

P12

CAUSE NO. 1335606

THE STATE OF TEXAS § IN THE 262ND DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
JOSE JULIAN SANCHEZ § JANUARY TERM, A. D., 2013

Members of the Jury:

The defendant, Jose Julian Sanchez, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 29th day of January, 2012, in Harris County, Texas. The defendant has pleaded not guilty.

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

A person commits the offense of capital murder if he commits murder, as hereinbefore defined, and the person intentionally or knowingly causes the death of more than one person during the same criminal transaction.

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

"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.

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.

You are instructed that it is your duty to consider the evidence of all relevant facts and circumstances surrounding the

RECORDER'S MEMORANDUM
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deaths and the previous relationship, if any, existing between the accused and Eliazar Valenzuela and the accused and Abram Vallejo together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the alleged offense.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 29th day of January, 2012, in Harris County, Texas, the defendant, Jose Julian Sanchez, did then and there unlawfully, during the same criminal transaction, intentionally or knowingly cause the death of Eliazar Valenzuela by shooting Eliazar Valenzuela with a deadly weapon, namely a firearm, and intentionally or knowingly cause the death of Abram Vallejo, by shooting Abram Vallejo with a deadly weapon, namely, a firearm, then you will find the defendant guilty of 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 and say by your verdict "Not Guilty."

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Upon the law of self-defense, you are instructed that a person is justified in using force against another when and to the degree he reasonably believed 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.

A person is justified in using deadly force against another if he would be justified in using force against the other in the first place, as above set out, and when he reasonably believes that such deadly force is immediately necessary:

- (1) to protect himself against the other person's use or attempted use of unlawful deadly force, or
- (2) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

The defendant's belief that the force was immediately necessary is presumed to be reasonable if the defendant:

- (1) knew or had reason to believe that the person against whom the force was used:
 - (a) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the defendant's habitation, vehicle, or place of business or employment; or
 - (b) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the defendant from the defendant's habitation, vehicle, or place of business or employment; or
 - (c) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

X (2) did not provoke the person against whom the force was used; and

X (3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

With regard to the presumption of the necessity of deadly force, you are further instructed that:

- (1) the presumption applies unless the state proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist;
- (2) if the state fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed fact exists;
- (3) even though the jury may find that the presumed fact does not exist, the state must prove beyond a reasonable doubt each of the elements of the offense charged; and
- (4) if the jury has a reasonable doubt as to whether the presumed fact exists, the presumption applies and the jury must consider the presumed fact to exist.

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 defendant failed to retreat.

By the term "reasonable belief" as used herein 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" as used herein is meant force that is intended or known by the persons 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.

In determining the existence of real or apparent danger, you should consider all the facts and circumstances in evidence before you, all relevant facts and circumstances surrounding the offense, if any, the previous relationship existing between the defendant and Eliazar Valenzuela and/or Abram Vallejo, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the offense, and, in considering such circumstances, you should place yourselves in the defendant's position at that time and view them from his standpoint alone.

Therefore, if you find from the evidence beyond a reasonable doubt that the defendant, Jose Julian Sanchez, did shoot Eliazar Valenzuela and/or Abram Vallejo, as alleged, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct, or both of Eliazar Valenzuela and/or Abram Vallejo, 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 Eliazar Valenzuela and/or Abram Vallejo, and that acting under such apprehension and reasonably believing that the use of deadly force on his part was immediately necessary to protect himself against Eliazar Valenzuela's and/or Abram Vallejo's use or attempted use of unlawful deadly force, he shot Eliazar Valenzuela and/or Abram Vallejo, 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 said occasion and under the circumstances, then

you should give the defendant the benefit of that doubt and say by your verdict, not guilty.

If you find from the evidence beyond a reasonable doubt that at the time and place in question the defendant did not reasonably believe that he was in danger of death or serious bodily injury, or that the defendant, under the circumstances as viewed by him from his standpoint at the time, did not reasonably believe that the degree of force actually used by him was immediately necessary to protect himself against Eliazar Valenzuela's and/or Abram Vallejo's use or attempted use of unlawful deadly force, then you should find against the defendant on the issue of self-defense.

