



**IN THE DISTRICT COURT
OF NUECES COUNTY, TEXAS
THE 148TH JUDICIAL DISTRICT OF TEXAS**

**THE STATE OF TEXAS
Vs.
DOMINGO VILLARREAL**

No. 16-FC-1703-E

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The Defendant, DOMINGO VILLARREAL, stands charged by indictment with the offense of Capital Murder alleged to have been committed on or about December 18, 2016 in Nueces County, Texas. To this charge the Defendant has pleaded "not guilty."

In order to assist the Jury, the Court provides each Juror with a copy of the Charge to read along silently as I read the Charge aloud to you and to use during your deliberations. You are free to write or mark on your copy of the Charge during the argument of counsel and during your deliberations and to make such notes on it to assist you in reaching a verdict. After the Jury has reached a verdict, the Presiding Juror must sign the appropriate Verdict form contained in the original Charge of the Court. After you are discharged as Jurors, you will be free to take with you your copy of the Charge, if you so desire; if you do not want to keep a copy of the Charge, you may leave your copy of the Charge in the Jury room.


1.

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 issue of the guilt of the Defendant.

The burden of proof in all criminal cases rests upon the State throughout the trial, and never

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ANNE LOBERTZEN, CLERK
COUNTY DISTRICT CLERK, NUECES COUNTY, TEXAS
BY  DEPUTY

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 a person has been arrested, confined, or indicted for, or otherwise charged with the offense give 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 of 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 so by your verdict of "Not Guilty."

2.

A person commits the offense of Capital Murder if the person intentionally commits Murder, and the person commits the murder in course of committing or attempting to commit the offense of Robbery or Burglary.

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

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

A person commits the offense of Robbery if, in the course of committing Theft as defined below and with intent to obtain or maintain control of the property, he (1) intentionally, knowingly or recklessly causes bodily injury to another, or (2) intentionally or knowingly threatens or places another in fear of bodily injury or death.

A person commits the offense of Aggravated Robbery if, in the course of committing Theft as defined below and with intent to obtain or maintain control of the property, (1) he causes serious bodily injury to another, or (2) he uses or exhibits a deadly weapon.

A person commits the offense of Burglary if, without the effective consent of the owner, the person enters a habitation with intent to commit a felony, theft or an assault; or if he enters a

habitation or a building and commits or attempts to commit a felony, theft or an assault.

A person commits the offense of Theft if he unlawfully appropriates property with intent to deprive the owner of the property. Appropriation of property is unlawful if it is without the owner's effective consent.

"Appropriation" and "appropriate" mean to acquire or otherwise exercise control over property other than real property.

"Property" means tangible or intangible personal property or any document, including money, that represents or embodies a thing of value.

"Deprive" means to withhold property from the owner permanently.

"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, coercion, force or threats.

"Habitation" means a structure that is adapted for the overnight accommodation of persons.

"Owner" means a person who has title to the property, possession of the property, or a greater right to possession of the property than the person charged.

"Possession" means actual care, custody, control or management of the property.

"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.

With respect to the offenses of Capital Murder and Murder only:

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.

With respect to all other offenses stated in this Charge:

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.

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 standpoint of the person charged.

A person commits an offense only if he voluntarily engages in conduct, including an act. "Conduct" means an act and its accompanying mental state. "Act" means a bodily movement, whether voluntary or involuntary.

3.

All persons are parties to an offense who are guilty of acting together in the commission of an 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. Each party to an offense may be charged with 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 at the scene of the commission of the offense does not constitute one a party to the offense.

In a prosecution in which a person's criminal responsibility is based on the conduct of another, the person may be convicted on proof of commission of the offense and that he was a party to its commission, and it is no defense that the person for whose conduct the person is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

4.

You are instructed that an "accomplice," as the term is used in this Charge, means any person connected with the crime charged, as a party charged to the offense, and includes all persons who are connected with the crime, as such parties, by unlawful act or omission on their part transpiring either before or during the time of 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 both. Mere presence alone, however, will not constitute one a party to an offense.

