

NO. B-16-0305-CR

THE STATE OF TEXAS

IN THE DISTRICT COURT

FILED FOR RECORD
ECTOR COUNTY, TEXAS

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CLARISSA WEBSTER
DISTRICT CLERK

VS.

OF ECTOR COUNTY, TEXAS *By Deputy*

ROY DANIEL GARZA

161ST JUDICIAL DISTRICT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, ROY DANIEL GARZA, stands charged by indictment in cause numbers B-16-0305-CR with the offenses of Attempted Capital Murder (Counts 1 and 2), alleged to have been committed on or about the 23rd day of December, 2015, in Ector County, Texas. To these charges, the defendant has pleaded not guilty.

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

OFFENSE DEFINITIONS

A person commits **murder** if he (1) intentionally or knowingly causes the death of an individual or (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.

A person commits **capital murder** if the person commits murder and the person murders a peace officer who is acting in the lawful discharge of an official duty and who the person knows is a peace officer.

A person commits **attempted capital murder** when he:

1. Intentionally or knowingly attempts to cause the death of an individual;
2. The individual is a peace officer who is acting in the lawful discharge of an official duty; and,

3. The defendant knows the individual is a peace officer.

A person commits an **assault** if the person intentionally, knowingly, or recklessly causes bodily injury to another.

A person commits **aggravated assault of a public servant** if:

1. The person commits an assault, as defined above, and
2. Causes serious bodily injury to another; or
3. Uses or exhibits a deadly weapon during the commission of the assault.

TERM DEFINITIONS

"Peace Officer" means a person employed as a police officer of an incorporated city, town, or village.

"Public Servant" means a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government

"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.

"Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

"Deadly weapon" means:

1. A firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious bodily injury; or

2. Anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

"Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

MENTAL STATE DEFINITIONS

A person acts "intentionally", or with intent, when it is his conscious objective or desire to engage in the conduct or 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 circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or 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.

COUNT 1: ATTEMPTED CAPITAL MURDER OF PEDRO GONZALEZ

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about the 23rd day of December, 2015, in Ector County, Texas, the Defendant, ROY DANIEL GARZA, did then and there, with specific intent to commit the offense of capital murder, intentionally or knowingly attempt to cause the death of an individual, namely, Pedro Gonzalez, by shooting him with a deadly

weapon, to-wit: a firearm, and the said Pedro Gonzalez was then and there a peace officer with the Odessa Police Department, who was acting in the lawful discharge of an official duty, to-wit: attempting to detain and investigate said Defendant, and the defendant knew Pedro Gonzalez was a peace officer, and the said attempt did then and there amount to more than mere preparation that tended but failed to effect the commission of the offense of capital murder, and that a deadly weapon, to-wit: a firearm, was used or exhibited during the commission of the aforesaid offense, and that the defendant used or exhibited said deadly weapon as alleged in the Indictment, then you will consider the issue of **SELF DEFENSE INVOLVING DEADLY FORCE** (page 4).

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 sign Verdict Form B. Next you will consider the lesser included offense of **AGGRAVATED ASSAULT OF A PUBLIC SERVANT as it pertains to Pedro Gonzalez** (page 7).

DEFINITIONS AND INSTRUCTIONS REGARDING SELF-DEFENSE INVOLVING DEADLY FORCE

If you all agree the state has proved, beyond a reasonable doubt that the defendant committed the offense as instructed, you must next consider whether the defendant's use of force was made in self-defense.

SELF-DEFENSE

You have heard evidence that, when the defendant shot Pedro Gonzalez or Cory Wester with a firearm, he believed his use of force was necessary to defend himself against Pedro Gonzalez's or Cory Wester's use or attempted use of unlawful deadly force.

RELEVANT STATUTES

A person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.

The use of force against another is not justified in response to verbal provocation alone.

The use of force against another is not justified:

1. To resist an arrest or search that the actor knows is being made by a peace officer, even though the arrest or search is unlawful; unless,
2. If, before the defendant offers any resistance, the peace officer uses or attempts to use greater force than necessary to make the arrest or search; and when and to the degree the defendant reasonably believes the force is immediately necessary to protect himself against the peace officer's use or attempted use of greater force than necessary.

A person is justified in using deadly force against another, if the defendant is justified in using force against the other in the first place, as set out above, and when and to the degree the actor reasonably believes the deadly force is immediately necessary to

protect the actor against the other's use or attempted use of unlawful deadly force.

BURDEN OF PROOF

The Defendant is not required to prove self-defense. Rather, the State must prove, beyond a reasonable doubt, that self-defense does not apply to the defendant's conduct.

DEFINITIONS

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

"Deadly force" means force that is intended or known by the person using it to cause death or serious bodily injury or force that in the manner of its use or intended use is capable of causing death or serious bodily injury.

