

NO. 2010-429,455

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

RUBEN GARCIA

§ 137TH JUDICIAL DISTRICT

*Rubens*  
2012 MAY 24 PM 2:51  
FILED FOR RECORD  
DISTRICT CLERK LUBBOCK CO.  
DEPUTY

**COURT'S CHARGE**

**MEMBERS OF THE JURY:**

The defendant, RUBEN GARCIA, stands charged by indictment with the offense of capital murder, alleged to have been committed in Lubbock County, Texas, on or about October 1, 2009. The defendant has entered a plea of not guilty to the indictment which was read to you.

You are instructed that you will consider only the guilt or innocence of the defendant from the evidence admitted before you and from the law as given to you in the charge by the Court.

You are instructed that the law applicable to this case is as follows:

1.

Our law provides that a person commits murder when he intentionally or knowingly causes the death of an individual.

A person commits capital murder if he commits murder as defined above and such person murders more than one person during the same criminal transaction.



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CCJR - COURT CHARGE TO THE JURY  
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A person commits the offense of manslaughter if he recklessly causes the death of an individual.

A person commits the offense of criminally negligent homicide if he causes the death of an individual by criminal negligence.

2.

“Actor” means a person whose criminal responsibility is in issue in a criminal action.

3.

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, when he is aware that his conduct is reasonably certain to cause the result.

A person acts recklessly, or is reckless, with respect to the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

A person acts with criminal negligence, or is criminally negligent, with respect to the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

4.

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about October 1, 2009, in Lubbock County, Texas, the defendant, RUBEN GARCIA, did then and there intentionally or knowingly cause the death of an individual, namely, Rudy Vela, by stabbing the said Rudy Vela with a knife, and did then and there intentionally or knowingly cause the death of another individual, Jessica Hernandez, by stabbing the Jessica Hernandez with a knife, and both murders were committed during the same criminal transaction, then you will find the defendant guilty of capital murder.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit defendant of the offense of capital murder.

5.

Upon the law of self-defense, you are instructed that a person is justified in using force against another when and to the degree that the actor reasonably believes the force is immediately necessary to protect oneself 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 the actor would be justified in using force against the other in the first place, as above set out, and when the actor reasonably believes that such deadly force is immediately necessary to protect oneself against the other person's use or attempted use of unlawful deadly force, or to prevent the other's imminent commission of murder.

"Reasonable belief" means a belief that would be held by an ordinary and prudent person in the same circumstances as defendant.

"Deadly force" means 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.

The actor's belief that the deadly force was immediately necessary is presumed to be reasonable if the actor (1) knew or had reason to believe that the person against whom deadly force was used was committing or attempting to commit murder and (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 law or ordinance regulating traffic at the time the force was used.

This presumption applies unless you find that the State has proven beyond a reasonable doubt that the facts giving rise to the presumption do not exist. If the State has failed to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, you must find that the presumed fact exists that the person against whom deadly force was used was committing or attempting to commit murder. Even if you find that the State has proven beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the State must prove beyond a reasonable doubt each of the elements of the offense charged in the indictment. If you have a reasonable doubt as to whether the facts giving rise to the presumption do not exist, the presumption applies and you must consider that the presumed fact exists that the person against whom deadly force was used was committing or attempting to commit murder.

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. You are not to consider whether the actor failed to retreat.

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 killing, if any, 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 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.

Now, if you find from the evidence beyond a reasonable doubt that on or about October 1, 2009, in Lubbock County, Texas, the defendant, RUBEN GARCIA, did then and there intentionally or knowingly cause the death of an individual, namely Rudy Vela, by stabbing the said Rudy Vela with a knife, and did then and there intentionally or knowingly cause the death of another individual, namely Jessica Hernandez, by stabbing the said Jessica Hernandez with a knife, and both murders were committed during the same criminal transaction, but you further find from the evidence, or you have a reasonable doubt thereof, that at that time the defendant acted in self-defense as to both Rudy Vela and Jessica Hernandez, as self-defense has been previously defined for, and explained to you, then you will acquit the defendant of all charges, and you will sign verdict form No. 1, attached to this charge, indicating a "Not Guilty" verdict.