The witness, Andrew Luis, is an accomplice, if an offense was committed, and you cannot convict the Defendant upon the testimony of an accomplice unless you first believe that the accomplice testimony is true and shows that the Defendant is guilty of an offense stated in this Charge, and then you cannot convict the Defendant upon said accomplice testimony unless you further believe that there is other testimony in the case, outside of the accomplice evidence, tending to connect the Defendant with the offense committed, if you find that an offense was committed, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must also tend to connect the Defendant with its commission, and then from all of the evidence you must believe beyond a reasonable doubt that the Defendant is guilty of the offense charged against him or of another offense stated in this Charge.

5.

A defendant may testify and produce evidence in his own behalf if he elects to do so. These are privileges, however, that are granted to a defendant, and, in the event he elects not to testify or to produce evidence in his own behalf, these facts cannot be taken as circumstances against him.

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

6.

You may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense, if any.

7.

The State is not required to prove the exact date of the offense alleged in the indictment but may prove that the offense, if any, was committed at any time before presentment of the indictment, so long as the offense, if any, occurred prior to the date of the presentment of the indictment. The indictment, as amended, in this cause was presented and filed on March 9, 2018.

8. Instructions on the Offense of Capital Murder

In order to find the Defendant guilty of Capital Murder as charged in the indictment, you must find that the State has proven to you beyond a reasonable doubt each and every one of the following elements of the offense under either sub-parts (a) or (b), namely, that:

(a)

1. DOMINGO VILLARREAL, Defendant,
2. on or about December 18, 2016,
3. in Nueces County, Texas,
4. did then and there,
5. intentionally
6. cause
7. the death
8. of Jesus Cruz,
9. by shooting Jesus Cruz with a firearm,
10. and the Defendant was then and there in the course of committing or attempting to commit the offense of Robbery or Burglary of Jesus Cruz; or,

(b)

1. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis,
2. on or about December 18, 2016,
3. in Nueces County, Texas,
4. did then and there,
5. intentionally
6. cause
7. the death
8. of Jesus Cruz,

9. by shooting Jesus Cruz with a firearm,
10. and the Defendant was then and there in the course of committing or attempting to commit the offense of Robbery or Burglary of Jesus Cruz, and
11. DOMINGO VILLARREAL, Defendant,
12. with the intent to promote or assist the commission of the offense,
13. did solicit, encourage, direct, aid or attempt to aid
14. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis
15. to intentionally
16. commit the offense of Capital Murder of Jesus Cruz.

If the State fails to prove to you beyond a reasonable doubt all of the elements of the offense of Capital Murder, or if you have a reasonable doubt thereof, then you must acquit the Defendant of the offense of Capital Murder.

Therefore, if you find from the evidence beyond a reasonable doubt that either (a) DOMINGO VILLARREAL, Defendant, on or about December 18, 2016, in Nueces County, Texas, did then and there, intentionally cause the death of Jesus Cruz, by shooting Jesus Cruz with a firearm, and the Defendant was then and there in the course of committing or attempting to commit the offense of Robbery or Burglary of Jesus Cruz; or (b) Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis, on or about December 18, 2016, in Nueces County, Texas, did then and there, intentionally cause the death of Jesus Cruz, by shooting Jesus Cruz with a firearm, and DOMINGO VILLARREAL, Defendant, with the intent to promote or assist the commission of the offense, did solicit, encourage, direct, aid or attempt to aid Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis to intentionally commit the offense of Capital Murder of Jesus Cruz, then you will find DOMINGO VILLARREAL, Defendant, guilty of the offense of Capital Murder as charged in the indictment and say so by your verdict of Guilty.

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

8. Instructions on the Offense of Murder

In order to find the Defendant guilty of the lesser included offense of Murder, you must find that the State has proven to you beyond a reasonable doubt each and every one of the following

elements of the offense under either sub-parts (a) or (b), namely, that:

(a)

- 1. DOMINGO VILLARREAL, Defendant,
- 2. on or about December 18, 2016,
- 3. in Nueces County, Texas,
- 4. did then and there,
- 5. intentionally or knowingly
- 6. cause
- 7. the death
- 8. of Jesus Cruz,
- 9. by shooting Jesus Cruz with a firearm; or,

(b)

- 1. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis,
- 2. on or about December 18, 2016,
- 3. in Nueces County, Texas,
- 4. did then and there,
- 5. intentionally or knowingly
- 6. cause
- 7. the death
- 8. of Jesus Cruz,
- 9. by shooting Jesus Cruz with a firearm, and,
- 10. DOMINGO VILLARREAL, Defendant,
- 11. with the intent to promote or assist the commission of the offense,

12. did solicit, encourage, direct, aid or attempt to aid
13. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis
14. to intentionally or knowingly
15. commit the offense of Murder of Jesus Cruz.

