

**CAUSE NO. F11-61804-J**

**THE STATE OF TEXAS** } **IN THE CRIMINAL**  
**VS.** } **DISTRICT COURT NO. 3**  
**JOSE CUTBERTO VALLE** } **DALLAS COUNTY, TEXAS**

**CHARGE OF THE COURT**

**MEMBERS OF THE JURY:**

The defendant, JOSE CUTBERTO VALLE, stands charged by indictment with the offense of Capital Murder, alleged to have been committed on or about the 7th day of November, 2011, in Dallas County, Texas.

To this charge, the defendant has pled not guilty.

Our law provides that a person commits the offense of Murder when he intentionally or knowingly causes the death of an individual or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.

"Individual" means a human being who has been born and is alive.

A person commits capital murder when such person intentionally commits the murder in the course of committing or attempting to commit the offense of robbery.

"Deadly weapon" as used herein means a firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious bodily

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injury, or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

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

"Serious bodily injury" as used herein means a 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.

Our law provides that a person commits a Robbery if, in the course of committing theft, as defined hereinafter, and with intent to obtain or maintain control of the property of another, he

- (a) intentionally, knowingly, or recklessly causes bodily injury to another; or
- (b) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

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

"Attempt" to commit an offense occurs if, with specific intent to commit an offense, a person does an act amounting to more than mere preparation that tends, but fails, to effect the commission of the offense intended.

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

physical condition.

A person commits the offense of theft if with the intent to deprive such other person of said property he appropriates the property unlawfully.

"Appropriation" and "appropriate", as those terms are used herein, means to acquire or otherwise exercise control over property other than real property. Appropriation of property is unlawful if it is without the owner's effective consent.

"Property" as used herein means tangible or intangible personal property or documents, including money, that represents or embodies anything of value.

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

"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 induced by deception or coercion.

"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.

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 a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

You are further instructed that voluntary intoxication does not constitute a defense to the commission of a crime.

"Intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

You are instructed that an "accomplice," as the term is here used, means any person 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 of 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 of 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.

A person is criminally responsible for an offense committed by the conduct of another if in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

The term "conduct" means any act or omission and its accompanying mental state.

You are further instructed that a conviction cannot be had upon the testimony of an accomplice unless the jury first believes 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 also tend to connect the defendant with its commission.

Mere presence of the defendant with an accomplice shortly before or

shortly after the commission of a crime is not sufficient corroboration of an accomplice witness' testimony to convict the defendant.

You are instructed that Sergio Teran is an accomplice by law.

Now, if you believe from the evidence beyond a reasonable doubt that an offense was committed and you further believe from the evidence that the witness, Sergio Teran, was an accomplice, or you have a reasonable doubt as to whether he was or was not an accomplice, as that term is defined in the foregoing instructions, then you cannot convict the defendant upon the testimony of Sergio Teran unless you first believe that the testimony of Sergio Teran is true and that it shows the defendant is guilty as charged in the indictment; even then you cannot convict the defendant unless you further believe that there is other evidence in the case, outside of the evidence of Sergio Teran 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.

In all criminal cases the burden of proof is on the State.

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 a careful and impartial consideration of all the evidence in the case.

The prosecution has the burden of proving the defendant guilty and it must do so by proving each and every element of the offense charged beyond a reasonable doubt and if it fails to do so, you must acquit the defendant.

It is not required that the prosecution prove guilt beyond all possible doubt; it is required that the prosecution's proof excludes all reasonable doubt concerning the defendant's guilt.

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.

You are instructed that a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other person's use or attempted use of unlawful force.

The use of force against another is not justified in response to verbal provocation alone. The use of force against another is not justified if the actor provoked the other's use or attempted use of unlawful force.

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

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 of the deadly force is used is not required to retreat before using deadly force.

An actor's belief that the deadly force was immediately necessary is



presumed to be reasonable if the actor knew or had reason to believe that the person against whom the deadly force was used unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied vehicle or unlawfully and with force removed or was attempting to remove unlawfully and with force the actor from the actor's vehicle.

The term "deadly force" as used herein means 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.

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

When a person is attacked with unlawful deadly force, or he reasonably believes he is under attack or attempted attack with unlawful deadly force by one or more persons, 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 said person reasonably believes immediately necessary, as 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 said person acted upon a reasonable apprehension of danger, as it appeared to said person from his standpoint at the time, and that said person reasonably believed such deadly force was immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

You are further instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship existing between the accused and the deceased, 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 offense, if any.

