

CASE NO. CR-1236-10-J (COUNT ONE)

THE STATE OF TEXAS
VS
ENRIQUE RAMON CERVANTES

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§

IN THE 430TH DISTRICT COURT
OF
HIDALGO COUNTY, TEXAS

FILED
AT 9:28 O'CLOCK P M

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, ENRIQUE RAMON CERVANTES, stands charged by indictment with the offense of Attempted Capital Murder alleged to have been committed on or about FEBRUARY 21, 2010, in Hidalgo County, Texas. To this charge, the Defendant has pleaded not guilty.

AUG 05 2010
LAURA HINOJOSA, CLERK
District Courts, Hidalgo County
By *[Signature]* Deputy

1.

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.

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.

2.

Our law provides that a person commits Murder if he intentionally or knowingly causes the death of an individual.

A person commits Capital Murder if he murders more than one person during the same criminal transaction.

3.

A person commits an offense 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. This is an attempt to commit an offense.

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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.

4.

Now, if you find from the evidence beyond a reasonable doubt that on or about FEBRUARY 21, 2010, in Hidalgo County, Texas, the Defendant, ENRIQUE RAMON CERVANTES, did then and there, with the specific intent to commit the offense of capital murder, do an act, to-wit: shoot at Luis Gonzalez, Gloria Rodriguez, Joel Olguin, Leobardo Torres, and Christian Rodriguez with 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 Attempted Capital Murder as charged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Attempted Capital Murder and say by your verdict "Not Guilty".

5.

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 or deadly force against another if the actor would be justified in using force against the other in the first place, as above set out, and when the actor reasonably believes that such force or deadly force is immediately necessary to protect oneself against the other person's use or attempted use of unlawful deadly force, or to prevent the other's imminent commission of deadly force.

The actor's belief that the force or deadly force was immediately necessary is presumed to be reasonable if the actor (1) knew or had reason to believe that the person against whom deadly force was used was committing or attempting to commit deadly force and (2) did not provoke the person against whom the force was used and (3) was not otherwise engaged in criminal activity.

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 actor failed to retreat.

By the term "reasonable belief" as herein used 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" is meant force that is intended or known by the person 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 is attacked with unlawful deadly force, or he reasonably believes he 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, 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 from such attack or attempted attack. 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 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 against the other person's use or attempted use of unlawful deadly force.

By the term "reasonable person," as applied to one in the situation of a third party being defended, is meant an ordinary and prudent person in the same circumstances as such third party.

6.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 21st day of February, 2010 in Hidalgo County, Texas, the defendant, Enrique Ramon Cervantes, did then and there, with the specific intent to commit the offense of capital murder, do an act, to-wit: shoot at Luis Gonzalez, Gloria Rodriguez, Joel Olguin, Leobardo Torres, and Christian Rodriguez with a firearm, which amounted to more than mere preparation that tended but failed to effect the commission of the offense intended, but

you further find from the evidence, or you have a reasonable doubt thereof, that at that time another person, to-wit: Tomasa M. Pena was under attack or attempted attack from the complainants Luis Gonzalez, Gloria Rodriguez, Joel Olguin, Leobardo Torres, and Christian Rodriguez, and that the defendant reasonably believed, as viewed from his standpoint, that such force as he used, if any, was immediately necessary to protect Tomasa M. Pena against such attack or attempted attack, and so believing, he committed the offense or solicited, encouraged, directed, aided, or attempted to aid other persons to commit the offense, then you will acquit the defendant and say by your verdict "not guilty."

7.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a privilege 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 or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against the Defendant.

8.

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 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.

9.

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that a person has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial. The law does not require a defendant to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the defendant, unless the jurors are satisfied beyond a

reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

10.

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 Defendant and say by your verdict "Not Guilty".

11.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and the weight to be given their testimony. You will be governed by the law you shall receive in these written instructions.

12.

When you retire to the jury room, you should first select one of your members as Presiding Juror. It is the Presiding Juror's 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 thereto, and signing the same as Presiding Juror.

13.

In order to return a verdict, each juror must agree thereto, but jurors have a duty to consult with each other and to deliberate with a view of reaching an agreement, if it can be done without violence to individual judgment.

14.

Each juror must decide the case for himself or herself, but only after an impartial consideration of the evidence with his or her fellow jurors.

In the course of deliberations, a juror should not hesitate to re-examine his or her own views and change his or her opinion if convinced it is erroneous. However, no juror should surrender his or her honest conviction as to the weight or effect of the evidence solely because of the opinion of his or her fellow jurors, or for the mere purpose of returning a verdict.

15.

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.

16.

You should not discuss or consider punishment for the offense charged for any purpose. You must concern yourselves solely with the question of guilt or innocence of the Defendant under these written instructions without regard to any possible punishment imposed by law for the offense charged.

17.

During your deliberations, you are instructed that you should not consider the remarks, rulings or actions of the presiding judge during this trial as any indication of the Court's opinion as to the guilt or innocence of the Defendant. The remarks, rulings and actions of the presiding judge were upon matters of the law only and were not upon the facts which you and you alone, must determine.

18.

While you are deliberating, no one has authority to communicate with you except the officer who has you in charge being the Bailiff. However, after you have retired, you may communicate with the Court as to any questions you may have, but that communication must be in writing through the Bailiff.

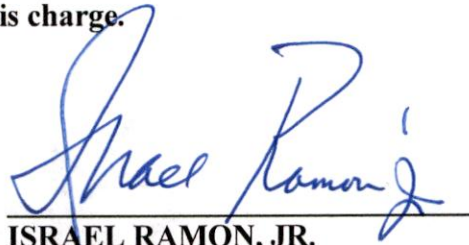
When you have reached a verdict you will notify the Bailiff in writing, as to reaching a verdict, but not what the verdict is.

19.

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

Your verdict must be unanimous, and after you have reached a unanimous verdict, the Presiding Juror will certify thereto by signing the appropriate form attached to this charge.

Filed on the 5th day of August, 2010, at 9:22 o'clock a.m.

A handwritten signature in blue ink, appearing to read "Israel Ramon, Jr.", written over a horizontal line.

**ISRAEL RAMON, JR.
JUDGE PRESIDING
430TH DISTRICT COURT
HIDALGO COUNTY, TEXAS**

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**IN THE 430TH DISTRICT COURT
OF
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JURY VERDICT

We, the Jury, find the Defendant, ENRIQUE RAMON CERVANTES, guilty of the offense of Attempted Capital Murder as charged in the indictment.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, ENRIQUE RAMON CERVANTES, not guilty of the offense of Attempted Capital Murder as charged in the indictment.



PRESIDING JUROR