If the State fails to prove to you beyond a reasonable doubt all of the elements of the offense of Murder, or if you have a reasonable doubt thereof, then you must acquit the Defendant of the offense of Murder.

Therefore, if you find from the evidence beyond a reasonable doubt that either (a) DOMINGO VILLARREAL, Defendant, on or about December 18, 2016, in Nueces County, Texas, did then and there, intentionally cause the death of Jesus Cruz, by shooting Jesus Cruz with a firearm; or (b) Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis, on or about December 18, 2016, in Nueces County, Texas, did then and there, intentionally or knowingly cause the death of Jesus Cruz, by shooting Jesus Cruz with a firearm, and DOMINGO VILLARREAL, Defendant, with the intent to promote or assist the commission of the offense, did solicit, encourage, direct, aid or attempt to aid Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis to intentionally or knowingly commit the lesser included offense of Murder of Jesus Cruz, then you will find DOMINGO VILLARREAL, Defendant, guilty of the lesser included offense of Murder and say so by your verdict of Guilty.

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

9. Instructions on the Offense of Manslaughter

In order to find the Defendant guilty of the lesser included offense of Manslaughter, you must find that the State has proven to you beyond a reasonable doubt each and every one of the following elements of the offense under either sub-parts (a) or (b), namely, that:

(a)

1. DOMINGO VILLARREAL, Defendant,
2. on or about December 18, 2016,
3. in Nueces County, Texas,
4. did then and there,

- 5. recklessly
- 6. cause
- 7. the death
- 8. of Jesus Cruz,
- 9. by shooting Jesus Cruz with a firearm; or,

(b)

- 1. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis,
- 2. on or about December 18, 2016,
- 3. in Nueces County, Texas,
- 4. did then and there,
- 5. recklessly
- 6. cause
- 7. the death
- 8. of Jesus Cruz,
- 9. by shooting Jesus Cruz with a firearm, and,
- 10. DOMINGO VILLARREAL, Defendant,
- 11. with the intent to promote or assist the commission of the offense,
- 12. did solicit, encourage, direct, aid or attempt to aid
- 13. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis
- 14. to commit the offense of Manslaughter of Jesus Cruz.

If the State fails to prove to you beyond a reasonable doubt all of the elements of the offense of Manslaughter, or if you have a reasonable doubt thereof, then you must acquit the Defendant of the offense of Manslaughter.

Therefore, if you find from the evidence beyond a reasonable doubt that (a) DOMINGO VILLARREAL, Defendant, on or about December 18, 2016, in Nueces County, Texas, did then and there, recklessly cause the death of Jesus Cruz, by shooting Jesus Cruz with a firearm; or (b) Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis, on or about December 18, 2016, in Nueces County, Texas, did then and there, recklessly cause the death of Jesus Cruz, by shooting Jesus Cruz with a firearm, and DOMINGO VILLARREAL, Defendant, with the intent to promote or assist the commission of the offense, did solicit, encourage, direct, aid or attempt to aid Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis to recklessly commit the lesser included offense of Manslaughter of Jesus Cruz, then you will find DOMINGO VILLARREAL, Defendant, guilty of the lesser included offense of Manslaughter and say so by your verdict of Guilty.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the lesser included offense of Murder and next consider whether he is guilty of the lesser offense of Aggravated Robbery.

