

CAUSE NO. D-1-DC-10-203162

THE STATE OF TEXAS § IN THE 167TH DISTRICT
VS. § COURT OF
JORGE GUTIERREZ § TRAVIS COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, Jorge Gutierrez, stands charged by indictment with the offense of Capital Murder, alleged to have been committed in Travis County, Texas, on or about the 31st day of May 2010.

To this charge the defendant has pleaded not guilty. You are instructed that the law applicable to this case is as follows:

1.

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 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 commits murder only as defined in (1) above and he murders more than one person during the same criminal transaction.

2.

"Individual" means a human being who has been born and is alive.

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury.

Filed in The District Court of Travis County, Texas

JUN 08 2012

At 5:45 P.M. Analina Rodriguez-Mendoza, Clerk

"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.

"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.

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, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person is criminally responsible if the result would not have occurred but for his conduct.

4.

You are further instructed that it is your duty to consider all relevant facts and circumstances surrounding the alleged killings, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the alleged offense.

5.

CAPITAL MURDER

Now bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt that the defendant Jorge Gutierrez, on or about the 31st day of May, 2010, in the County of Travis, and State of Texas, as alleged in the indictment, did then and there, without justification, as set out in paragraphs 6 and 7 below, intentionally or knowingly cause the death of an individual, namely, Jose Arroyo Hernandez, by shooting him with a firearm, and did

then and there, without justification, as set out in paragraphs 6 and 7 below, intentionally or knowingly cause the death of an individual, namely, Arturo Rodriguez, by shooting him with a firearm, and both murders were committed during the same criminal transaction, you will find the defendant guilty of capital murder and so say by your verdict; but if you do not so believe or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of capital murder.

6.

Upon the law of self defense you are instructed that a person is justified in using force against another or others when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other or others' 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 or others:

(1) if he would be justified in using force against the other or others; and

(2) when and to the degree he reasonably believes the deadly force is immediately necessary to protect himself against the other or others' use or attempted use of unlawful deadly force.

Where there is more than one assailant, the defendant has the right to act upon the hostile demonstration of either one or all of them and to assault either one of them, if it reasonably appears to him that they are present for the purpose and acting together to take his life or to do him serious bodily injury.

A person who has a right to be present at the location where the deadly force is used, who has not provoked the person or persons 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 justified deadly force.

In determining whether an actor reasonably believed that the use of deadly force was necessary, a finder of fact may not consider whether the actor failed to retreat.

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

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

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.

7.

Now, therefore, bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt that the defendant, Jorge Gutierrez, on or about the 31st day of May, 2010, in the County of Travis, and State of Texas, did then and there intentionally or knowingly cause the death of Jose Arroyo Hernandez, by shooting him with a firearm, and did then and there intentionally or knowingly cause the death of another individual, namely, Arturo Rodriguez, by shooting him with a firearm, as alleged in the indictment; but you further find from the evidence, or have a reasonable doubt thereof, that the defendant reasonably believed as viewed from his standpoint alone that deadly force when and to the degree used, if it was, was immediately necessary to protect himself against the use or attempted use of unlawful deadly force by the said Jose Arroyo Hernandez and/or Arturo Rodriguez, you will acquit the defendant and say by your verdict "not guilty."

In summary, if, and only if, you find beyond a reasonable doubt that the defendant intentionally caused the death of both Jose Arroyo Hernandez and Arturo Rodriguez and you further find beyond a reasonable doubt that the defendant was not justified in using deadly force to defend

himself against any use or attempted use of unlawful deadly force by Jose Arroyo Hernandez and the defendant was not justified in using deadly force to defend himself against any use or attempted use of unlawful deadly force by Arturo Rodriguez, you will convict the defendant of capital murder. If you do not so find beyond a reasonable doubt, you will say by your verdict "not guilty" and proceed to consider the charges of murder as set out below.

Proceed to consider paragraphs 8 and 9 only if you have found the defendant "not guilty" of capital murder. Otherwise, proceed to paragraph 10.

8.

MURDER

Now bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt that the defendant Jorge Gutierrez, on or about the 31st day of May 2010, in the County of Travis, and State of Texas, did then and there, without justification, intentionally or knowingly cause the death of an individual, namely, Jose Arroyo Hernandez, by shooting him with a firearm, or did then and there without justification, intending to cause serious bodily injury to an individual, namely, Jose Arroyo Hernandez, commit an act clearly dangerous to human life, to wit, shoot Jose Arroyo Hernandez with a firearm, you will find the defendant guilty of murder and so say by your verdict; but if you do not so believe or if you have a reasonable doubt thereof, or if you further find from the evidence, or have a reasonable doubt thereof, that the defendant reasonably believed as viewed from his standpoint alone that deadly force when and to the degree used, if it was, was immediately necessary to protect himself against the use or attempted use of unlawful deadly force by the said Jose Arroyo Hernandez, you will acquit the defendant and say by your verdict "not guilty" of the offense of murder of Jose Arroyo Hernandez.

