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THE STATE OF TEXAS § IN THE 228TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
JOSE VASQUEZ § JANUARY TERM, A. D., 2012

Members of the Jury:

The defendant, Jose Vasquez, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 1st day of April, 2010, 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 or knowingly causes the death of more than one person during the same criminal transaction or intentionally commits the murder in the course of committing or attempting to commit the offense of robbery.

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:

RECORDER'S MEMORANDUM
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(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 deception or coercion.

"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.

"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 definitions of intentionally and knowingly relative to the offenses of capital murder and 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 and 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.

All persons are parties to an offense who are guilty of acting together in the commission of the offense. 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.

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. Mere presence alone will not constitute one a party to an offense.

Before you would be warranted in finding the defendant guilty of capital murder, as alleged in paragraphs two, three, four and five of the indictment, 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 Aleksander Lobos also known as

Aleksander Lobos, or was in the course of committing or attempting to commit the felony offense of robbery of Suu Nguyen, as alleged in this charge, but also that the defendant specifically intended to cause the death of Aleksander Lobos also known as Aleksander Lobos, by shooting Aleksander Lobos also known as Aleksander Lobos, with a deadly weapon, namely a firearm, or the defendant specifically intended to cause the death of Suu Nguyen, by shooting Suu Nguyen, with a deadly weapon, namely, a firearm; or you must find from the evidence beyond a reasonable doubt that the defendant, Jose Vasquez, with the intent to promote or assist in the commission of the offense of robbery, if any, solicited, encouraged, directed, aided, or attempted to aid Walter Martinez in shooting Suu Nguyen and/or Aleksander Lobos also known as Aleksander Lobos, if he did, with the intention of thereby killing Suu Nguyen and/or Aleksander Lobos also known as Aleksander Lobos, and unless you so find, then you cannot convict the defendant of the offense of capital murder as to paragraphs two, three, four and five.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, the defendant, Jose Vasquez, did then and there unlawfully during the same criminal transaction, intentionally or knowingly cause the death of Suu Nguyen by shooting Suu Nguyen with a deadly weapon, namely a firearm, and intentionally or knowingly cause the death of Aleksander Lobos also known as Aleksander Lobos by shooting Aleksander Lobos with a deadly weapon, namely a firearm; or if you find from the evidence beyond a reasonable

doubt that on or about the 1st day of April, 2010, in Harris County, Texas, Walter Martinez, did then and there unlawfully during the same criminal transaction, intentionally or knowingly cause the death of Suu Nguyen by shooting Suu Nguyen with a deadly weapon, namely a firearm, and intentionally or knowingly cause the death of Aleksander Lobos also known as Aleksander Lobos by shooting Aleksander Lobos with a deadly weapon, namely a firearm, and that the defendant, Jose Vasquez, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Walter Martinez to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, the defendant, Jose Vasquez, did then and there unlawfully while in the course of committing or attempting to commit the robbery of Aleksander Lobos also known as Aleksander Lobos, intentionally cause the death of Aleksander Lobos also known as Aleksander Lobos by shooting Aleksander Lobos also known as Aleksander Lobos with a deadly weapon, namely a firearm; or if you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, Walter Martinez, did then and there unlawfully while in the course of committing or attempting to commit the robbery of Aleksander Lobos also known as Aleksander Lobos, intentionally cause the death of Aleksander Lobos also known as Aleksander Lobos by shooting Aleksander Lobos also known as Aleksander Lobos with a deadly weapon, namely a firearm, and that the defendant, Jose Vasquez, with the intent to

promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Walter Martinez to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, the defendant, Jose Vasquez, did then and there unlawfully while in the course of committing or attempting to commit the robbery of Aleksander Lobos also known as Aleksander Lobos, intentionally cause the death of Suu Nguyen by shooting Suu Nguyen with a deadly weapon, namely a firearm; or if you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, Walter Martinez, did then and there unlawfully while in the course of committing or attempting to commit the robbery of Aleksander Lobos also known as Aleksander Lobos, intentionally cause the death of Suu Nguyen by shooting Suu Nguyen with a deadly weapon, namely a firearm, and that the defendant, Jose Vasquez, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Walter Martinez to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, the defendant, Jose Vasquez, did then and there unlawfully while in the course of committing or attempting to commit the robbery of Suu Nguyen, intentionally cause the death of Aleksander Lobos also known as Aleksander Lobos by shooting Aleksander Lobos also known as Aleksander Lobos with a deadly weapon, namely a firearm;