10. Instructions on the Offense of Aggravated Robbery

In order to find the Defendant guilty of the lesser offense of Aggravated Robbery, you must find that the State has proven to you beyond a reasonable doubt each and every one of the following elements of the offense under either sub-parts (a) or (b), namely, that:

(a)

1. DOMINGO VILLARREAL, Defendant
2. on or about December 18, 2016,
3. in Nueces County, Texas,
4. did then and there,
5. while in the course of committing theft of property and with the intent to obtain or maintain control over the property,
6. intentionally, knowingly or recklessly
7. either (i) cause serious bodily injury to Jesus Cruz, or (ii) use or exhibit a deadly weapon;
or

(b)

1. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis,

2. on or about December 18, 2016,
3. in Nueces County, Texas,
4. did then and there,
5. while in the course of committing theft of property and with the intent to obtain or maintain control over the property,
6. intentionally, knowingly or recklessly
7. either (i) cause serious bodily injury to Jesus Cruz, or (ii) use or exhibit a deadly weapon, and,
8. DOMINGO VILLARREAL, Defendant,
11. with the intent to promote or assist the commission of the offense,
12. did solicit, encourage, direct, aid or attempt to aid
13. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis
14. to commit the offense of Aggravated Robbery of Jesus Cruz.

If the State fails to prove to you beyond a reasonable doubt all of the elements of the lesser offense of Aggravated Robbery, or if you have a reasonable doubt thereof, then you must acquit the Defendant of the lesser offense of Aggravated Robbery.

Therefore, if you find from the evidence beyond a reasonable doubt that (a) DOMINGO VILLARREAL, Defendant, on or about December 18, 2016, in Nueces County, Texas, did then and there, while in the course of committing theft of property and with the intent to obtain or maintain control over the property, either (i) intentionally or knowingly cause serious bodily injury to Jesus Cruz or (ii) use or exhibit a firearm; or (b) Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis, on or about December 18, 2016, in Nueces County, Texas, did then and there, intentionally, knowingly or recklessly either (i) intentionally or knowingly cause serious bodily injury to Jesus Cruz or (ii) use or exhibit a firearm, and DOMINGO VILLARREAL, Defendant, with the intent to promote or assist the commission of the offense, did solicit, encourage, direct, aid or attempt to aid Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis to commit the lesser offense of Aggravated Robbery of Jesus Cruz, then you will find the Defendant guilty of the lesser offense of Aggravated Robbery.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Aggravated Robbery, and next consider whether he is guilty of the lesser included offense of Robbery.

11. Instructions on the Offense of Robbery

In order to find the Defendant guilty of the lesser offense of Robbery, you must find that the State has proven to you beyond a reasonable doubt each and every one of the following elements of the offense under either sub-parts (a) or (b), namely, that:

(a)

1. DOMINGO VILLARREAL, Defendant
2. on or about December 18, 2016,
3. in Nueces County, Texas,
4. did then and there,
5. while in the course of committing theft of property and with the intent to obtain or maintain control over the property,
6. intentionally, knowingly or recklessly
7. cause bodily injury to Jesus Cruz; or

(b)

1. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis,
2. on or about December 18, 2016,
3. in Nueces County, Texas,
4. did then and there,
5. while in the course of committing theft of property and with the intent to obtain or maintain control over the property,
6. intentionally, knowingly or recklessly
7. cause bodily injury to Jesus Cruz, and,
8. DOMINGO VILLARREAL, Defendant,
11. with the intent to promote or assist the commission of the offense,

12. did solicit, encourage, direct, aid or attempt to aid
13. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis
14. to commit the offense of Robbery of Jesus Cruz.

If the State fails to prove to you beyond a reasonable doubt all of the elements of the lesser offense of Robbery, or if you have a reasonable doubt thereof, then you must acquit the Defendant of the lesser offense of Robbery.

Therefore, if you find from the evidence beyond a reasonable doubt that (a) DOMINGO VILLARREAL, Defendant, on or about December 18, 2016, in Nueces County, Texas, did then and there, while in the course of committing theft of property and with the intent to obtain or maintain control over the property, intentionally or knowingly cause bodily injury to Jesus Cruz; or (b) Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis, on or about December 18, 2016, in Nueces County, Texas, did then and there, intentionally, knowingly or recklessly cause bodily injury to Jesus Cruz, and DOMINGO VILLARREAL, Defendant, with the intent to promote or assist the commission of the offense, did solicit, encourage, direct, aid or attempt to aid Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis to commit the lesser offense of Robbery of Jesus Cruz, then you will find the Defendant guilty of the lesser offense of Robbery.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Robbery, and next consider whether he is guilty of the lesser offense of Aggravated Assault.

