

CAUSE NO. 1246855

THE STATE OF TEXAS                   §    IN THE 184TH DISTRICT COURT  
VS.                                       §    OF HARRIS COUNTY, TEXAS  
ROBERTO DIANAS                       §    NOVEMBER TERM, A. D., 2009

Members of the Jury:

The defendant, Roberto Dianas, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 6th day of February, 2008, 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 commits murder, as hereinbefore defined, and the person intentionally or knowingly causes the death of more than one person during the same criminal transaction.

"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.

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.

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.

You are instructed that it is your duty to consider the evidence of all relevant facts and circumstances surrounding the deaths and the previous relationship, if any, existing between the accused and Paublo Cayax and the accused and Roberto Gonzalez together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the alleged offense.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 6th day of February, 2008, in Harris County, Texas, the defendant, Roberto Dianas, did then and there unlawfully, during the same criminal transaction, intentionally or knowingly cause the death of Paublo Cayax by shooting Paublo Cayax with a deadly weapon, to-wit: a firearm, and intentionally or knowingly cause the death of Roberto Gonzalez by shooting Roberto Gonzalez with a deadly weapon, to-wit: a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 6th day of February, 2008, in Harris County, Texas, Martin Santoyo and/or Luis Gonzalez, did then and there unlawfully, during the same criminal transaction, intentionally or knowingly cause the death of Paublo Cayax by shooting Paublo Cayax with a deadly weapon, to-wit: a firearm, and intentionally or knowingly cause the death of Roberto Gonzalez by shooting Roberto Gonzalez with a deadly weapon, to-wit: a firearm, and that the defendant, Roberto Dianas, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Martin Santoyo and/or Luis Gonzalez 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 and say by your verdict "Not Guilty."

Voluntary intoxication does not constitute a defense to the commission of a crime. "Intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

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 or during the time of 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.

The witness, Martin Santoyo, is an accomplice, if an offense was committed, and you cannot convict the defendant upon his testimony unless you further believe that there is other evidence in the case, outside of the testimony of Martin Santoyo tending

to connect the defendant with the offense committed, if you find that an offense was committed, 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, and then from all of the evidence you must believe beyond a reasonable doubt that the defendant is guilty of the offense charged against him.

A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated, or risked is that a different person or property was injured, harmed, or otherwise affected.

Now, if you believe from the evidence beyond a reasonable doubt that the defendant, Roberto Dianas, in Harris County, Texas, on or about the 6<sup>th</sup> day of February, 2008, did then and there unlawfully and intentionally or knowingly shoot a firearm at Marcos Velasco, intending or knowing that death would occur to Marcos Velasco, but instead, missed Marcos Velasco and hit Roberto Gonzalez, causing the death of Roberto Gonzalez with the use of a deadly weapon, namely, a firearm, and you further find that the defendant did unlawfully and intentionally or knowingly shoot a firearm at Roberto Gonzalez, intending or knowing that death would occur to Roberto Gonzalez, but instead, missed Roberto Gonzalez and hit Paublo Cayax, causing the death of Paublo Cayax with the use of a deadly weapon, namely, a firearm; or

if you believe from the evidence beyond a reasonable doubt that the defendant, Roberto Dianas, in Harris County, Texas, on or about the 6<sup>th</sup> day of February, 2008, did then and there unlawfully and intentionally or knowingly shoot a firearm at Marcos Velasco, intending or knowing that death would occur to Marcos Velasco, but instead, missed Marcos Velasco and hit Paublo Cayax, causing the death of Paublo Cayax with the use of a deadly weapon, namely, a firearm, and you further find that the defendant did unlawfully and intentionally or knowingly shoot

a firearm at Paublo Cayax, intending or knowing that death would occur to Paublo Cayax, but instead, missed Paublo Cayax and hit Roberto Gonzalez, causing the death of Roberto Gonzalez with the use of a deadly weapon, namely, a firearm; or

if you believe from the evidence beyond a reasonable doubt that the defendant, Roberto Dianas, in Harris County, Texas, on or about the 6<sup>th</sup> day of February, 2008, did then and there unlawfully and intentionally or knowingly shoot a firearm at Paublo Cayax, intending or knowing that death would occur to Paublo Cayax, but instead, missed Paublo Cayax and hit Roberto Gonzalez, causing the death of Roberto Gonzalez with the use of a deadly weapon, namely, a firearm, and you further find that the defendant did unlawfully and intentionally or knowingly shoot a firearm at Roberto Gonzalez, intending or knowing that death would occur to Roberto Gonzalez, but instead, missed Roberto Gonzalez and hit Paublo Cayax, causing the death of Paublo Cayax with the use of a deadly weapon, namely, a firearm; or