If you find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, that on or about October 1, 2009, in Lubbock County, Texas, the defendant, RUBEN GARCIA, did then and there intentionally or knowingly cause the deaths of both Rudy Vela and Jessica Hernandez, by stabbing the said Rudy Vela and Jessica Hernandez with a knife, and both were committed during the same criminal transaction, but that the defendant acted in self-defense as to one of them, but not as to the other, then you will acquit the defendant of capital murder, and you will acquit the defendant of all criminal charges as to the deceased

person for whom you find the defendant acted in self-defense. In that event, you will sign either verdict form No. 3, 4 or 5 (as to Rudy Vela's death), or verdict form No. 6, 7 or 8 (as to Jessica Hernandez's death), indicating a "Not Guilty" verdict related to the death of the deceased person for whom you have determined defendant acted in self-defense.

Then, if you have acquitted the defendant, RUBEN GARCIA, of capital murder and of murder as to one of the deceased persons alleged in the indictment, you will next consider the lesser-included offense of murder as to the deceased person for whom you find defendant did not act in self-defense.

If you have found that the defendant acted in self-defense as to Rudy Vela's death, you will disregard any further instructions in this charge related to the death of Rudy Vela. Conversely, if you have found that the defendant acted in self-defense as to Jessica Hernandez's death, you will disregard any further instruction in this charge related to the death of Jessica Hernandez.



7.

You are further instructed as part of the law of this case, and as a qualification of the law on self-defense, that the use of force by a defendant against another is not justified if the defendant provoked the other's use or attempted use of unlawful force, unless (a) the defendant abandons the encounter, or clearly communicates to the other his intent to do so, reasonably believing he cannot safely abandon the encounter, and (b) the other person, nevertheless, continues or attempts to use unlawful force against the defendant.

8.

Bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about October 1, 2009, in Lubbock County, Texas, the defendant, RUBEN GARCIA, did then and there intentionally or knowingly cause the death of an individual, namely, Rudy Vela, by stabbing the said Rudy Vela, and did then and there cause the death of another individual, Jessica Hernandez, by stabbing the Jessica Hernandez with a knife, and both murders were committed during the same criminal transaction, but you find that the murder of Jessica Hernandez, if any, was committed in self-defense, then you will find the defendant guilty of murder of Rudy Vela and so say by your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit defendant of the offense of murder as to Rudy Vela and next consider if he is guilty of the lesser offense of manslaughter as to Rudy Vela.

9.

Bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about October 1, 2009, in Lubbock County, Texas, the defendant, RUBEN GARCIA, did then and there recklessly cause the death of an individual, namely, Rudy Vela, by stabbing the said Rudy Vela, and did then and there cause the death of another individual, Jessica Hernandez, by stabbing the Jessica Hernandez with a knife, and both were committed during the

same criminal transaction, but you find that the murder of Jessica Hernandez, if any, was committed in self-defense, then you will find the defendant guilty of manslaughter of Rudy Vela and so say by your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit defendant of the offense of manslaughter as to Rudy Vela and next consider if he is guilty of the lesser offense of criminally negligent homicide as to Rudy Vela.

10.

Bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about October 1, 2009, in Lubbock County, Texas, the defendant, RUBEN GARCIA, did then and there cause the death of an individual, namely, Rudy Vela, with criminal negligence, by stabbing the said Rudy Vela, and did then and there cause the death of another individual, Jessica Hernandez, by stabbing the Jessica Hernandez with a knife, and both were committed during the same criminal transaction, but you find that the murder of Jessica Hernandez, if any, was committed in self-defense, then you will find the defendant guilty of criminally negligent homicide of Rudy Vela and so say by your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit defendant of the offense of criminally negligent homicide as to Rudy Vela.

11.

Alternatively, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about October 1, 2009, in Lubbock County, Texas, the defendant, RUBEN GARCIA, did then and there cause the death of an individual, namely, Rudy Vela, by stabbing the said Rudy Vela, and did then and there intentionally or knowingly cause the death of another individual, Jessica Hernandez, by stabbing the Jessica Hernandez with a knife, and both murders were committed during the same criminal transaction, but you find that the murder of Rudy Vela, if any, was committed in self-defense, then you will find the defendant guilty of murder of Jessica Hernandez and so say by your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit defendant of the offense of murder as to Jessica Hernandez and next consider if the defendant is guilty of the offense of manslaughter as to Jessica Hernandez.

12.

Bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about October 1, 2009, in Lubbock County, Texas, the defendant, RUBEN GARCIA, did then and there cause the death of an individual, namely, Rudy Vela, by stabbing the said Rudy Vela, and did then and there recklessly cause the death of another individual, Jessica Hernandez, by stabbing the Jessica Hernandez with a knife, and both were committed during the same criminal transaction, but you find that the murder of Rudy Vela, if any, was committed in self-defense, then you will find the defendant guilty of manslaughter of Jessica Hernandez and so say by your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit defendant of the offense of manslaughter as to Jessica Hernandez and next consider if he is guilty of the lesser offense of criminally negligent homicide as to Jessica Hernandez.

13.

Bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about October 1, 2009, in Lubbock County, Texas, the defendant, RUBEN GARCIA, did then and there cause the death of an individual, namely, Rudy Vela, by stabbing the said Rudy Vela, and did then and there cause the death of another individual, Jessica Hernandez, with criminal

negligence, by stabbing the Jessica Hernandez with a knife, and both were committed during the same criminal transaction, but you find that the murder of Rudy Vela, if any, was committed in self-defense, then you will find the defendant guilty of criminally negligent homicide of Jessica Hernandez and so say by your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit defendant of the offense of criminally negligent homicide as to Jessica Hernandez.

14.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either the offense of capital murder, on the one hand, or the offense of 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 defendant's favor and find him guilty of the lesser offense of murder, and so say by your verdict.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either the offense of murder, on the one hand, or the offense of manslaughter, 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 defendant's favor and find him guilty of the lesser offense of manslaughter, and so say by your verdict.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either the offense of manslaughter, on the one hand, or the offense of criminally negligent homicide, 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 defendant's favor and find him guilty of the lesser offense of criminally negligent homicide, and so say by your verdict.

If you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge, then you will acquit the defendant and say by your verdict "Not Guilty."

15.

Voluntary intoxication does not constitute a defense to the commission of a crime.

16.

You are further charged that if there is any evidence before you in this case tending to show that the defendant herein committed offenses other than the offense alleged against him in the indictment, you cannot consider said testimony for any purpose unless you find and believe, beyond a reasonable doubt, that the defendant committed such other offenses, if any were committed; and if you find and believe beyond a reasonable doubt from such testimony that other offenses were committed, you may then consider the same in determining the motive,

opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, and for no other purpose.

17.

In your deliberations, you will consider this charge as a whole. You are instructed that the indictment in this case is of itself a mere accusation or charge against this defendant, and is not any evidence of the defendant's guilt; no juror in this case should permit himself/herself to be to any extent influenced against this defendant because of, or on account of, said indictment.

18.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, and no juror is permitted to communicate to any other juror anything he/she may have heard regarding the case from any source other than the witness stand.

19.

In deliberating on the cause you are not to refer to or discuss any matter or issue not in evidence before you; nor talk about this case to anyone not of your jury; and after the reading of this Charge you shall not separate from each other until you have reached a verdict.

20.

Your verdict, if any, will be by unanimous vote.



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 a person 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 of 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."

22.

When the jury wishes to communicate with the Court, it shall so notify the Bailiff, who shall inform the Court thereof. Any communication relative to the cause must be written, signed by the Foreman, and shall be submitted to the Court through the Bailiff.

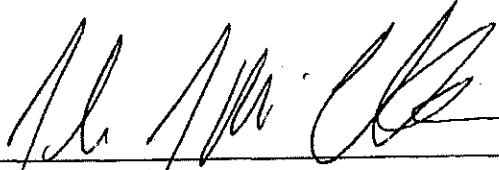
23.

You are the exclusive judges of the facts proven, of the credibility of the witnesses, and of the weight to be given to their testimony; but you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

24.

After argument of counsel, you will retire and select one of your members as your Foreman. It is his/her duty to preside at your deliberations and to vote with you in arriving at a verdict. Your verdict, if any, must be unanimous; and after you have arrived at your verdict, you may use one of the forms attached hereto by having your Foreman sign his/her name to the particular form that conforms to your verdict. If you reach a verdict, you may only use one of the verdict forms attached hereto.

The above and foregoing is the Charge in this case, and the same is hereby  
signed and certified by the Court, this the 5<sup>th</sup> day of March, 2012.

  
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Judge Presiding

**VERDICT FORM NO. 1**

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**VERDICT**

We, the jury, find the defendant not guilty.

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Foreman of the Jury