12. Instructions on the Offense of Aggravated Assault

In order to find the Defendant guilty of the lesser offense of Aggravated Assault, you must find that the State has proven to you beyond a reasonable doubt each and every one of the following elements of the offense under either sub-parts (a) or (b), namely, that:

(a)

1. DOMINGO VILLARREAL, Defendant
2. on or about December 18, 2016,
3. in Nueces County, Texas,
4. did then and there,
5. intentionally, knowingly or recklessly

6. either (i) cause serious bodily injury to Jesus Cruz, or (ii) cause bodily injury to Jesus Cruz and use or exhibit a deadly weapon during the assault; or,

(b)

1. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis,
2. on or about December 18, 2016,
3. in Nueces County, Texas,
4. did then and there,
5. intentionally, knowingly or recklessly
6. either (i) cause serious bodily injury to Jesus Cruz, or (ii) cause bodily injury to Jesus Cruz and use or exhibit a deadly weapon during the assault, and
7. DOMINGO VILLARREAL, Defendant,
8. with the intent to promote or assist the commission of the offense,
9. did solicit, encourage, direct, aid or attempt to aid
13. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis
14. to commit the offense of Aggravated Assault of Jesus Cruz.

If the State fails to prove to you beyond a reasonable doubt all of the elements of the lesser offense of Aggravated Assault, or if you have a reasonable doubt thereof, then you must acquit the Defendant of the lesser offense of Aggravated Assault.

Therefore, if you find from the evidence beyond a reasonable doubt that (a) DOMINGO VILLARREAL, Defendant, on or about December 18, 2016, in Nueces County, Texas, did then and there, intentionally, knowingly or recklessly cause bodily injury to Jesus Cruz; or (b) Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis, on or about December 18, 2016, in Nueces County, Texas, did then and there, intentionally, knowingly or recklessly either (i) cause serious bodily injury to Jesus Cruz, or (ii) cause bodily injury to Jesus Cruz and use or exhibit a deadly weapon during the assault, and DOMINGO VILLARREAL, Defendant, with the intent to promote or assist the commission of the offense, did solicit, encourage, direct, aid or attempt to aid Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis to commit the lesser offense of Aggravated Assault of Jesus Cruz, then you will find the Defendant guilty of the lesser offense of Aggravated Assault.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you

will acquit the Defendant of the offense of Aggravated Assault, and next consider whether he is guilty of the lesser offense of Burglary.

13. Instructions on the Offense of Burglary of a Habitation

In order to find the Defendant guilty of the lesser offense Burglary of a Habitation, you must find that the State has proven to you beyond a reasonable doubt each and every one of the following elements of the offense under either sub-parts (a) or (b), namely, that:

(a)

1. DOMINGO VILLARREAL, Defendant,
2. on or about December 18, 2016,
3. in Nueces County, Texas,
4. did then and there,
5. with intent to commit theft,
6. enter
7. a habitation
8. without the effective consent of
9. Jesus Cruz, the owner thereof; or,

(b)

1. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis,
2. on or about December 18, 2016,
3. in Nueces County, Texas,
4. did then and there,
5. with intent to commit theft,
6. enter
7. a habitation

8. without the effective consent of
9. Jesus Cruz, the owner thereof, and,
10. DOMINGO VILLARREAL, Defendant,
11. with the intent to promote or assist the commission of the offense,
12. did solicit, encourage, direct, aid or attempt to aid
13. Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis
14. to commit the offense of Burglary of a Habitation of Jesus Cruz.

If the State fails to prove to you beyond a reasonable doubt all of the elements of the offense, or if you have a reasonable doubt thereof, then you must acquit the Defendant of the offense of Burglary of a Habitation.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about December 18, 2016 in Nueces County, Texas, either (a) DOMINGO VILLARREAL, Defendant, did then and there, with intent to commit theft, enter a habitation without the effective consent of Jesus Cruz, the owner thereof; or (b) Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis, did then and there, with intent to commit theft, enter a habitation without the effective consent of Jesus Cruz, the owner thereof, and DOMINGO VILLARREAL, Defendant, with the intent to promote or assist the commission of the offense, Ian Hernandez, Juan Herrera, Jose De Luna and/or Andrew Luis to commit the offense of Burglary of a Habitation of Jesus Cruz, then you will find the Defendant guilty of the offense of Burglary of a Habitation 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 will acquit the Defendant of the offense of Burglary of a Habitation and say so by your verdict of not guilty.