APPLICATION OF LAW TO THE FACTS

If you have found that the State has proved the offense beyond a reasonable doubt that the defendant committed the offense of Attempted Capital Murder of Pedro Gonzalez, you must next decide whether the State has proved that the defendant's conduct was not justified by self-defense.

To decide the issue of self-defense, you must determine whether the State has proved, beyond a reasonable doubt, one of the following two elements. The elements are that—

1. The defendant did not believe his conduct was immediately necessary to protect himself against Pedro Gonzalez's use or attempted use of unlawful deadly force; or

2. The defendant's belief was not reasonable.

You must all agree that the State has proved, beyond a reasonable doubt, either element 1 or 2 listed above. You need not agree on which of these elements the state has proved.

If you all agree the State has proved, beyond a reasonable doubt, each of the elements of the offense of Attempted Capital Murder of Pedro Gonzalez as alleged in the B-16-0305-CR, and you all agree the State has proved, beyond a reasonable doubt, either element 1 or 2 listed above, you must find the Defendant "guilty" and sign **Verdict Form A**.

If you find that the State has failed to prove, beyond a reasonable doubt, either element 1 or 2 listed above, you must find the defendant "not guilty" and sign **Verdict Form B**.

If you acquit the Defendant of Attempted Capital Murder of Pedro Gonzalez and sign **VERDICT FORM B**, then you will next consider whether the Defendant is guilty of the lesser included offense of Aggravated Assault of a Public Servant as it pertains to Pedro Gonzalez.

COUNT 1- LESSER INCLUDED OFFENSE OF AGGRAVATED ASSAULT OF A PUBLIC SERVANT

Now, if you find from the evidence beyond a reasonable doubt that on or about the 23rd day of December 2015, in Ector County, Texas, the Defendant, ROY DANIEL GARZA, did then and there intentionally or knowingly or recklessly cause bodily injury to Pedro Gonzalez by shooting him with a deadly weapon, to-wit: a firearm, and the defendant did then and there know that Pedro Gonzalez was then and there a public

servant, to-wit: an officer with the Odessa Police Department, and that the complainant was then and there lawfully discharging an official duty, to-wit: attempting to detain and investigate said defendant then you will consider the issue of **SELF-DEFENSE INVOLVING DEADLY FORCE** (page 8).

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 sign Verdict Form D. Next you will consider **COUNT 2: ATTEMPTED CAPITAL MURDER of Cory Wester** (page 9).

SELF-DEFENSE INVOLVING DEADLY FORCE

To decide the issue of self-defense, you must determine whether the State has proved, beyond a reasonable doubt, one of the following two elements. The elements are that—

1. The defendant did not believe his conduct was immediately necessary to protect himself against Pedro Gonzalez's use or attempted use of unlawful deadly force; or
2. The defendant's belief was not reasonable.

You must all agree that the State has proved, beyond a reasonable doubt, either element 1 or 2 listed above. You need not agree on which of these elements the state has proved.

APPLICATION OF LAW TO THE FACTS

Now bearing in mind the instructions and definitions on self-defense above and as found on pages 4-6, if you all agree the State has proved, beyond a reasonable doubt,

each of the elements of the lesser included offense of Aggravated Assault of a Public Servant as it pertains to Pedro Gonzalez, and you all agree the state has proved, beyond a reasonable doubt, either element 1 or 2, you must find the defendant "guilty" and sign **Verdict Form C.**

If you find that the State has failed to prove, beyond a reasonable doubt, either element 1 or 2 listed above, you must find the defendant "not guilty" and sign **Verdict Form D.**

If you find from the evidence beyond a reasonable doubt that the Defendant is guilty of either Attempted Capital Murder of Pedro Gonzalez or Aggravated Assault of a Public Servant as it pertains to Pedro Gonzalez, but you have a reasonable doubt as to which offense he is guilty, then you should find the Defendant guilty of the lesser included offense of Aggravated Assault of a Public Servant as it pertains to Pedro Gonzalez and sign **Verdict Form C.**

If you have a reasonable doubt as to whether the Defendant is guilty of any offense referred to in this charge as it pertains to Pedro Gonzalez, you will acquit the Defendant and say by your verdict "Not Guilty" as it pertains to Pedro Gonzalez and sign **Verdict Form B and Verdict Form D.**

Next you will consider Attempted Capital Murder as alleged in COUNT 2.

