

NO. 14-CR-1302-F

STATE OF TEXAS VS. DANIEL GARCIA
IN THE 214TH DISTRICT COURT
NUECES COUNTY, TEXAS

FILED

JUN 15 2015

ANNE LORENTE
COUNTY CLERK
DISTRICT CLERK
NUECES COUNTY, TEXAS
BY *[Signature]* DEPUTY

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, DANIEL GARCIA, stands charged by indictment with the offense of COUNT 1: CAPITAL MURDER, a capital felony and COUNT 2: AGGRAVATED ASSAULT, a second degree felony, both alleged to have been committed on or about APRIL 14, 2014 in Nueces County, Texas. The defendant has pled not guilty to both counts. You are instructed that the law applicable to this case is as follows:

1.

A person commits the offense of murder when he intentionally or knowingly causes the death of an individual.

A person commits capital murder when such person intentionally commits the murder in the course of committing or attempting to commit the offense of robbery.

2.

A person commits the offense of robbery if, in the course of committing theft and with intent to obtain and maintain control of property of another, he intentionally or knowingly causes bodily injury to another.

The offense is aggravated robbery if the person committing robbery uses or exhibits a deadly weapon or threatens another with imminent bodily injury with a deadly weapon.

3.

A person commits the offense of aggravated assault, if he commits the offense of assault, as hereinafter defined, and he uses or exhibits a deadly weapon during the commission of the offense.

A person commits the offense of assault if he intentionally, knowingly, or recklessly causes or threatens imminent bodily injury with a deadly weapon.

4.

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"Serious bodily injury" means a 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.

"In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission or in 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” means as used herein is the unlawful appropriation of the corporeal personal property of another with the intent to deprive such person of said property.

5.

A "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 and means of its use or intended use is capable of causing serious bodily injury or death.

6.

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 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.

7.

COUNT 1

Now if you find from the evidence beyond a reasonable doubt that DANIEL GARCIA, defendant, on or about APRIL 14, 2014, in Nueces County, Texas, did then and there intentionally cause the death of an individual, Mostafa Bighamian by shooting Mostafa Bighamian with a firearm, and the defendant was then and there in the course of committing or attempting to commit the offense of Robbery of Mostafa Bighamian, then you will find the defendant DANIEL GARCIA, guilty of Count 1: 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 shall next consider the lesser included offense of Murder.

8.

Lesser-Included offense - Murder

Now if you find from the evidence beyond a reasonable doubt that DANIEL GARCIA, defendant, on or about April 14, 2014, in Nueces County, Texas, did then and there with the intent to commit or attempting to commit a felony, to wit: Robbery, and in the course of and in furtherance of the commission or attempt, or in

immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of Mostafa Bighamian, to wit: pointing a firearm at Mostafa Bighamian and discharging it, that causes the death of Mostafa Bighamian, then you will find the Defendant guilty of the lesser included offense of Murder,

9.

COUNT 2

Now, if you find from the evidence beyond a reasonable doubt that on or about APRIL 14, 2014 in Nueces County, Texas, the defendant, DANIEL GARCIA, did then and there intentionally or knowingly threaten Amanda Rodriguez with imminent bodily injury by pointing a firearm at Amanda Rodriguez and did then and there use or exhibit a deadly weapon, to-wit: a firearm, during the commission of said assault, then you will find the defendant guilty of Count 2: Aggravated Assault, as charged in the indictment.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

10.

You are instructed that voluntary intoxication does not constitute a defense to the commission of crime.

11.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed offenses other than the offense alleged against him in the indictment in this case, 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 even then you may only consider the same in determining the identity, motive, opportunity, intent, or plan, of the defendant, in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

12.

The Court may not grant a general request from the Jury that the testimony of a witness be read back to the Jury. For example, if the Jury requests that the testimony of a certain witness be read back to the Jury, the Court will deny the request. However, if the Jury disagrees as to the particular statement of a witness and the Jury specifies the point on which the Jury disagrees, then the Court may have that testimony, and no other, read back to you from the Reporter's notes.

13.

At this stage of the trial, the jury will restrict its deliberations solely to the issue of whether the defendant is guilty or not guilty.

14.

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.

15.

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".

16.

The jury is the exclusive judge of the facts proved, of the credibility of the witnesses, and of the weight to be given their testimony. In deciding the question of guilt or innocence, the jury shall be governed by the law as it is stated in this charge.

17.

After entering the jury room, the jury must first select a presiding juror. The presiding juror presides over the deliberations, speaks for the jury when it wishes to communicate with the Court, and votes with the jury on the issues before it. Any verdict reached must be unanimous. Verdict Forms applicable to this case are attached to the charge. If a verdict is reached, it will be indicated by the presiding juror signing his or her name to the appropriate Verdict Form.

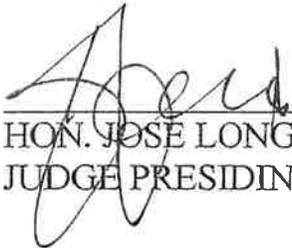
During the deliberations, the jury may not:

- (1) communicate with anyone except the Court or the officer in charge of the jury;
- (2) separate for any purpose without permission of the Court;
- (3) discuss the case except with each other in the privacy of the jury room; or
- (4) consider or discuss matters not in evidence including personal knowledge or information about any fact or person connected with the case.

Communications to the Court must be in writing. Written communications from the jury will be delivered to the Court by the officer in charge of the jury.

After the arguments of counsel, the jury will go to the jury room to begin its deliberations.

June 15th, 2015
DATE


HON. JOSE LONGORIA
JUDGE PRESIDING

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NUECES COUNTY, TEXAS

VERDICT FORMS

COUNT 1

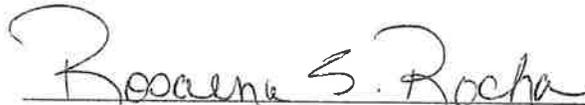
USE ONLY ONE FORM:

We, the Jury, find the Defendant, DANIEL GARCIA, *not guilty* of Capital Murder.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, DANIEL GARCIA, *guilty* of the offense of Capital Murder, as alleged in the indictment.



PRESIDING JUROR

OR

We, the Jury, find the Defendant, DANIEL GARCIA, guilty of the lesser included offense of Murder.

PRESIDING JUROR

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VERDICT FORMS

COUNT 2

USE ONLY ONE FORM:

We, the Jury, find the Defendant, DANIEL GARCIA, *not guilty* of Aggravated Assault.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, DANIEL GARCIA, *guilty* of Count 2: Aggravated Assault, as alleged in the indictment.

Rosanna S. Rocha
PRESIDING JUROR

7/18/14
Jury Charge p.11