14.

If you believe from the evidence beyond a reasonable doubt that Defendant is guilty of the indicted offense of Capital Murder on the one hand, or of the lesser included offense of Murder on the other hand, but you have a reasonable doubt as to which offense he is guilty, then you should resolve that doubt in his favor and find him guilty only of the lesser included offense of Murder.

If you believe from the evidence beyond a reasonable doubt that Defendant is guilty of the indicted offense of Capital Murder or the lesser included offense of Murder on the one hand, or

of the lesser included offense of Manslaughter on the other hand, but you have a reasonable doubt as to which offense he is guilty, then you should resolve that doubt in his favor and find him guilty only of the lesser included offense Manslaughter.

If you believe from the evidence beyond a reasonable doubt that Defendant is guilty of the indicted offense of Capital Murder or the lesser included offense of Murder or the lesser included offense of Manslaughter on the one hand, or of the lesser included offense of Aggravated Robbery on the other hand, but you have a reasonable doubt as to which offense he is guilty, then you should resolve that doubt in his favor and find him guilty only of the lesser included offense of Aggravated Robbery.

If you believe from the evidence beyond a reasonable doubt that Defendant is guilty of the indicted offense of Capital Murder or the lesser included offense of Murder or the lesser included offense of Manslaughter or the lesser offense of Aggravated Robbery on the one hand, or of the lesser included offense of Robbery on the other hand, but you have a reasonable doubt as to which offense he is guilty, then you should resolve that doubt in his favor and find him guilty only of the lesser included offense of Robbery.

If you believe from the evidence beyond a reasonable doubt that Defendant is guilty of the indicted offense of Capital Murder or the lesser included offense of Murder or the lesser included offense of Manslaughter or the lesser included offense of Aggravated Robbery or the lesser included offense of Robbery on the one hand, or of the lesser offense of Aggravated Assault on the other hand, but you have a reasonable doubt as to which offense he is guilty, then you should resolve that doubt in his favor and find him guilty only of the lesser included offense of Aggravated Assault.

If you believe from the evidence beyond a reasonable doubt that Defendant is guilty of the indicted offense of Capital Murder or the lesser included offense of Murder, or the lesser included offense of Manslaughter or the lesser included offense of Aggravated Robbery or the lesser included offense of Robbery or the lesser included offense of Aggravated Assault on the one hand, or of the lesser included offense of Burglary of a Habitation on the other hand, but you have a reasonable doubt as to which offense he is guilty, then you should resolve that doubt in his favor and find him guilty only of the lesser included offense of Burglary of a Habitation.

If you do not find from the evidence beyond a reasonable doubt that Defendant is guilty of any offense stated in this Charge, or if you have a reasonable doubt as to whether Defendant is guilty of any offense in this cause, then you will acquit Defendant of all offenses and say so by your verdict of not guilty.

15.

The Jury will restrict its deliberations at this stage of the trial solely to the issue of whether the Defendant is guilty or not guilty without regard to any punishment that may be imposed by law for the offense charged if the Defendant were to be found guilty. Therefore, you shall not

consider or discuss punishment for the offense during your deliberations.

16.

At the beginning of the trial, the Court instructed you and informed you that jurors are now allowed to take notes of the testimony and evidence presented to you. Accordingly, some of you took notes during the trial. I must now give additional instructions concerning note-taking.

For those of you who took notes, any notes that you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. If any juror starts to read his or her notes aloud or wants to share his or her notes, the presiding juror or any other juror shall remind that juror that he or she cannot do so.

You must leave your notes with the Bailiff when you are not deliberating. The Bailiff will give your notes to me promptly after collecting them from you. I will make sure that your notes are kept in a safe, secure location and not be disclosed to anyone. After you complete your deliberations, the Bailiff will collect your notes. When you are released from jury duty, the Bailiff will promptly destroy your notes so that nobody can read what you wrote.

17.

You shall not let bias, prejudice or sympathy play any part in your deliberations.

