proceedings.

IT IS, THEREFORE, CONSIDERED AND ORDERED by the Court, in the presence of said Defendant, and his attorney that the said judgment, as set forth above be, is hereby in all things, approved and confirmed, and that Defendant, who has been adjudged guilty of the above named offense, as shown above, and whose punishment has been assessed by the Court or the jury, as shown above, that Defendant be punished in accordance with the punishment set forth above and that Defendant shall be delivered by the Sheriff to the Director of the Department of Corrections of the State of Texas, or other person legally authorized to receive such convicts for the punishment assessed herein, and said Defendant shall be confined for the above named term in accordance with the provisions of law governing such punishments and execution may issue as necessary. It is further ordered that Defendant pay court costs, restitution or reparation, as set forth above.

And Defendant is remanded to jail until said Sheriff can obey the directions of this judgment.

*$104.50 court cost

4-29-91 DEFENDANT EXCEPTS AND GIVES NOTICE OF APPEAL TO THE COURT OF APPEALS, FIFTH DISTRICT OF TEXAS AT DALLAS

Richard A Mays

Mays

PRESIDING JUDGE

JUDGMENT ON JURY VERDICT OF GUILTY - PUNISHMENT FIXED BY COURT OR JURY - NO PROBATION GRANTED

Cause No. F1340494-Q **TRN**

THE STATE OF TEXAS	§	IN THE 204th JUDICIAL DISTRICT
v.	§	COURT
JAMES BERKELEY HARBIN	§	DALLAS COUNTY, TEXAS

SID: **TX**04443092

CLERK'S CERTIFICATE

I, Felicia Pitre, Clerk of the District Courts within and for the State of Texas and Dallas County, do hereby certify that the above and foregoing is a true and correct copy of judgment and imposition of sentence in Cause No. F1340494-Q, entitled The State of Texas vs. **JAMES BERKELEY HARBIN** as the same appears on record now on file in my office.

Given under my hand and seal of office in Dallas County, Texas on **12/14/2017**.

Felicia Pitre
District Clerk
Dallas County, Texas

by: S. RAYSON
Deputy District Clerk

FORM 188-B

DEFENDANT HARBIN, JAMES BERKELEY II. WM 6-1-72 CHARGE MURDER

ADDRESS 523 GRAND, WAXAHACHIE LOCATION DSO

FILING AGENCY CEH PD DATE FILED 1-15-91 COURT

COMPLAINANT JAMES BERKELEY HARBIN SR. F91-22107 U Q

C/C LEVI GLOSSINGER

TRUE BILL OF INDICTMENT

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Dallas County, State of Texas, duly organized at the JANUARY Term, A.D. 19 91 of the 291ST JUDICIAL District Court, Dallas County, in said court at said Term, do present that one JAMES BERKELEY HARBIN II. on or about the 8TH day of JANUARY A.D. 19 91 in the County of Dallas and said State, did

then and there knowingly and intentionally cause the death of JAMES BERKELEY HARBIN SR., an individual, by shooting said JAMES BERKELEY HARBIN SR. with a firearm, a deadly weapon,

against the peace and dignity of the State.

JOHN VANCE

Criminal District Attorney of Dallas County, Texas.

Peter Lowe

Foreman of the Grand Jury.

COURT

FILED

91 JAN 23 AM 10:57

BILL LONG
DISTRICT CLERK
DALLAS CO., TEXAS

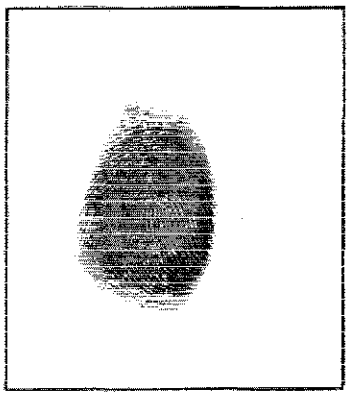
DEPUTY

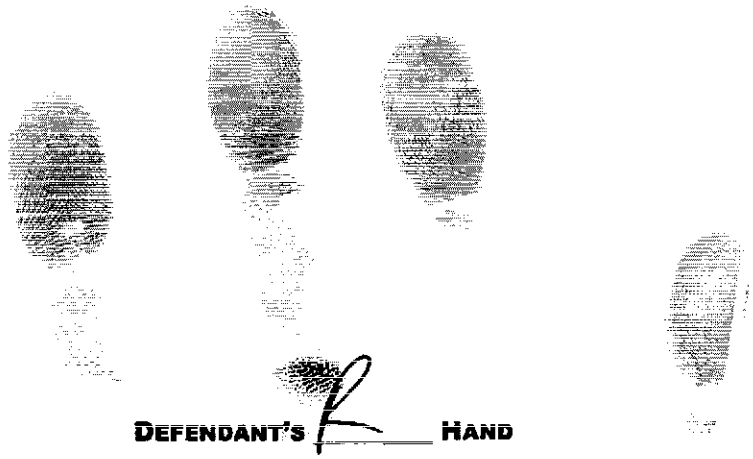
JUDGMENT
CERTIFICATE OF THUMBPRINT

THE STATE OF TEXAS **CAUSE NO. F** 91-22107-Q

VS. 204TH **DISTRICT COURT** ____

JAMES B. HARBIN, II **DALLAS COUNTY, TEXAS**





RIGHT THUMB **DEFENDANT'S** R **HAND**

THIS IS TO CERTIFY THAT THE FINGERPRINTS ABOVE ARE THE ABOVE-NAMED DEFENDANT'S FINGERPRINTS TAKEN AT THE TIME OF DISPOSITION OF THE ABOVE STYLED AND NUMBERED CAUSE.

DONE IN COURT THIS 14th **DAY OF** Dec, **20**17.

BAILIFF/DEPUTY SHERIFF

***INDICATE HERE IF PRINT OTHER THAN DEFENDANT'S RIGHT THUMBPRINT IS PLACED IN BOX:**

____ **LEFT THUMBPRINT** ____ **LEFT/RIGHT INDEX FINGER**

____ **OTHER,** _____

SIGNED AND ENTERED ON THIS 14 **DAY OF** Dec. **20**17.

Tammy Kemp

PRESIDING JUDGE

F91-22107-Q

THE STATE OF TEXAS	§	IN THE JUDICIAL DISTRICT COURT
	§	
V.	§	204TH DISTRICT
	§	
JAMES B. HARBIN, II Defendant	§	DALLAS COUNTY, TEXAS

FILED
2018 JAN -3 PM 12:19
FELICIA PITRE
DISTRICT CLERK
DALLAS CO. TEXAS
DEPUTY

MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW James B. Harbin, II, the defendant herein, and by and through his attorney moves that the Court grant him a new trial in this cause for the good and sufficient reason that the verdict is contrary to the law and the evidence.

WHEREFORE, the defendant prays that the Court grant him a new trial.

Respectfully submitted,

Lawrence B. Mitchell
Attorney for the defendant

PRESENTMENT

The foregoing Motion for New Trial was on this the 3 day of January, 2018, presented to the Court.

Tammy Kemp, Judge

Order

The foregoing Motion for New Trial is (granted) (denied) on January 3, 2018.

Tammy Kemp, Judge