

CAUSE NO.: 2015-DCR-02443-C

MAY 30 2018

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
VS.	§	DISTRICT COURT OF CAMERON COUNTY, TEXAS
GUSTAVO TIJERINA SANDOVAL	§	197 TH JUDICIAL DISTRICT Deputy #27
	§	CAMERON COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, **GUSTAVO TIJERINA SANDOVAL**, stands charged by indictment with the felony offenses of Capital Murder and Attempted Capital Murder alleged to have been committed in Willacy County, Texas, on or about August 3, 2014.

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

I.

A person commits the offense of Murder if the person intentionally causes the death of an individual.

A person commits the offense of manslaughter if he recklessly causes the death of an individual.

"Individual" means a human being who is alive.

A person commits the offense of Capital Murder if the person intentionally commits the murder in the course of committing or attempting to commit robbery.

"In the course of committing" means conduct occurring in an attempt to commit, during the commission, or in the immediate flight after the attempt or commission of the offense.

A person commits a criminal attempt if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

A person commits the offense of Robbery if, in the course of committing theft, with the intent to obtain or maintain control of property, the person intentionally, knowingly, or recklessly causes bodily injury to another, or intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

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

"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.

"Theft" means the unlawful appropriation of property with intent to deprive the owner of the property.

"Appropriate" means to acquire or otherwise exercise control over property. Appropriation of property is unlawful if it is without the owner's effective consent.

"Property" means tangible or intangible personal property or a document, 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, or to dispose of property in a manner that makes recovery of the property by the owner unlikely.

"Consent" means assent in fact, whether express or apparent.

"Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if it is induced by deception or coercion.

"Coercion" means a threat, however communicated, to commit an offense or inflict bodily injury in the future on the person threatened or another.

"Owner" means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor, or is a holder in due course of a negotiable instrument.

"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.

A firearm is a deadly weapon.

"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.

A person acts intentionally, or with intent, with respect to the nature of his conduct or 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 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.

"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.

You are instructed that a person acts intentionally, or with intent, with respect to the nature of his conduct or a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

You are instructed that under our law a statement of a Defendant made while under arrest or in custody, may not be used in evidence against the defendant unless it appears that the statement was freely and voluntarily made without compulsion or persuasion.

Now, therefore, if you find from the evidence, or if you have a reasonable doubt thereof, that the Defendant's statement, if any, was not voluntary, then you will completely disregard such statement as evidence for any purpose nor will you consider any evidence obtained as a result thereof.

II. COUNT I: CAPITAL MURDER

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, **GUSTAVO TIJERINA SANDOVAL**, on or about **August 3, 2014**, in Willacy County, Texas, intentionally caused the death of **JAVIER VEGA, JR.**, by shooting **JAVIER VEGA, JR.** with a firearm, in the course of committing or attempting to commit robbery of **JAVIER VEGA, JR.**, then you will find the defendant guilty of the offense of Capital Murder, as alleged in Count I of the indictment, 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 as alleged in Count I of the indictment, say by your verdict "Not Guilty," and proceed to consider whether the defendant is guilty of the lesser included offense of murder.

III. MURDER

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the defendant, **GUSTAVO TIJERINA SANDOVAL**, on or about **August 3, 2014**, in Willacy County, Texas, did then and there intentionally cause the death of an individual, **JAVIER VEGA, JR.**, by shooting **JAVIER VEGA, JR.**, with a firearm, then you will find the defendant guilty of the offense of Murder and so say by your verdict, but if you do not do so believe, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty" but if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of murder

and proceed to consider whether the defendant is guilty of the lesser included offense of manslaughter.

IV. MANSLAUGHTER

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the defendant, **GUSTAVO TIJERINA SANDOVAL**, on or about **August 3, 2014**, in Willacy County, Texas, did then and there recklessly cause the death of an individual, **JAVIER VEGA, JR.**, to wit: by discharging a firearm in the direction of **JAVIER VEGA, JR.**, you will find the defendant guilty of the offense of Manslaughter 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 and say by your verdict "Not Guilty."

You are further instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, of **JAVIER VEGA, JR.**, and the previous relationship existing between the accused and **JAVIER VEGA, JR.**, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense alleged in the indictment.

V. COUNT II:

ATTEMPTED CAPITAL MURDER

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.

Each party to an offense may be charged with the commission of the 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.