if you believe from the evidence beyond a reasonable doubt that the defendant, Roberto Dianas, in Harris County, Texas, on or about the 6<sup>th</sup> day of February, 2008, did then and there unlawfully and intentionally or knowingly shoot a firearm at Marcos Velasco, intending or knowing that death would occur to Marcos Velasco, but instead, missed Marcos Velasco and hit Paublo Cayax, causing the death of Paublo Cayax with the use of a deadly weapon, namely, a firearm, and you further find that the defendant did unlawfully and intentionally or knowingly shoot a firearm at Roberto Gonzalez, intending or knowing that death would



occur to Roberto Gonzalez, and thereby caused the death of Roberto Gonzalez with the use of a deadly weapon, namely, a firearm; or

if you believe from the evidence beyond a reasonable doubt that the defendant, Roberto Dianas, in Harris County, Texas, on or about the 6<sup>th</sup> day of February, 2008, did then and there unlawfully and intentionally or knowingly shoot a firearm at Marcos Velasco, intending or knowing that death would occur to Marcos Velasco, but instead, missed Marcos Velasco and hit Roberto Gonzalez, causing the death of Roberto Gonzalez with the use of a deadly weapon, namely, a firearm, and you further find that the defendant did unlawfully and intentionally or knowingly shoot a firearm at Paublo Cayax, intending or knowing that death would occur to Paublo Cayax and thereby caused the death of Paublo Cayax with the use of a deadly weapon, namely, a firearm, then you will find the defendant guilty of capital murder, as charged in the indictment.

You are instructed that a statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion.

Therefore, unless you believe from the evidence beyond a reasonable doubt that the alleged statement introduced into evidence was freely and voluntarily made by the defendant without compulsion or persuasion, or if you have a reasonable doubt thereof, you shall not consider such alleged statement for any purpose.

Further, be instructed that if you find from the evidence, or if you have a reasonable doubt thereof, that at the time of the video-taped statement of the defendant in this case, if such statement there was, to John McGalin, the defendant was under the influence of a substance to such extent as to be reduced to a condition of mental impairment such as to render his statement not voluntary, then such statement would not be voluntarily made, and in such case, you will wholly disregard the alleged video-taped statement referred to and not consider it for any purpose.

Upon the law of self-defense, you are instructed that a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other person's use or attempted use of unlawful force. The use of force against another is not justified in response to verbal provocation alone.

A person is justified in using deadly force against another if he would be justified in using force against the other in the first place, as above set out, and when he reasonably believes that such deadly force is immediately necessary:

- (1) to protect himself against the other person's use or attempted use of unlawful deadly force, or
- (2) to prevent the other's imminent commission of murder.

The defendant's belief that the force was immediately necessary is presumed to be reasonable if the defendant:

- (1) knew or had reason to believe that the person against whom the force was used was committing or attempting to commit murder;
- (2) did not provoke the person against whom the force was used; and
- (3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

With regard to the presumption of the necessity of deadly force, you are further instructed that:

9 11

- (1) the presumption applies unless the state proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist;
- (2) if the state fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed fact exists;
- (3) even though the jury may find that the presumed fact does not exist, the state must prove beyond a reasonable doubt each of the elements of the offense charged; and
- (4) if the jury has a reasonable doubt as to whether the presumed fact exists, the presumption applies and the jury must consider the presumed fact to exist.

A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force. In determining whether ~~the~~ <sup>person</sup> ~~defendant~~ reasonably believed that the use of force was necessary, you may not consider whether the ~~defendant~~ <sup>person</sup> failed to retreat.

By the term "reasonable belief" as used herein is meant a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

By the term "deadly force" as used herein is meant force that is intended or known by the persons using it to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

When a person is attacked with unlawful deadly force, or he reasonably believes he is under attack or attempted attack with unlawful deadly force, and there is created in the mind of such person a reasonable expectation or fear of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, viewed from his standpoint at the time, to protect himself from such attack or attempted attack. It is not necessary that there be an actual attack or attempted attack, as a person has a right to defend his life and person from apparent danger as fully and to the same extent as he would had the danger been real, provided that he acted upon a reasonable apprehension of danger, as it appeared to him from his standpoint at the time, and that he reasonably believed such deadly force was immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

In determining the existence of real or apparent danger, you should consider all the facts and circumstances in evidence before you, all relevant facts and circumstances surrounding the offense, if any, the previous relationship existing between the defendant and Paublo Cayax and/or Roberto Gonzalez, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the offense, and, in considering such circumstances, you should place yourselves in the defendant's position at that time and view them from his standpoint alone.