COUNT 2: ATTEMPTED CAPITAL MURDER OF CORY WESTER

Now if you find from the evidence beyond a reasonable doubt that on or about the 23rd day of December, 2015, in Ector County, Texas, the Defendant, ROY DANIEL GARZA, did then and there, with specific intent to commit the offense of capital murder, intentionally or knowingly attempt to cause the death of an individual, namely Cory

Wester , by shooting him with a deadly weapon, to-wit: a firearm, and the said Cory Wester was then and there a peace officer with the Odessa Police Department, who was acting in the lawful discharge of an official duty, to-wit: attempting to detain and investigate said Defendant, and the defendant knew Cory Wester was a peace officer, and the said attempt did then and there amount to more than mere preparation that tended but failed to effect the commission of the offense of capital murder, and that a deadly weapon, to-wit: a firearm, was used or exhibited during the commission of the aforesaid offense, and that the defendant used or exhibited said deadly weapon as alleged in the Indictment, then you will consider the issue of **SELF DEFENSE INVOLVING DEADLY FORCE** (page 10).

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 sign **Verdict Form F**. Next you will consider the lesser included offense of AGGRAVATED ASSAULT OF A PUBLIC SERVANT as it pertains to Cory Wester (page 11).

SELF DEFENSE INVOLVING DEADLY FORCE

If you have found that the State has proved the offense beyond a reasonable doubt that the defendant committed the offense of Attempted Capital Murder of Cory Wester, you must next decide whether the State has proved that the defendant's conduct was not justified by self-defense.

To decide the issue of self-defense, you must determine whether the State has proved, beyond a reasonable doubt, one of the following two elements. The elements are that—

1. The defendant did not believe his conduct was immediately necessary to

protect himself against Cory Wester's use or attempted use of unlawful deadly force; or

2. The defendant's belief was not reasonable.

You must all agree that the State has proved, beyond a reasonable doubt, either element 1 or 2 listed above. You need not agree on which of these elements the state has proved.

Now bearing in mind the instructions and definitions on self-defense above and as found on pages 4-6, if you all agree the State has proved, beyond a reasonable doubt, each of the elements of the offense of Attempted Capital Murder of Cory Wester as alleged in B-16-^{B305}~~0311~~-CR, and you all agree the State has proved, beyond a reasonable doubt, either element 1 or 2 listed above, you must find the defendant "guilty" and sign

Verdict Form E.

If you find that the State has failed to prove, beyond a reasonable doubt, either element 1 or 2 listed above, you must find the defendant "not guilty" and sign **Verdict Form F.**

Next you will consider whether the Defendant is guilty of the lesser included offense of Aggravated Assault of a Public Servant as it pertains to Cory Wester.

COUNT 2: LESSER INCLUDED OFFENSE OF AGGRAVATED ASSAULT OF A PUBLIC SERVANT AS IT PERTAINS TO CORY WESTER

Now, if you find from the evidence beyond a reasonable doubt that on or about the 23rd day of December 2015, in Ector County, Texas, the Defendant, ROY DANIEL GARZA, did then and there intentionally or knowingly or recklessly cause bodily injury to Cory Wester by shooting him with a deadly weapon, to-wit: a firearm, which caused bodily

injury, and the defendant did then and there know that Cory Wester was then and there a public servant, to-wit: an officer with the Odessa Police Department, and that the complainant was then and there lawfully discharging an official duty, to-wit: attempting to detain and investigate said defendant then you will consider then you will consider the issue of **SELF DEFENSE INVOLVING DEADLY FORCE** (pg. 12).

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 sign **Verdict Form H**.

SELF-DEFENSE INVOLVING DEADLY FORCE

To decide the issue of self-defense, you must determine whether the State has proved, beyond a reasonable doubt, one of the following two elements. The elements are that—

1. The defendant did not believe his conduct was immediately necessary to protect himself against Cory Wester's use or attempted use of unlawful deadly force; or
2. The defendant's belief was not reasonable.

You must all agree that the State has proved, beyond a reasonable doubt, either element 1 or 2 listed above. You need not agree on which of these elements the state has proved.

APPLICATION OF LAW TO THE FACTS

Now bearing in mind the instructions and definitions on self-defense above and as found on pages 4-6, if you all agree the State has proved, beyond a reasonable doubt, each of the elements of the lesser included offense of Aggravated Assault of a Public Servant as it pertains to Cory Wester, and you all agree the State has proved, beyond a

reasonable doubt, either element 1 or 2, you must find the defendant "guilty" and sign **Verdict Form G.**

If you find that the State has failed to prove, beyond a reasonable doubt, either element 1 or 2 listed above, you must find the defendant "not guilty" and sign **Verdict Form H.**

If you find from the evidence beyond a reasonable doubt that the Defendant is guilty of either Attempted Capital Murder of Cory Wester or Aggravated Assault of a Public Servant as it pertains to Cory Wester, but you have a reasonable doubt as to which offense he is guilty, then you should find the Defendant guilty of the lesser included offense of Aggravated Assault of a Public Servant as it pertains to Cory Wester and sign **Verdict Form G.**

If you have a reasonable doubt as to whether the Defendant is guilty of any offense referred to in this charge as it pertains to ~~Pedro Gonzalez~~ ^{CORY WESTER}, you will acquit the Defendant and say by your verdict "Not Guilty" as it pertains to Cory Wester and sign **Verdict Form F and Verdict Form H.**

GENERAL INSTRUCTIONS

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 issue 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 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 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.