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

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, **GUSTAVO TIJERINA SANDOVAL**, on or about **August 3, 2014**, in Willacy County, Texas, did then and there, with the specific intent to commit the offense of Capital Murder of Javier Vega, Jr., do an act, to wit: by shooting **JAVIER VEGA** with a deadly weapon, to wit: a firearm, which amounted to more than mere preparation that tended but failed to effect the commission of the offense intended, then you will find the defendant guilty of the offense of Attempted Capital Murder, as alleged in Count Two the indictment, 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 Attempted Capital Murder, as alleged in Count II of the indictment, say by your verdict "Not Guilty" but if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Attempted Capital Murder and proceed to consider whether the defendant is guilty of the lesser included offense of Attempted Murder.

VI.

ATTEMPTED MURDER

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, **GUSTAVO TIJERINA SANDOVAL**, on or about **August 3, 2014**, in Willacy County, Texas, did then and there, with the specific intent to commit the offense of Murder of Javier Vega, Jr., do an act, to wit: by shooting **JAVIER VEGA** with a deadly weapon, to wit: a firearm, which amounted to more than mere preparation that tended but failed to effect the commission of the offense intended, then you will find the defendant guilty 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 Attempted Murder and say by your verdict "Not Guilty".

VII.

You are instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, of **JAVIER VEGA, JR.**, and the previous relationship existing between the accused and **JAVIER VEGA, JR.**, if any, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the shooting in question, if any.

VIII. SELF DEFENSE

You are instructed that a person is justified in using force against another when and to the degree the actor reasonably believes that force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force. The actor's belief that force is immediately necessary is presumed to be reasonable if the actor knew or had reason to believe that the person against whom force was used against was committing or attempting to commit the offense of murder or aggravated assault.

IX. DEADLY WEAPON FINDING

In addition, if you find the Defendant guilty of a felony offense, you must further find beyond a reasonable doubt whether the Defendant used or exhibited a deadly weapon, namely, a firearm, during the commission of the offense or during immediate flight therefrom.

Now bearing in mind the foregoing instructions, if you have found the defendant guilty of a felony offense and believe beyond a reasonable doubt that a deadly weapon, namely a firearm, was used or exhibited during the commission of the offense, or during immediate flight therefrom, then you must make an affirmative finding as to that special issue.

But if you have a reasonable doubt that a deadly weapon, namely a firearm, was used or exhibited during the commission of the offense, or during

immediate flight therefrom, then you must make a negative finding as to that special issue.

X.

In a criminal case the law permits the defendant to testify in his own behalf. However, the same law provides that the fact that a defendant has not testified shall not be considered as a circumstance against him. You will, therefore, not consider the fact that the defendant has not testified as a circumstance against him. You will not, in your retirement to consider your verdict, allude to, comment on, or in any manner refer to the fact that the defendant has not testified.

XI.

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, 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 State 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 State prove the defendant's guilt beyond all possible doubt. It is required that the State'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 further instructed as a part of the law in this case that the indictment against the defendant is not evidence in the case. The true and sole use of the indictment is to charge the offense and to inform the defendant of the offense alleged. 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.

In deliberating on the case you are not to refer to or discuss any matter or issue not in evidence before you. In determining the guilt or innocence of the defendant, you shall not discuss or consider punishment, if any, which may be assessed against the defendant in the event the defendant is found guilty beyond a reasonable doubt.

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. 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.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the testimony, but you are bound to receive the law from the Court, which is herein given to you, and be governed thereby.

After the reading of this Charge, you shall not be permitted to separate from each other, nor shall you talk with anyone not of your jury. After argument of counsel, you will retire and select one of your members as presiding juror. It is the duty of the presiding juror to preside at your deliberations and to vote with you in arriving at a unanimous verdict. After you have arrived at your verdict, you may use the forms attached hereto by having the presiding juror sign his or her name to the particular form or forms that conform to your verdict, but in no event shall the presiding juror sign more than four of such forms.

From time to time throughout the trial the Court has been called upon to pass on the question of whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the court, you, of course, must not consider the same; as to any

question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

You are instructed that you are not to allow yourselves to be influenced on any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of facts involved in this case, nor the guilt or innocence of the Defendant. The Court has not intended to express any such opinion, and if you have observed anything which you have or may interpret as the Court's opinion upon any matter of fact in this case or of the guilt or innocence of the defendant, you must wholly disregard it.

You are instructed that the statements of counsel made during the course of the trial or during the argument, if not supported by evidence, or statements of law made by counsel, if not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

After you have retired to consider your verdict, no one has any authority to communicate with you except the officer who has you in charge. You may communicate with this Court in writing, signed by your presiding juror, through the officer who has you in charge. Do not attempt to talk to the officer, the attorneys, or the Court concerning questions you may have.

