

NO. 14-CR-0694-H

ORIGINAL

STATE OF TEXAS VS. BRENDON GAYTAN

IN THE 347TH DISTRICT COURT
NUECES COUNTY, TEXAS

CHARGE OF THE COURT

FILED

11:47am

FEB 24 2015

ANNE LORENTZEN, CLERK
COUNTY & DISTRICT COURTS, NUECES COUNTY, TEXAS
BY *[Signature]* DEPUTY

Ladies and Gentlemen of the Jury:

The defendant, BRENDON GAYTAN, stands charged by indictment with the offense of Counts 1 & 2: Capital Murder, alleged to have been committed on or about February 16, 2014 in Nueces County, Texas. To this charge the defendant has plead not guilty. You are instructed that the law applicable to this case is as follows:

1.

A person commits the offense of **Capital Murder** if the person intentionally or knowingly murders an individual under ten years of age.

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

A person commits the lesser-offense of **Deadly Conduct** if he knowingly discharges a firearm at or in the direction of one or more individuals or a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied.

2.

"Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

"Another" means a person other than the actor.

By the term "bodily injury" is meant physical pain, illness, or any impairment of physical condition.

"Serious bodily injury" means a bodily injury that causes 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.

3.

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 the 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 defendant's standpoint.

4.

“Conduct” means an act or omission and its accompanying mental state.

5.

A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession.

Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.

A person who omits to perform an act does not commit an offense unless a law as defined by Section 1.07 of the Penal Code provides that the omission is an offense or otherwise provides that he has a duty to perform the act.

6.

COUNT 1

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the defendant, BRENDON GAYTAN, on or about February 16, 2014 , in Nueces County, Texas, did

then and there intentionally or knowingly, cause the death of an individual, Lillyanna Valent, by shooting Lillyanna Valent with a firearm and Lillyanna Valent was then and there an individual younger than ten years of age, you will then find the defendant guilty of the offense of Count 1: 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 shall next consider the lesser-included offense of Manslaughter.

Lesser-Included offense

Manslaughter as to Count 1

7.

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about February 16, 2014, in Nueces County, Texas, the defendant, BRENDON GAYTAN did then and there recklessly cause the death of an individual, Lillyanna Valent, by shooting Lillyanna Valent with a firearm and Lillyanna Valent was then and there an individual younger than ten years of age, you will then find the defendant guilty of the lesser- included offense of Manslaughter.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you shall next consider the lesser-included offense of Deadly Conduct.

Lesser-Included Offense

Deadly Conduct as to Count 1

8.

Now, if you find from the evidence beyond a reasonable doubt that on or about, February 16, 2014, in Nueces County, Texas, the defendant, BRENDON GAYTAN did then and there knowingly cause imminent bodily injury by pointing a firearm at Lillyanna Valent, and shooting Lillyanna Valent with a firearm and did then and there use or exhibit a deadly weapon, to-wit: A firearm, during the commission of said assault, then you will find the defendant, BRENDON GAYTAN guilty of the lesser-included offense of Deadly Conduct.

9.

COUNT 2

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that the defendant, BRENDON GAYTAN, on or about February 16, 2014, in Nueces County, Texas, did then and there intentionally or knowingly, cause the death of an individual,

Nevaeh Oliva, by shooting Nevaeh Oliva with a firearm and Nevaeh Oliva was then and there an individual younger than ten years of age, you will then find the defendant guilty of the offense of Count 2: 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 shall next consider the lesser-included offense of Manslaughter.

Lesser-Included Offense

Manslaughter as to Count 2

10.

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about February 16, 2014, in Nueces County, Texas, the defendant, BRENDON GAYTAN did then and there recklessly cause the death of an individual, Nevaeh Oliva, by shooting Nevaeh Oliva with a firearm and Nevaeh Oliva was then and there an individual younger than ten years of age, you will then find the defendant guilty of the lesser- included offense of Manslaughter.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you shall next consider the lesser-included offense of Deadly Conduct.

Lesser-Included Offense

Deadly Conduct as to Count 2

11.

Now, if you find from the evidence beyond a reasonable doubt that on or about, February 16, 2014, in Nueces County, Texas, the defendant, BRENDON GAYTAN did then and there knowingly cause imminent bodily injury by pointing a firearm at Nevaeh Oliva, and shooting Nevaeh Oliva with a firearm, and did then and there use or exhibit a deadly weapon, to-wit: A firearm, during the commission of said assault, then you will find the defendant, BRENDON GAYTAN guilty of the lesser-included offense of Deadly Conduct.