Now, if you find from the evidence beyond a reasonable doubt that the defendant, **JOSE CUTBERTO VALLE**, on or about the 7th day of November, A.D., 2011, in the County of Dallas and State of Texas, did cause the death of **ALEJANDRO GRANADOS**, an individual, by shooting **ALEJANDRO GRANADOS** with a firearm, a deadly weapon, but you further find from the evidence that, viewed from the standpoint of the defendant at the time, from the

words or conduct or both of **ALEJANDRO GRANADOS**, it reasonably appeared to the defendant that his life or person was in danger and there was created in his mind a reasonable expectation or fear of death or serious bodily injury from the use of unlawful deadly force at the hands of **ALEJANDRO GRANADOS**, and that acting under such apprehension, he reasonably believed that the use of deadly force on his part was immediately necessary to protect himself against **ALEJANDRO GRANADOS'S** use or attempted use of unlawful deadly force, and he shot the said **ALEJANDRO GRANADOS**, and that a reasonable person in the defendant's situation at that time would not have retreated, then you should acquit the defendant on the grounds of self-defense; or if you have a reasonable doubt as to whether or not the defendant was acting in self-defense on the occasion and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict "not guilty."

Now, if you find from the evidence beyond a reasonable doubt that the defendant, **JOSE CUTBERTO VALLE**, on or about the 7th day of November, A.D., 2011, in the County of Dallas and State of Texas, did cause the death of **ALEJANDRO GRANADOS**, an individual, by shooting **ALEJANDRO GRANADOS** with a firearm, a deadly weapon as alleged in the indictment, but you further find from the evidence, or you have a reasonable doubt thereof, that, viewed from the standpoint of the defendant at the time, from the words or conduct, or both

of ALEJANDRO GRANADOS, it reasonably appeared to defendant that the life or person of SERGIO TERAN was in danger and there was created in defendant's mind a reasonable expectation or fear of SERGIO TERAN's death or serious bodily injury from the use of unlawful deadly force at the hands of ALEJANDRO GRANADOS and that defendant reasonably believed that, under the circumstances then existing, a reasonable person in SERGIO TERAN's situation would not have retreated before using deadly force in his own defense, and that the defendant, acting under such apprehension and reasonably believing that the use of deadly force, by his intervention, on his part was immediately necessary to protect SERGIO TERAN against ALEJANDRO GRANADOS's use or attempted use of unlawful deadly force, and that he, therefore, caused bodily injury to said complainant, then you will find the defendant not guilty, or, if you should have a reasonable doubt as to whether the defendant was acting in defense of SERGIO TERAN on said occasion under such foregoing circumstances, then you should give the defendant the benefit of that doubt and find him "not guilty".

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed offenses, if any, 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 motive, intent, scheme or design, if any, of the defendant, in connection with the offense alleged against him in the indictment and for no other purpose.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a right accorded a defendant, and in the event he elects not to testify, that fact cannot be taken as a circumstance against him.

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

The fact that he has been arrested, confined, or indicted for, or otherwise charged with the offense gives no rise to any inference of guilt at his trial.

To warrant a conviction of the defendant of Capital Murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant, **JOSE CUTBERTO VALLE**, was engaged in the commission or attempted commission of the felony offense of robbery, as defined in this charge, but you also must find that during the commission of the robbery or attempted commission thereof, if any, the defendant, **JOSE CUTBERTO VALLE**, either acting alone or as a party, as that term has been defined, shot Alejandro Granados with the intention of thereby killing him.

Unless you find from the evidence beyond a reasonable doubt that the defendant, either acting alone or as a party, as that term has been defined, on said occasion, specifically intended to kill the said Alejandro Granados, and that such act was committed in the course of committing or attempting to commit the offense of robbery of Alejandro Granados, you cannot convict the defendant, **JOSE CUTBERTO VALLE**, of the offense of Capital Murder.

Now, bearing in mind the foregoing instructions, if you find and believe from the evidence beyond a reasonable doubt that on or about the 7th day of November, 2011, in the County of Dallas and State of Texas, **JOSE CUTBERTO VALLE**, either acting alone or as a party, as that term has been defined, did unlawfully then and there intentionally cause the death of Alejandro Granados, an individual, hereinafter called deceased, by shooting the deceased with a firearm, a deadly weapon, and the defendant was then and there in the course of committing or attempting to commit the offense of robbery of said deceased, then you will find the defendant, **JOSE CUTBERTO VALLE**, guilty of Capital Murder, as charged in the indictment and so say by your verdict.