FILED 2:40 o'clock PM
ERIC GARZA - DISTRICT CLERK

MAY 30 2018

DISTRICT COURT OF CAMERON COUNTY, TEXAS
By [Signature] Deputy #27

Migdalia López
Presiding Judge
197th Judicial District Court

May 30, 2018

CAUSE NO.: 2015-DCR-02443-C

MAY 30 2018

THE STATE OF TEXAS

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IN THE DISTRICT COURT
DISTRICT COURT OF CAMERON COUNTY, TEXAS

VS.

197TH JUDICIAL DISTRICT

Deputy #27

GUSTAVO TIJERINA SANDOVAL

CAMERON COUNTY, TEXAS

VERDICT OF THE JURY

COUNT I: CAPITAL MURDER

We, the Jury, find the defendant, **GUSTAVO TIJERINA SANDOVAL**, not guilty of the offense of Capital Murder as alleged in Count I of the indictment.

Presiding Juror

COUNT I: CAPITAL MURDER

We, the Jury, find the defendant, **GUSTAVO TIJERINA SANDOVAL**, guilty of the offense of Capital Murder as alleged in Count I of the Indictment.

Ramon Martinez Suajardo

Presiding Juror

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of Capital Murder and next consider whether the defendant is guilty of the lesser offense of Murder.

OR

We, the Jury, find the defendant, **GUSTAVO TIJERINA SANDOVAL**, not guilty of the lesser included offense of Murder in Count I of the indictment.

Presiding Juror

OR

We, the Jury, find the defendant, **GUSTAVO TIJERINA SANDOVAL**, guilty of the lesser included offense of Murder in Count I of the indictment.

Presiding Juror

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of Murder and next consider whether the defendant is guilty of the lesser offense of Manslaughter.

OR

We, the Jury, find the defendant, **GUSTAVO TIJERINA SANDOVAL**, not guilty of the lesser included offense of Manslaughter in Count I of the indictment.

Presiding Juror

We, the Jury, find the defendant, **GUSTAVO TIJERINA SANDOVAL**, guilty of the lesser included offense of Manslaughter in Count I of the indictment.

Presiding Juror

CAUSE NO.: 2015-DCR-02443-C

MAY 30 2018

THE STATE OF TEXAS

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IN THE DISTRICT COURT
DISTRICT COURT OF CAMERON COUNTY, TEXAS
197TH JUDICIAL DISTRICT
By Deputy #27

VS.

GUSTAVO TIJERINA SANDOVAL

CAMERON COUNTY, TEXAS

VERDICT OF THE JURY

COUNT II: ATTEMPTED CAPITAL MURDER

We, the Jury, find the defendant, **GUSTAVO TIJERINA SANDOVAL**, not guilty of the offense of Attempted Capital Murder, as alleged in Count II of the indictment.

Presiding Juror

COUNT II: ATTEMPTED CAPITAL MURDER

We, the Jury, find the defendant, **GUSTAVO TIJERINA SANDOVAL**, guilty of the offense of Attempted Capital Murder, as alleged in Count II of the indictment.

Ramona Martinez Burjardo

Presiding Juror

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of Attempted Capital Murder and next consider whether the defendant is guilty of the lesser offense of Attempted Murder.

OR

We, the Jury, find the defendant, **GUSTAVO TIJERINA SANDOVAL**, not guilty of the lesser included offense of Attempted Murder in Count II of the indictment.

Presiding Juror

We, the Jury, find the defendant, **GUSTAVO TIJERINA SANDOVAL**, guilty of the lesser included offense of Attempted Murder in Count II of the indictment.

Presiding Juror

MAY 30 2018

CAUSE NO.: 2015-DCR-02443-C

DISTRICT COURT OF CAMERON COUNTY, TEXAS
Deputy #27

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
VS.	§	197 TH JUDICIAL DISTRICT
GUSTAVO TIJERINA SANDOVAL	§	CAMERON COUNTY, TEXAS

SPECIAL ISSUE: DEADLY WEAPON FINDING

Having found the Defendant, **GUSTAVO TIJERINA SANDOVAL**, guilty of a felony offense, we, the jury, further find ("find" or "do not find") that a deadly weapon, namely a firearm, was used or exhibited during the commission of a felony or during the immediate flight therefrom.

Ramona Martinez
Ramona Suajardo
Presiding Juror