

P15

CAUSE NO. 1447789

| | | |
|------------------------|---|-----------------------------|
| THE STATE OF TEXAS | § | IN THE 179TH DISTRICT COURT |
| VS. | § | OF HARRIS COUNTY, TEXAS |
| JORGE ANTONIO GALLARDO | § | JANUARY TERM, A. D., 2016 |

Members of the Jury:

The defendant, Jorge Antonio Gallardo, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 30th day of October, 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 Jesus Rodriguez, as alleged in the indictment, but also that the defendant specifically intended to cause the death of Jesus Rodriguez, by shooting Jesus Rodriguez, 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 30th day of October, 2014, in Harris County,

Texas, the defendant, Jorge Antonio Gallardo, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Jesus Rodriguez, intentionally cause the death of Jesus Rodriguez by shooting Jesus Rodríguez 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 30th day of October, 2014, in Harris County, Texas, the defendant, Jorge Antonio Gallardo, did then and there unlawfully, intentionally or knowingly cause the death of Jesus Rodriguez, by shooting Jesus Rodriguez with a deadly weapon, namely, a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 30th day of October, 2014, in Harris County, Texas, the defendant, Jorge Antonio Gallardo, did then and there unlawfully intend to cause serious bodily injury to Jesus Rodriguez, and did cause the death of Jesus Rodriguez by intentionally or knowingly committing an act clearly dangerous to human life, namely, by shooting Jesus Rodriguez with a deadly weapon, namely, a firearm, then you will find the defendant guilty of murder.

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 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."

An accomplice, as the term is here used, means anyone connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime by unlawful act or omission on their part transpiring either before, at the time of, or after the commission of the offense, and whether or not they were present and participated in the commission of the crime. A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both. Mere presence alone, however, will not constitute one a party to an offense.

A person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. The term "conduct" means any act or omission and its accompanying mental state.

You are instructed that a conviction cannot be had upon the testimony of an accomplice unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

Therefore, if you believe from the evidence beyond a reasonable doubt that an offense was committed and you further believe from the evidence that the witness, Mario Turcios, was an accomplice, or you have a reasonable doubt whether he was or not,

as that term is defined in the foregoing instructions, then you cannot convict the defendant upon the testimony of Mario Turcios unless you further believe that there is other evidence in the case, outside of the testimony of Mario Turcios tending to connect the defendant with the offense charged in the indictment, and then from all the evidence you must believe beyond a reasonable doubt that the defendant is guilty.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a right accorded a defendant, and in the event he elects not to testify, that fact cannot be taken as a circumstance against him.

In this case, the defendant has elected not to testify and you are instructed that you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

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.

You are further instructed that any evidence that any witness has committed any crime 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 testimony, and you will not consider the same for any other purpose.

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 Presiding Juror. 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 Presiding Juror.

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 and prepared by the Presiding Juror 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.



Kristin M. Guiney, Judge
179th District Court
Harris County, TEXAS

FILED
Chris Daniel
District Clerk
MAY 20 2016 9:17
Time:
Harris County, Texas
Deputy

CAUSE NO. 1447789

THE STATE OF TEXAS

§ IN THE 179TH DISTRICT COURT

VS.

§ OF HARRIS COUNTY, TEXAS

JORGE ANTONIO GALLARDO

§ JANUARY TERM, A. D.

FILED
Chris Daniel
District Clerk
MAY 20 2016
5:20 PM
Harris County, Texas
Deputy

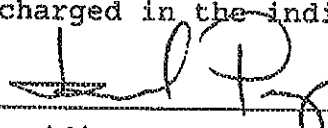
CHOOSE ONE

"We, the Jury, find the defendant, Jorge Antonio Gallardo, not guilty."

Presiding Juror

(Please Print) Presiding Juror

"We, the Jury, find the defendant, Jorge Antonio Gallardo, guilty of capital murder, as charged in the indictment."



Presiding Juror

Ismael Perez
(Please Print) Presiding Juror

"We, the Jury, find the defendant, Jorge Antonio Gallardo, guilty of murder."

Presiding Juror

(Please Print) Presiding Juror