12.

AS TO COUNTS 1 & 2

If you should find from the evidence beyond a reasonable doubt that the defendant is either guilty of Capital Murder, Manslaughter or Deadly Conduct, but you have a reasonable doubt as to which offense he is guilty, then you should resolve that doubt in defendant's favor, and in such event, you will find the defendant guilty of the lesser offense of Manslaughter or the lesser-included offense of Deadly Conduct.

If you have a reasonable doubt as to whether defendant is guilty of any offense defined in this charge, then you should acquit the defendant and say by your verdict "Not Guilty."

13.

Transferred Intent

A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated or risked is that a different person was injured, harmed or otherwise affected.

14.

COUNT 1- Transferred Intent

Now, if you find from the evidence beyond a reasonable doubt, that on or about, February 16, 2014, in Nueces County, Texas, the defendant BRENDON GAYTAN, did intentionally or knowingly shoot a gun at Arnold Valent or an unknown person with intent to kill unknown person but, instead, missed Arnold Valent or Arnold Valent or an unknown person and hit and killed Lillyanna Valent, and Lillyanna Valent was then and there an individual younger than ten years of age, then you will find the defendant guilty of the offense of Capital Murder 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."

15.

COUNT 2- Transferred Intent

Now, if you find from the evidence beyond a reasonable doubt, that on or about, February 16, 2014, in Nueces County, Texas, the defendant BRENDON GAYTAN, did intentionally or knowingly shoot a gun at Arnold Valent or an unknown person with intent to kill Arnold Valent or an unknown person but, instead, missed Arnold Valent or an unknown person and hit and killed Nevaeh Oliva, and Nevaeh Oliva was then and there an individual younger than ten years of age, then you will find the defendant guilty of the offense of Capital Murder 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."

16.

You are instructed with regard to the offense the State is not required to prove the exact date alleged in the indictment but may prove the offense, if any, to have been committed at any time before presentment of the indictment so long as the indictment, occurs within the statute of limitations of the offense. The day the indictment was presented and the day the offense

occurred, if any, are not computed within the limitation period. The indictment in this case was presented on May 8, 2014.

Instruction on the Law of Parties

17.

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.

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.

18.

Law of Parties

Count 1- as to Capital Murder

Under the law of parties, if you find from the evidence beyond a reasonable doubt that on or about the 16th day February, 2014, in Nueces County, Texas, BRENDON GAYTAN, did then and there intentionally or knowing, cause the death of an individual younger than six years of age, namely, Lillyanna Valent, by shooting Lillyanna Valent with a firearm, and that the defendant, BRENDON GAYTAN, acted with intent to promote or

assist the commission of the offense by causing the death an individual younger than six years of age, namely, Lillyanna Valent, and by encouraging, directing, aiding, attempting, or attempting to aid Cruz Salazar or another to commit the offense as alleged herein, then you will find the defendant, BRENDON GAYTAN, guilty of Count 1: 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 shall acquit the defendant and say by your verdict "Not Guilty".

19.

Law of Parties

Count 1- as to the lesser-included offense of Manslaughter

Under the law of parties, if you find from the evidence beyond a reasonable doubt that on or about the 16th day February, 2014, in Nueces County, Texas, BRENDON GAYTAN, did then and there intentionally or knowing, cause the death of an individual younger than six years of age, namely, Lillyanna Valent, by shooting Lillyanna Valent with a firearm, and that the defendant, BRENDON GAYTAN, acted with intent to promote or assist the commission of the offense by causing the death an individual younger than six years of age, namely, Lillyanna Valent, and by encouraging,

directing, aiding, attempting, or attempting to aid Cruz Salazar or another to commit the offense as alleged herein, then you will find the defendant, BRENDON GAYTAN, guilty of the lesser-included offense of Manslaughter.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you shall acquit the defendant and say by your verdict "Not Guilty".

20.

Law of Parties

Count 1- as to the lesser-included offense of Deadly Conduct

Under the law of parties, if you find from the evidence beyond a reasonable doubt that on or about the 16th day February, 2014, in Nueces County, Texas, BRENDON GAYTAN, did then and there intentionally or knowing, cause the death of an individual namely, Lillyanna Valent, by shooting Lillyanna Valent with a firearm, and that the defendant, BRENDON GAYTAN, acted with intent to promote or assist the commission of the offense by causing the death an individual namely, Lillyanna Valent, and by encouraging, directing, aiding, attempting, or attempting to aid Cruz Salazar or another to commit the offense as alleged herein, then you will find the defendant, BRENDON GAYTAN, guilty of the lesser-included offense of Deadly Conduct.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you shall acquit the defendant and say by your verdict "Not Guilty".