You are instructed that certain evidence was admitted in evidence before you in regard to the defendant's having been charged and convicted of offenses other than the one for which he is now on trial. Such evidence cannot be considered by you against the Defendant as any evidence of guilt in this case. Said evidence was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the weight you will give his testimony, and you will not consider the same for any other purpose.

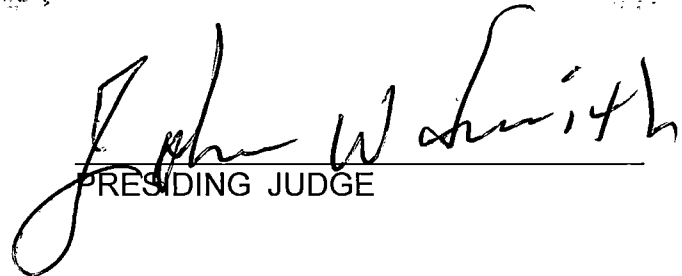
You are the exclusive judges of the facts proved, of the credibility of the witnesses, and the weight to be given their testimony, but the law you must be governed by, you shall receive in these written instructions.

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.

No one has any authority to communicate with you except the officer who has you in charge. 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.

After you have retired, you may communicate with this court in writing through the officer who has you in charge. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the court, or anyone else concerning any question you may have. After you have reached a unanimous verdict, the Foreperson will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as Foreperson.


PRESIDING JUDGE

NO. B-16-0305-CR

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ROY DANIEL GARZA

161ST JUDICIAL DISTRICT

VERDICT FORM B

We, the Jury, find the Defendant, ROY DANIEL GARZA, "Not Guilty" of Attempted Capital Murder of Pedro Gonzalez, as charged in COUNT 1 of the Indictment in cause number B-16-0305-CR.

FOREPERSON

NO. B-16-0305-CR

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ROY DANIEL GARZA

161ST JUDICIAL DISTRICT

VERDICT FORM C

We, the Jury, find the Defendant, ROY DANIEL GARZA, "Guilty", beyond a reasonable doubt, of the lesser included offense of Aggravated Assault of a Public Servant as it pertains to Pedro Gonzalez.

Special Issue No. 1

Do you find from the evidence beyond a reasonable doubt that the Defendant used or exhibited a deadly weapon, to wit: a firearm, if he did, during the commission of the offense alleged herein?

ANSWER: "We do" or "We do not"

ANSWER: _____
(fill in appropriate answer)

FOREPERSON

NO. B-16-0305-CR

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ROY DANIEL GARZA

161ST JUDICIAL DISTRICT

VERDICT FORM D

We, the Jury, find the Defendant, ROY DANIEL GARZA, "Not Guilty" of the lesser included offense of Aggravated Assault with a Deadly Weapon as it pertains to Pedro Gonzalez.

FOREPERSON

NO. B-16-0305-CR

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ROY DANIEL GARZA

161ST JUDICIAL DISTRICT

VERDICT FORM F

We, the Jury, find the Defendant, ROY DANIEL GARZA, "Not Guilty" of Attempted Capital Murder of Cory Wester, as charged in COUNT 2 of the Indictment.

FOREPERSON

NO. B-16-0305-CR

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ROY DANIEL GARZA

161ST JUDICIAL DISTRICT

VERDICT FORM G

We, the Jury, find the Defendant, ROY DANIEL GARZA, "Guilty", beyond a reasonable doubt, of the lesser included offense of Aggravated Assault of a Public Servant as it pertains to Cory Wester.

Special Issue No. 1

Do you find from the evidence beyond a reasonable doubt that the Defendant used or exhibited a deadly weapon, to wit: a firearm, if he did, during the commission of the offense alleged herein?

ANSWER: "We do" or "We do not"

ANSWER: _____
(fill in appropriate answer)

FOREPERSON

NO. B-16-0305-CR

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ROY DANIEL GARZA

161ST JUDICIAL DISTRICT

VERDICT FORM H

We, the Jury, find the Defendant, ROY DANIEL GARZA, "Not Guilty" of the lesser included offense of Aggravated Assault with a Deadly Weapon as it pertains to Cory Wester.

FOREPERSON