or if you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, Walter Martinez, did then and there unlawfully while in the course of committing or attempting to commit the robbery of Suu Nguyen, intentionally cause the death of Aleksander Lobos also known as Aleksander Lobos by shooting Aleksander Lobos also known as Aleksander Lobos with a deadly weapon, namely a firearm, and that the defendant, Jose Vasquez, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Walter Martinez to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, the defendant, Jose Vasquez, did then and there unlawfully while in the course of committing or attempting to commit the robbery of Suu Nguyen, intentionally cause the death of Suu Nguyen by shooting Suu Nguyen with a deadly weapon, namely a firearm; or if you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, Walter Martinez, did then and there unlawfully while in the course of committing or attempting to commit the robbery of Suu Nguyen, intentionally cause the death of Suu Nguyen by shooting Suu Nguyen with a deadly weapon, namely a firearm, and that the defendant, Jose Vasquez, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Walter Martinez to commit the

offense, if he did, 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 1st day of April, 2010, in Harris County, Texas, the defendant, Jose Vasquez, did then and there unlawfully, intentionally or knowingly cause the death of Aleksander Lobos also known as Aleksander Lobos, by shooting Aleksander Lobos also known as Aleksander Lobos with a deadly weapon, namely a firearm; or if you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, Walter Martinez, did then and there unlawfully, intentionally or knowingly cause the death of Aleksander Lobos also known as Aleksander Lobos, by shooting Aleksander Lobos also known as Aleksander Lobos with a deadly weapon, namely a firearm, and that the defendant, Jose Vasquez, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Walter Martinez to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, the defendant, Jose Vasquez, did then and there unlawfully intend to cause serious bodily injury to Aleksander Lobos also known as

Aleksander Lobos, and did cause the death of Aleksander Lobos also known as Aleksander Lobos by intentionally or knowingly committing an act clearly dangerous to human life, namely by shooting Aleksander Lobos also known as Aleksander Lobos with a deadly weapon, namely a firearm; or if you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, Walter Martinez, did then and there unlawfully intend to cause serious bodily injury to Aleksander Lobos also known as Aleksander Lobos, and did cause the death of Aleksander Lobos also known as Aleksander Lobos by intentionally or knowingly committing an act clearly dangerous to human life, namely by shooting Aleksander Lobos also known as Aleksander Lobos with a deadly weapon, namely a firearm, and that the defendant, Jose Vasquez, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Walter Martinez to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, the defendant, Jose Vasquez, did then and there unlawfully, intentionally or knowingly cause the death of Suu Nguyen, by shooting Suu Nguyen with a deadly weapon, namely a firearm; or if you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, Walter Martinez, did then and there unlawfully, intentionally or knowingly cause the death of Suu Nguyen, by shooting Suu Nguyen with a deadly weapon, namely a firearm, and that the defendant,

Jose Vasquez, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Walter Martinez to commit the offense, if he did; or .

If you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, the defendant, Jose Vasquez, did then and there unlawfully intend to cause serious bodily injury to Suu Nguyen, and did cause the death of Suu Nguyen by intentionally or knowingly committing an act clearly dangerous to human life, namely by shooting Suu Nguyen with a deadly weapon, namely a firearm; or if you find from the evidence beyond a reasonable doubt that on or about the 1st day of April, 2010, in Harris County, Texas, Walter Martinez, did then and there unlawfully intend to cause serious bodily injury to Suu Nguyen, and did cause the death of Suu Nguyen by intentionally or knowingly committing an act clearly dangerous to human life, namely by shooting Suu Nguyen with a deadly weapon, namely a firearm, and that the defendant, Jose Vasquez, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Walter Martinez to commit the offense, if he did, 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."

Voluntary intoxication does not constitute a defense to the commission of a crime. "Intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

You are instructed that under our law a person is justified in using force or deadly force against another to protect a third person if, under the circumstances as he reasonably believes them to be, such person would be justified in using force or deadly force to protect himself against the unlawful force or deadly force of another which he reasonably believes to be threatening the third person he seeks to protect, and he reasonably believes that his intervention is immediately necessary to protect the third person.

A person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself 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 he would be justified in using force against the other in the first place, as above set out, and when he reasonably believes that such deadly force is immediately necessary to protect himself or a third person against the other person's use or attempted use of unlawful deadly force.