21.

Law of Parties

Count 2 as to Capital Murder

Under the law of parties, if you find from the evidence beyond a reasonable doubt that on or about the 16th day February, 2014, in Nueces County, Texas, BRENDON GAYTAN, did then and there intentionally or knowing, cause the death of an individual younger than ten years of age, namely, Nevaeh Oliva, by shooting Nevaeh Oliva with a firearm, and that the defendant, BRENDON GAYTAN, acted with intent to promote or assist the commission of the offense by causing the death an individual younger than ten years of age, namely, Nevaeh Oliva, and by encouraging, directing, aiding, attempting, or attempting to aid CRUZ SALAZAR or another to commit the offense as alleged herein, then you will find the defendant, BRENDON GAYTAN, guilty of Count 1: 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 shall acquit the defendant and say by your verdict "Not Guilty".

22.

Law of Parties

Count 2 as to the lesser-included offense of Manslaughter

Under the law of parties, if you find from the evidence beyond a reasonable doubt that on or about the 16th day February, 2014, in Nueces County, Texas, BRENDON GAYTAN, did then and there intentionally or knowing, cause the death of an individual younger than ten years of age, namely, Nevaeh Oliva, by shooting Nevaeh Oliva with a firearm, and that the defendant, BRENDON GAYTAN, acted with intent to promote or assist the commission of the offense by causing the death an individual younger than ten years of age, namely, Nevaeh Oliva, and by encouraging, directing, aiding, attempting, or attempting to aid CRUZ SALAZAR or another to commit the offense as alleged herein, then you will find the defendant, BRENDON GAYTAN, guilty of the lesser-included offense of Deadly Conduct.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you shall acquit the defendant and say by your verdict "Not Guilty".

23.

Law of Parties

Count 2 as to the lesser-included offense of Deadly Conduct

Under the law of parties, if you find from the evidence beyond a reasonable doubt that on or about the 16th day February, 2014, in Nueces County, Texas, BRENDON GAYTAN, did then and there intentionally or knowing, cause the death of an individual, namely, Nevaeh Oliva, by shooting Nevaeh Oliva with a firearm, and that the defendant, BRENDON GAYTAN, acted with intent to promote or assist the commission of the offense by causing the death an individual younger than ten years of age, namely, Nevaeh Oliva, and by encouraging, directing, aiding, attempting, or attempting to aid CRUZ SALAZAR or another to commit the offense as alleged herein, then you will find the defendant, BRENDON GAYTAN, guilty of the lesser-included offense of Deadly Conduct.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you shall acquit the defendant and say by your verdict "Not Guilty".

24.

BOTH COUNTS

ACCOMPLICE BY FACT

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

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

25.

An accomplice as the word is here used, means anyone connected with the crime charged as a party to 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 the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense; 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; having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense. Mere presence alone will not constitute one a party to an offense.

You are further instructed that mere presence of the accused in the company of an accomplice witness shortly before or after the time of the offense, if any, is not, in itself, sufficient corroboration of the accomplice witness' testimony.

A conviction cannot be had upon the testimony of an accomplice unless the jury first believe that the accomplice's evidence is true and that it shows the defendant is guilty of the offense charged against him, and even then you cannot convict unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the

corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

You are further instructed that while the testimony of an accomplice must be corroborated by proof that tends to connect the defendant to the crime, the defendant's knowledge or intent may be established by the uncorroborated testimony of the accomplice.

If you find from the evidence that the witness, IRIS FLORES, was an accomplice, or you have a reasonable doubt thereof, as that term has been defined to you in the foregoing instructions, then you are instructed that if you find beyond a reasonable doubt that an offense was committed, you cannot find the defendant, BRENDAN GAYTAN guilty upon the testimony of IRIS FLORES unless you first believe that the testimony of the said IRIS FLORES is true and that it shows the defendant is guilty as charged in the indictment; and even then you cannot convict the defendant unless you further believe that there is other evidence in this case, outside the evidence of said IRIS FLORES, tending to connect the defendant with the commission of the offense charged in the indictment and then from all the evidence you must believe beyond a reasonable doubt that the defendant is guilty.

26.