No statement, ruling or remark which I may have made during the presentation of testimony was intended to indicate my opinion as to what the facts are. 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. In determining the credibility of the witnesses, you alone must decide upon the believability of the evidence and its weight and value.

These instructions are given to you because your conduct is subject to review the same as that of the witnesses, the parties, the attorneys and the Judge. If it should be found that you have disregarded any of these instructions, it will be Jury misconduct and it may require another trial by another Jury; then all of our time will have been wasted.

The Presiding Juror or any other who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the Juror not to do so again.

18.

After you retire to the Jury room, you must first select one of your members as your Presiding Juror. It is the duty of the Presiding Juror to preside during your deliberations, to vote with you, to speak for the Jury when it wishes to communicate with the Court, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate verdict form attached hereto, and signing the same as Presiding Juror.

No one has any authority to communicate with you except the Bailiff. 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. You should not discuss the case except with each other in the privacy of the Jury room. You should not separate for any purpose, that is, leave the Jury room, without permission of the Court.

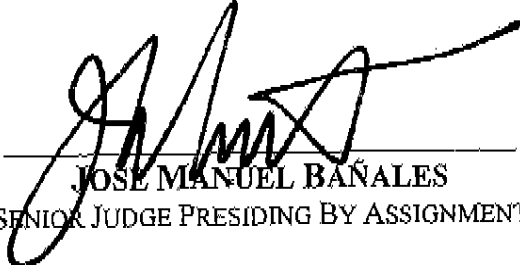
After you have retired to deliberate upon a verdict, you may communicate with this Court in writing signed by the Presiding Juror through the Bailiff. Do not attempt to talk to the Bailiff, or the attorneys, or the Court, or anyone else concerning any question you may have.

The Court may not grant a general request from the Jury that the testimony of a witness be read back to the Jury. However, if the Jury disagrees as to the 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.

After you have reached a unanimous verdict, the Presiding Juror will certify thereto by filling in the appropriate form attached to this Charge and signing his or her name as Presiding Juror.

After the attorneys have argued the case, you will then go into the Jury room to begin your deliberations.

Signed May 2, 2018.



JOSE MANUEL BAÑALES
SENIOR JUDGE PRESIDING BY ASSIGNMENT



IN THE DISTRICT COURT
OF NUECES COUNTY, TEXAS
THE 148TH JUDICIAL DISTRICT OF TEXAS

THE STATE OF TEXAS
VS.
DOMINGO VILLARREAL

No. 16-FC-1703-E

VERDICT FORMS

USE ONLY ONE FORM:

VERDICT OF GUILTY OF CAPITAL MURDER

We, the Jury, find the Defendant, DOMINGO VILLARREAL, guilty of the offense of Capital Murder as charged in the Indictment.

Presiding Juror

Or:

VERDICT OF GUILTY OF MURDER

We, the Jury, find the Defendant, DOMINGO VILLARREAL, guilty of the lesser included offense of Murder.

Presiding Juror

Or:

VERDICT OF GUILTY OF MANSLAUGHTER

We, the Jury, find the Defendant, DOMINGO VILLARREAL, guilty of the lesser included offense of Manslaughter.



Presiding Juror

Or:

VERDICT OF GUILTY OF AGGRAVATED ROBBERY

We, the Jury, find the Defendant, DOMINGO VILLARREAL, guilty of the lesser included offense of Aggravated Robbery.

Presiding Juror

Or:

VERDICT OF GUILTY OF ROBBERY

We, the Jury, find the Defendant, DOMINGO VILLARREAL, guilty of the lesser included offense of Robbery.

Presiding Juror

Or:

VERDICT OF GUILTY OF AGGRAVATED ASSAULT

We, the Jury, find the Defendant, DOMINGO VILLARREAL, guilty of the lesser included offense of Aggravated Assault.

Presiding Juror

Or:

VERDICT OF GUILTY OF BURGLARY

We, the Jury, find the Defendant, DOMINGO VILLARREAL, guilty of the lesser included offense of Burglary.

Presiding Juror

Or:

VERDICT OF NOT GUILTY

We, the Jury, find the Defendant, DOMINGO VILLARREAL, not guilty.

Presiding Juror