9.**MURDER**

Now bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt that the defendant Jorge Gutierrez, on or about the 31st day of May 2010, in the County of Travis, and State of Texas, did then and there, without justification, intentionally or knowingly cause the death of an individual, namely, Arturo Rodriguez, by shooting him with a firearm, or did then and there without justification, intending to cause serious bodily injury to an individual, namely, Arturo Rodriguez, commit an act clearly dangerous to human life, to wit, shoot Arturo Rodriguez with a firearm, you will find the defendant guilty of murder and so say by your verdict; but if you do not so believe or if you have a reasonable doubt thereof, or if you further find from the evidence, or have a reasonable doubt thereof, that the defendant reasonably believed as viewed from his standpoint alone that deadly force when and to the degree used, if it was, was immediately necessary to protect himself against the use or attempted use of unlawful deadly force by the said Arturo Rodriguez, you will acquit the defendant and say by your verdict "not guilty" of the offense of murder of Arturo Rodriguez.

10.

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

11.

You are instructed that witnesses may be impeached by showing that they have made other and different statements out of court, or upon a former judicial investigation of the facts, from those made before you on the trial. You may consider such impeaching evidence, if any, as it may tend to affect the weight to be given the testimony of the witnesses so impeached and their credibility (if it does do so); but such impeaching evidence, if any, is not to be considered by you as tending to

establish the alleged guilt of the defendant, or any fact in the case.

12.

In a criminal case the law permits a defendant to testify in his own behalf but he is not compelled to do so, and the same law provides that the fact that a defendant does not testify shall not be considered as a circumstance against him. You will, therefore, not consider the fact that the defendant did not testify as a circumstance against him; and you will not during your deliberations allude to, comment on, or in any manner refer to the fact that the defendant has not testified.

13.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

Occasionally, during jury deliberations, a dispute arises as the testimony presented. You shall not rely on your notes to resolve any dispute concerning specific testimony because these notes, if any, are not official transcripts.

14.

You are further instructed as a part of the law in this case that the indictment against the defendant is not evidence in the case, and that the true and sole use of the indictment is to charge the offense, and to inform the defendant of the offense alleged against him.

The reading of the indictment to the jury in the statement of the case of the State against the defendant cannot be considered as a fact or circumstance against the defendant in your deliberations.

15.

In all criminal cases the burden of proof is on the State. 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.

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 the defendant and say by your verdict "Not Guilty".


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

In deliberating on this case 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 on your jury; and after the reading of this charge you shall not separate from each other without permission of the court until you have reached a verdict. Further, you shall not consider or discuss the punishment, if any, which may be assessed against this defendant in the event he is found guilty beyond a reasonable doubt.

You are the exclusive judges of the facts proved, 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.

If the jury wishes to communicate with the Court, it shall notify the bailiff, who shall inform the Court thereof. Any communication related to the cause must be in writing, signed by the foreperson, and shall be submitted to the Court through the bailiff. After argument of counsel, you will retire and select one of your members as your foreperson. It is his or her duty to preside at your deliberations and to vote with you in arriving at your verdict. Your verdict must be unanimous, and after you have arrived at your verdict, you may use the forms attached hereto by having your foreperson ~~and another~~ sign his or her name to the form as it conforms to your verdict.

Respectfully submitted,



MIKE LYNCH
Presiding Judge

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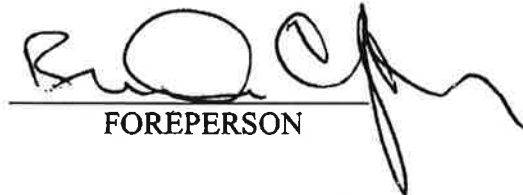
THE STATE OF TEXAS	§	IN THE 167TH DISTRICT
VS.	§	COURT OF
JORGE GUTIERREZ	§	TRAVIS COUNTY, TEXAS

VERDICT OF THE JURY

CAPITAL MURDER

We, the jury, find the defendant, Jorge Gutierrez, Guilty ~~or Not Guilty~~)

guilty of the offense of capital murder, as alleged in the indictment.



FOREPERSON

IF YOU HAVE FOUND THE DEFEDANT NOT GUILTY, PROCEED TO CONSIDER THE VERDICT FORMS ON PAGES 12 AND 13.

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VS.	§	COURT OF
JORGE GUTIERREZ	§	TRAVIS COUNTY, TEXAS

VERDICT OF THE JURY

MURDER

We, the jury, find the defendant, Jorge Gutierrez, (Guilty or Not Guilty)

_____ of the offense of murder of Jose Arroyo Hernandez.

FOREPERSON

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VS.	§	COURT OF
JORGE GUTIERREZ	§	TRAVIS COUNTY, TEXAS

VERDICT OF THE JURY

MURDER

We, the jury, find the defendant, Jorge Gutierrez, (Guilty or Not Guilty)

_____ of the offense of murder of Arturo Rodriguez.

FOREPERSON