You are to be reminded of the previous instruction on note taking. Your notes are for your use only. You may not share your notes with the other jurors. You may not mention that your notes are indicative of some matter. You should not permit the other jurors to share their notes. They may be used only to refresh your own personal memory of what you recorded. In your deliberations give no more or no less weight to the views of a fellow juror just because that juror did or did not take these notes. You are not to use your notes as authority to persuade fellow jurors of what the evidence was during trial. Your notes are not evidence. If a dispute arises as to the evidence, the notes shall not be used to resolve such dispute. Any disputes as to the evidence shall be submitted by specific question to the Court.

27.

The Court may not grant a general request from the Jury that the testimony of a witness be read back to the Jury. For example, if the Jury requests that the testimony of a certain witness be read back to the Jury, the Court will deny the request. However, if the Jury disagrees as to the particular 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.

28.

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.

29.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed offenses other than the offense alleged against him in the indictment in this case, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offenses, if any were committed, and even then you may only consider the same in determining the credibility of the witnesses, in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

30.

At this stage of the trial, the jury will restrict its deliberations solely to the issue of whether the defendant is guilty or not guilty.

31.

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.

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.

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".

32.

The jury is the exclusive judge of the facts proved, of the credibility of the witnesses, and of the weight to be given their testimony. In deciding the question of whether the defendant is guilty or not guilty, the jury shall be governed by the law as it is stated in this charge.

33.

After entering the jury room, the jury must first select a presiding juror. The presiding juror presides over the deliberations, speaks for the jury when it wishes to communicate with the Court, and votes with the jury on the issues before it. Any verdict reached must be unanimous. Verdict Forms applicable to this case are attached to the charge. If a verdict is reached, it will be indicated by the presiding juror signing his or her name to the appropriate Verdict Form.

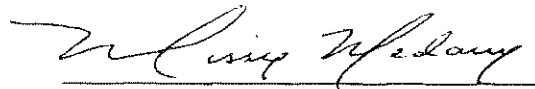
During the deliberations, the jury may not:

- (1) communicate with anyone except the Court or the officer in charge of the jury;
- (2) separate for any purpose without permission of the Court;
- (3) discuss the case except with each other in the privacy of the jury room; or
- (4) consider or discuss matters not in evidence including personal knowledge or information about any fact or person connected with the case.

Communications to the Court must be in writing. Written communications from the jury will be delivered to the Court by the officer in charge of the jury.

After the arguments of counsel, the jury will go to the jury room to begin its deliberations.

DATE: February 24th, 2015


MISSY MEDARY
JUDGE PRESIDING

NO. 14-CR-0694-H
STATE OF TEXAS VS. BRENDON GAYTAN
IN THE 347TH DISTRICT COURT
NUECES COUNTY, TEXAS

VERDICT FORMS -COUNT 1

USE ONLY ONE FORM:

We, the Jury, find the defendant, BRENDON GAYTAN, *not guilty*.

PRESIDING JUROR

OR

We, the Jury, find the defendant, BRENDON GAYTAN, *guilty* of the offense of CAPITAL MURDER, as alleged in the indictment.



PRESIDING JUROR

OR

We, the Jury, find the defendant, BRENDON GAYTAN, *guilty* of the lesser-included offense of MANSLAUGHTER.

PRESIDING JUROR

OR

We, the Jury, find the defendant, BRENDON GAYTAN, *guilty* of the lesser-included offense of DEADLY CONDUCT.

PRESIDING JUROR

NO. 14-CR-0694-H
STATE OF TEXAS VS. BRENDON GAYTAN
IN THE 347TH DISTRICT COURT
NUECES COUNTY, TEXAS

VERDICT FORMS -COUNT 2

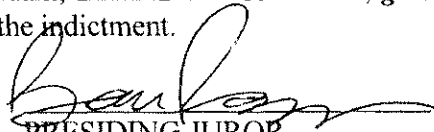
USE ONLY ONE FORM:

We, the Jury, find the defendant, BRENDON GAYTAN, *not guilty*.

PRESIDING JUROR

OR

We, the Jury, find the defendant, BRENDON GAYTAN, *guilty* of the offense of CAPITAL MURDER, as alleged in the indictment.


PRESIDING JUROR

OR

We, the Jury, find the defendant, BRENDON GAYTAN, *guilty* of the lesser-included offense of MANSLAUGHTER.

PRESIDING JUROR

OR

We, the Jury, find the defendant, BRENDON GAYTAN, *guilty* of the lesser-included offense of DEADLY CONDUCT.

PRESIDING JUROR