

CAUSE NO. 1445281

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|---------------------|---|-----------------------------|
| THE STATE OF TEXAS  | § | IN THE 174TH DISTRICT COURT |
| VS.                 | § | OF HARRIS COUNTY, TEXAS     |
| SAUL SANTIAGO ACUNA | § | JANUARY TERM, A. D., 2016   |

Members of the Jury:

The defendant, Saul Santiago Acuna, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 14th day of September, 2014, in Harris County, Texas. The defendant has pleaded not guilty.

A person commits the offense of murder if he:

- (1) intentionally or knowingly causes the death of an individual; or
- (2) intends to cause serious bodily injury and intentionally or knowingly commits an act clearly dangerous to human life that causes the death of an individual.

A person commits the offense of capital murder if he intentionally commits murder, as hereinbefore defined in paragraph (1), and the person intentionally commits the murder in the course of committing or attempting to commit the offense of robbery. Robbery is a felony.

A person commits the offense of robbery if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain or maintain control of property of another, he:

- (1) intentionally or knowingly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

"In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in the immediate flight after the attempt or commission of 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.

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

"Appropriation" and "appropriate", as those terms are used herein, 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" as used herein means tangible or intangible personal property or documents, 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 or threat.

"Owner" means a person who has title to the property, possession of property, or a greater right to possession of the property than the actor.

"Possession" means actual care, custody, control, or management of the property.

"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 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 or 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 definitions of intentionally or knowingly relative to the offense of robbery are as follow:

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.

A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. 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.

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 robbery of Gerardo Hernandez-Castaneda, as alleged in this charge, but also that the defendant specifically intended to cause the death of Gerardo Hernandez-Castaneda, by shooting Gerardo Hernandez-Castaneda, with a deadly weapon, namely a firearm, and unless you so find, then you cannot convict the defendant of the offense of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 14th day of September, 2014, in Harris

County, Texas, the defendant, Saul Santiago Acuna, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Gerardo Hernandez-Castaneda, intentionally cause the death of Gerardo Hernandez-Castaneda by shooting Gerardo Hernandez-Castaneda with a deadly weapon, namely a firearm, then you will find the defendant guilty of capital murder, as charged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether the defendant is guilty of the lesser offense of murder.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 14th day of September, 2014, in Harris County, Texas, the defendant, Saul Santiago Acuna, did then and there unlawfully, intentionally or knowingly cause the death of Gerardo Hernandez-Castaneda, by shooting Gerardo Hernandez-Castaneda with a deadly weapon, namely a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 14th day of September, 2014, in Harris County, Texas, the defendant, Saul Santiago Acuna, did then and there unlawfully intend to cause serious bodily injury to Gerardo Hernandez-Castaneda, and did cause the death of Gerardo Hernandez-Castaneda by intentionally or knowingly committing an act clearly dangerous to human life, namely by shooting Gerardo Hernandez-Castaneda with a deadly weapon, namely a firearm, 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, or if you are unable to agree, you will next consider whether the defendant is guilty of the lesser offense of unauthorized use of a motor-propelled vehicle.

A person commits the offense of unauthorized use of a motor-propelled vehicle if he intentionally or knowingly operates another's motor-propelled vehicle without the effective consent of the owner.

A person acts intentionally, or with intent, with respect to the nature of his conduct when it is his conscious objective or desire to engage in the conduct.

A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 14th day of September, 2014, in Harris County, Texas, the defendant, Saul Santiago Acuna, did then and there unlawfully, intentionally or knowingly operate a motor-propelled vehicle, namely, an automobile, owned by Gerardo Hernandez-Castaneda, without the effective consent of Gerardo Hernandez-Castaneda, then you will find the defendant guilty of unauthorized use of a motor-propelled vehicle.

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 believe from the evidence beyond a reasonable doubt that the defendant is guilty of either murder on the one hand or unauthorized use of a motor-propelled vehicle 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 unauthorized use of a motor-propelled vehicle.

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."

Upon the law of self-defense, as it applies to the lesser offense of murder, 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 to protect himself against the other person's use or attempted use of unlawful deadly force.

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 defendant's belief that deadly force was immediately necessary was a reasonable belief, you may consider the defendant's failure to retreat only if the State proves, beyond a reasonable doubt, one of the following three circumstances:

1. The defendant did not have a right to be present at the location where the deadly force was used, or
2. The defendant provoked the person against whom the deadly force was used; or



3. The defendant was engaged in criminal activity at the time the deadly force was used.

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.

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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 Gerardo Hernandez-Castaneda, 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, Saul Santiago Acuna, did cause the death of Gerardo Hernandez-Castaneda, by shooting Gerardo Hernandez-Castaneda with a deadly weapon, namely 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 Gerardo Hernandez-Castaneda 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 Gerardo Hernandez-Castaneda, 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 Gerardo Hernandez-Castaneda's use or attempted use of unlawful deadly force, he shot Gerardo Hernandez-Castaneda, then you should acquit the defendant on the grounds of self-defense; or if you have a reasonable doubt as to

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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 Gerardo Hernandez-Castaneda'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.

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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.

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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.

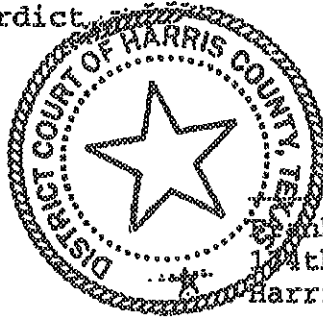
During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

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.



*Frank C. Price*

Frank C. Price, Judge Presiding  
14th District Court  
Harris County, TEXAS

**FILED**  
Chris Daniel  
District Clerk

**MAY 27 2016**

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



CAUSE NO. 1445281

THE STATE OF TEXAS  
VS.  
SAUL SANTIAGO ACUNA

§ IN THE 174TH DISTRICT COURT  
§ OF HARRIS COUNTY, TEXAS  
§ JANUARY TERM, A. D., 2016

CHOOSE ONE

"We, the Jury, find the defendant, Saul Santiago Acuna, guilty of capital murder, as charged in the indictment."

**FILED**  
Chris Daniel  
District Clerk  
MAY 27 2016

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

*Michael Vischak*

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

*Michael Vischak*

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

"We, the Jury, find the defendant, Saul Santiago Acuna, guilty of murder."

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Foreman of the Jury

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(Please Print) Foreman

"We, the Jury, find the defendant, Saul Santiago Acuna, guilty of unauthorized use of a motor-propelled vehicle."

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Foreman of the Jury

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(Please Print) Foreman

"We, the Jury, find the defendant, Saul Santiago Acuna, not guilty."

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Foreman of the Jury

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(Please Print) Foreman