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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 a third person(s) he seeks to protect, and he reasonably believes that his intervention is immediately necessary to protect the third person(s).

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.

A person is justified in using deadly force against another if he would be justified in using force against the other in the first place, as above set out, and when he reasonably believes that such deadly force is immediately necessary to protect himself or a third person(s) 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 the deadly force is used is not required to retreat before using deadly force. You are not to consider whether the defendant failed to retreat.

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

In determining the existence of real or apparent danger, you should consider all the facts and circumstances in the case in evidence before you, the previous relationship existing between the parties, if any, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the occurrence in question, and in considering such circumstances, you should place yourselves in the defendant's position at that time and view them from his standpoint alone.

Therefore, if you find from the evidence beyond a reasonable doubt that the defendant, Jose Julian Sanchez, did shoot Eliazar Valenzuela and/or Abram Vallejo, as alleged, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct, or both of Eliazar Valenzuela and/or Abram Vallejo, it reasonably appeared to the defendant that the life or person of Mailey Lon and/or Leah Sanchez was in danger and there was created in the defendant's mind a reasonable expectation or fear of death or serious bodily injury to Mailey Lon and/or Leah Sanchez from the use of

unlawful deadly force at the hands of Eliazar Valenzuela and/or Abram Vallejo, and that acting under such apprehension and reasonably believing that the use of deadly force on his part was immediately necessary to protect Mailey Lon and/or Leah Sanchez against Eliazar Valenzuela's and/or Abram Vallejo's use or attempted use of unlawful deadly force, he shot Eliazar Valenzuela and/or Abram Vallejo, then you should acquit the defendant on the grounds of defense of a third person(s); or if you have a reasonable doubt as to whether or not the defendant was acting in defense of Mailey Lon and/or Leah Sanchez on said occasion and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict, not guilty.

If you find from the evidence beyond a reasonable doubt that at the time and place in question the defendant did not reasonably believe that Mailey Lon and/or Leah Sanchez was in danger of death or serious bodily injury, or that the defendant, under the circumstances as viewed by him from his standpoint at the time, did not reasonably believe that the degree of force actually used by him was immediately necessary to protect Mailey Lon and/or Leah Sanchez against Eliazar Valenzuela's and/or Abram Vallejo's use or attempted use of unlawful deadly force, then you should find against the defendant on the issue of defense of a third person.

IV

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 question 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.

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 he 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.

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 by your verdict "Not Guilty."

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.

After you retire to the jury room, you should select one of your members as your Foreperson. It is his or her duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by

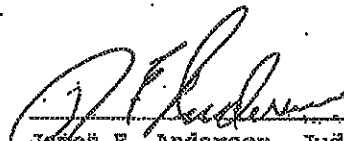
using the appropriate form attached hereto and signing the same as Foreperson.

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.

No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written, prepared and signed by the Foreperson and shall be submitted to the court through this officer. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the Court, or anyone else concerning any questions you may have.

Your sole duty at this time is to determine the guilt or innocence of the defendant under the indictment in this cause and restrict your deliberations solely to the issue of guilt or innocence of the defendant.

Following the arguments of counsel, you will retire to consider your verdict.


James E. Anderson, Judge Presiding
262nd District Court
Harris County, TEXAS

3/14/13

FILED

Chris Daniel
District Clerk

MAR 14 2013

Time: 11:23 AM

By: [Signature]

CAUSE NO. 1335606

THE STATE OF TEXAS
VS.
JOSE JULIAN SANCHEZ

§ IN THE 252ND DISTRICT COURT
§ OF HARRIS COUNTY, TEXAS
§ JANUARY TERM, A. D., 2013

VERDICT

"We, the Jury, find the defendant, Jose Julian Sanchez, not guilty."

Foreperson of the Jury

(Please Print) Foreperson

"We, the Jury, find the defendant, Jose Julian Sanchez, guilty of capital murder, as charged in the indictment,"

Carol Heller
Foreperson of the Jury

Carol Heller
(Please Print) Foreperson

FILED

Chris Dahl
District Clerk

MAR 14 2013

Time: _____
Harris County, Texas

By: _____
Deputy