The defendant's belief that the force was immediately necessary is presumed to be reasonable if the defendant was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

With regard to the presumption of the necessity of deadly force, you are further instructed that:

- (1) the presumption applies unless the state proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist;
- (2) if the state fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed fact exists;
- (3) even though the jury may find that the presumed fact does not exist, the state must prove beyond a reasonable doubt each of the elements of the offense charged; and
- (4) if the jury has a reasonable doubt as to whether the presumed fact exists, the presumption applies and the jury must consider the presumed fact to exist.

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 defendant failed to retreat.

By the term "reasonable belief" as used herein is meant a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

By the term "deadly force" as used herein is meant 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.

When a person, or the third person, is attacked with unlawful deadly force, or he reasonably believes he, or the third person,

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 to himself or the third person, 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 or the third person from such attack or attempted attack. And 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, or the life and person of the third 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, or the third person, 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 the case in evidence before you, the previous relationship existing between the parties, if any, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the occurrence in question, and in considering such circumstances, you should place yourselves in the defendant's position at that time and view them from his standpoint alone.

Therefore, if you find from the evidence beyond a reasonable doubt that the defendant, Jose Vasquez, did cause the death of Suu Nguyen or did cause the death of Aleksander Lobos also known as Aleksander Lobos, as alleged, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct, or both of Suu Nguyen and/or Aleksander Lobos also known as Aleksander Lobos it reasonably appeared to the defendant that the life or person of Walter Martinez, was in danger and there was created in the defendant's mind a reasonable expectation or fear of death or serious bodily injury to Walter Martinez from the use of unlawful deadly force at the hands of Suu Nguyen and/or Aleksander Lobos also known as Aleksander Lobos, and that acting under such apprehension and reasonably believing that the use of deadly force on his part was immediately necessary to protect Walter Martinez against Suu Nguyen and/or Aleksander Lobos also known as Aleksander Lobos' use or attempted use of unlawful deadly force, he shot Suu Nguyen and/or Aleksander Lobos also known as Aleksander Lobos, then you should acquit the defendant on the grounds of defense of a third person; or if you have a reasonable doubt as to whether or not the defendant was acting in defense of Walter Martinez on said occasion and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict, not guilty.

If you find from the evidence beyond a reasonable doubt that at the time and place in question the defendant did not reasonably believe that Walter Martinez was in danger of death or

serious bodily injury, or that the defendant, under the circumstances as viewed by him from his standpoint at the time, did not reasonably believe that the degree of force actually used by him was immediately necessary to protect Walter Martinez against Suu Nguyen and/or Aleksander Lobos also known as Aleksander Lobos' use or attempted use of unlawful deadly force, then you should find against the defendant on the issue of defense of a third person.

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.

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 Foreman. 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 Foreman.

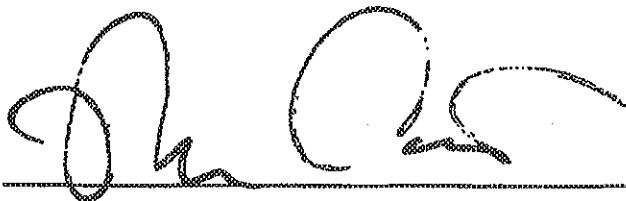
During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

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, prepared and signed by the Foreman 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 whether or not the State proved the defendant's guilt beyond a reasonable doubt

as to the offense charged in the indictment, and restrict your deliberations solely to that issue.

Following the arguments of counsel, you will retire to consider your verdict.



Marc Carter, Judge
228th District Court
Harris County, TEXAS

FILED

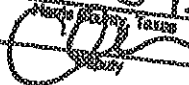
Chris Daniels
District Clerk

JAN 26 2012

Time:

1:39pm

By:



CAUSE NO. 1333231

THE STATE OF TEXAS
VS.
JOSE VASQUEZ

§ IN THE 228TH DISTRICT COURT
§ OF HARRIS COUNTY, TEXAS
§ JANUARY TERM, A. D., 2012

CHOOSE ONE

"We, the Jury, find the defendant, Jose Vasquez, not guilty."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Jose Vasquez, guilty of capital murder, as charged in the indictment."

FILED
Chris Daniel
District Clerk

JAN 26 2012

Time: _____

By _____

"We, the Jury, find the defendant, Jose Vasquez, guilty of murder."

Krystal D. Weiss

Foreman of the Jury

Krystal D. Weiss

(Please Print) Foreman

Foreman of the Jury

(Please Print) Foreman