Therefore, if you find from the evidence beyond a reasonable doubt that the defendant, Roberto Dianas, did intentionally or knowingly cause the death of Paublo Cayax by shooting Paublo Cayax with a deadly weapon, to-wit: a firearm, and intentionally or knowingly cause the death of Roberto Gonzalez by shooting Roberto Gonzalez with a deadly weapon, to-wit: a firearm, as alleged, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct, or both of Paublo Cayax and/or Roberto Gonzalez it reasonably appeared to the defendant that his life or person was in danger and there was created in his mind a reasonable expectation or fear of death or serious bodily injury from the use of unlawful deadly force at the hands of Paublo Cayax and/or Roberto Gonzalez, and that acting under such apprehension and reasonably believing that the use of deadly force on his part was immediately necessary to protect himself against Paublo Cayax and/or Roberto Gonzalez's use or attempted use of unlawful deadly force, he shot Paublo Cayax and/or Roberto Gonzalez, then you should acquit the defendant on the grounds of self-defense; or if you have a reasonable doubt as to whether or not the defendant was acting in self-defense on said occasion and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict, not guilty.

If you find from the evidence beyond a reasonable doubt that at the time and place in question the defendant did not reasonably believe that he was in danger of death or serious bodily injury, or that the defendant, under the circumstances as

viewed by him from his standpoint at the time, did not reasonably believe that the degree of force actually used by him was immediately necessary to protect himself against Paublo Cayax and/or Roberto Gonzalez's use or attempted use of unlawful deadly force, then you should find against the defendant on the issue of self-defense.

You are further instructed that if there is any evidence before you in this case regarding the defendant's committing an alleged offense or offenses other than the offense alleged against him in the indictment in this case, you cannot consider such evidence for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offense or offenses, if any, and even then you may only consider the same in determining the motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident of the defendant, if any, in connection with the offense, if any, alleged against him in the indictment and for no other purpose.



A defendant in a criminal case is not bound by law to testify in his own behalf therein and the failure of any defendant to so testify shall not be taken as a circumstance against him nor shall the same be alluded to nor commented upon by the jury, and you must not refer to, mention, comment upon or discuss the failure of the defendant to testify in this case. If any juror starts to mention the defendant's failure to testify in this case then it is the duty of the other jurors to stop him or her at once.

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 Foreperson. 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 Foreperson.

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 Foreperson 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.

*Jan Krocker*

Jan Krocker, Judge  
184th District Court  
Harris County, TEXAS

**FILED**

Loren Jackson  
District Clerk

JAN 29 2010

Time: 12:30  
Harris County, Texas  
By: [Signature]  
Deputy



~~FILED~~  
~~Loren Jackson~~  
~~District Clerk~~

~~JAN 29 2010~~

~~Time: \_\_\_\_\_  
Harris County, Texas  
By: \_\_\_\_\_  
Deputy~~

~~JAN 29 2010~~

~~Time: \_\_\_\_\_  
Harris County, Texas  
By: \_\_\_\_\_  
Deputy~~

CAUSE NO. 1246855

THE STATE OF TEXAS

§ IN THE 184TH DISTRICT COURT

VS.

§ OF HARRIS COUNTY, TEXAS

ROBERTO DIANAS

§ NOVEMBER TERM, A. D., 2009

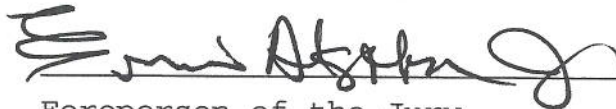
V E R D I C T

"We, the Jury, find the defendant, Roberto Dianas, not guilty."

\_\_\_\_\_  
Foreperson of the Jury

\_\_\_\_\_  
(Please Print) Foreperson

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

  
\_\_\_\_\_  
Foreperson of the Jury

**Ernie Alsobrook Jr**  
\_\_\_\_\_  
(Please Print) Foreperson

**FILED**  
Loren Jackson  
District Clerk

JAN 29 2010

Time: \_\_\_\_\_  
Harris County, Texas  
By: \_\_\_\_\_  
Deputy

19721