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 proceed to consider the offense of Murder, as included in the indictment.

Our law provides that a person commits the offense of Murder when he intentionally or knowingly causes the death of an individual or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.

Now, bearing in mind the foregoing instructions, if you find and believe from the evidence beyond a reasonable doubt that on or about the 7th day of November, 2011, in the County of Dallas and State of Texas, **JOSE CUTBERTO VALLE**, either acting alone or as a party, as that term has been defined, did unlawfully then and there intentionally cause the death of Alejandro Granados, an individual, hereinafter called deceased, by shooting the said deceased with a firearm, a deadly weapon, then you will find the defendant, **JOSE CUTBERTO VALLE**, guilty of Murder, as included in the indictment, and so say by your verdict.

If you do not so believe, or if you have a reasonable doubt thereof, then you will acquit the defendant of the offense of Murder and consider next whether the defendant is guilty of the lesser included offense of Manslaughter.

Our law provides that a person commits the offense of Manslaughter if he recklessly causes the death of an individual.

The term "individual" is defined on Page 1 of this Charge and has the same meaning here.

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.

Now, bearing in mind the foregoing instructions, if you find and believe from the evidence beyond a reasonable doubt that on or about the 7th day of November, 2011, in the County of Dallas and State of Texas, **JOSE CUTBERTO VALLE**, either acting alone or as a party, as that term has been defined, did unlawfully then and there recklessly cause the death of Alejandro Granados, an individual, hereinafter called deceased, by shooting the said deceased with a firearm, a deadly weapon, then you will find the defendant, **JOSE CUTBERTO VALLE**, guilty of Manslaughter, as included in the indictment, and so say by your verdict.

If you find from the evidence beyond a reasonable doubt that the defendant is guilty of either Capital Murder or Murder or Manslaughter but you have a doubt as to which offense he is guilty, then you must resolve the doubt in the defendant's favor and find him guilty of the lesser included offense of



Manslaughter.

If you have a reasonable doubt as to whether the defendant is guilty of Capital Murder or Murder or Manslaughter, then you should acquit the defendant and say by your verdict "not guilty".

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

You are further instructed that an indictment is no evidence of guilt. Therefore, you are instructed in this case that the indictment herein shall not be considered by the jury as any evidence of guilt, if any.

At times 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 inference from her. 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 in 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 fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion upon any matter of fact in this case, 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, you must wholly disregard it.

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

After you retire to the jury room, you will select one of your members as foreperson. It is the foreperson'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 hereto, and signing the same as foreperson.

After you retire to consider your verdict, no one has any authority to

communicate with you except the officer who has you in charge. During your deliberations in this case, you must neither consider, discuss, nor relate any matters not in evidence before you. You should neither 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.

After you have retired, you may communicate with this Court in writing through the bailiff who has you in charge. Your written communication must be signed by the foreperson. Do not attempt to talk to the bailiff, the attorneys, or the Court regarding any question you may have concerning the trial of this case.

After you have reached a unanimous verdict or if you desire to communicate with the Court, please use the jury call button on the wall and one of the bailiffs will respond.


*Gracie Lewis*

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**HONORABLE GRACIE LEWIS, JUDGE  
CRIMINAL DISTRICT COURT NO. 3  
DALLAS COUNTY, TEXAS**

**VERDICT FORM**

We, the jury, find the defendant, JOSE CUTBERTO VALLE, guilty of the offense of Capital Murder, as charged in the indictment.

  
\_\_\_\_\_  
FOREPERSON  
  
James Dillin  
\_\_\_\_\_  
(Printed Name of Foreperson)

- OR -

We, the jury, find the defendant, JOSE CUTBERTO VALLE, guilty of the offense of Murder, as included in the indictment.

\_\_\_\_\_  
FOREPERSON  
  
\_\_\_\_\_  
(Printed Name of Foreperson)

- OR -

We, the jury, find the defendant, JOSE CUTBERTO VALLE, guilty of the offense of Manslaughter, as included in the indictment.

\_\_\_\_\_  
FOREPERSON  
  
\_\_\_\_\_  
(Printed Name of Foreperson)  
-OR-

We, the jury, find the defendant, JOSE CUTBERTO VALLE, not guilty.

\_\_\_\_\_  
FOREPERSON  
  
\_\_\_\_\_  
(Printed Name of Foreperson)