

THE STATE OF TEXAS
VS
ADRIAN CASAS SANDOVAL

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IN THE 93RD DISTRICT COURT
OF
HIDALGO COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, ADRIAN CASAS SANDOVAL, stands charged by indictment with the offense of CAPITAL MURDER, alleged to have been committed in Hidalgo County, Texas, on or about SEPTEMBER 11, 2006, and to this charge the Defendant has pled, "Not guilty."

1.

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

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

A person commits the offense of Capital Murder when such person intentionally commits the Murder in the course of committing or attempting to commit the offense of Robbery.

2.

A person commits the offense of Robbery if, in the course of committing theft, and with intent to obtain or maintain control of the property, he intentionally, knowingly, or recklessly, causes bodily injury to another.

"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, including death.

"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.

"Theft" as used herein is the unlawful appropriation of the corporeal personal property of another, with the intent to deprive such other person of said property.

"Appropriation" and **"appropriate,"** as those terms are used herein, mean 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 represent or embody anything of value.

"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 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.

3.

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.

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.

4.

A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the Defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

5.

Now, if you find from the evidence beyond a reasonable doubt that on or about SEPTEMBER 11, 2006, in Hidalgo County, Texas, the Defendant, ADRIAN CASAS SANDOVAL, did then and there intentionally cause the death of an individual, namely, Fernando Villasenor, by hitting him with a pipe, and the Defendant was then and there in the course of committing or attempting to commit the offense of Robbery of Fernando Villasenor, then you will find the Defendant guilty of the offense of Capital Murder.

OR

If you find from the evidence beyond a reasonable doubt that on or about SEPTEMBER 11, 2006, in Hidalgo County, Texas, the Defendant, ADRIAN CASAS ANDOVAL, did then and there intentionally cause the death of an individual, namely, FERNANDO VILLASENOR, by hitting him with an object unknown to the Grand Jurors, and the Defendant was then and there in the course of committing or attempting to commit the offense of Robbery of FERNANDO VILLASENOR, then you will find the Defendant guilty of the offense of Capital Murder.

Unless you find beyond a reasonable doubt that the Defendant is guilty of Capital Murder, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Capital Murder.

6.

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.

The mere presence of the Defendant, ADRIAN CASAS SANDOVAL, at the scene of the alleged offense, if any, alone by itself, would not constitute him a party to the offense.

7.

To warrant a conviction of the Defendant for the offense of Capital Murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the Defendant was engaged in the commission or attempted commission of the robbery, if any; but also that the Defendant hit Fernando Villasenor with a pipe or with an object unknown to the grand jurors with the intention of

thereby killing Fernando Villasenor; or the Defendant knew of the intent of Luis Gomez to hit Fernando Villasenor with a pipe or with an object unknown to the grand jurors during the course of committing or attempting to commit the Robbery of Fernando Villasenor and thereby kill Fernando Villasenor; and with intent to promote or assist the commission of such offense by Luis Gomez, the Defendant encouraged, directed, aided or attempted to aid Luis Gomez to kill Fernando Villasenor.

8.

Now, if you find from the evidence beyond a reasonable doubt that on or about September 11, 2006, in Hidalgo County, Texas, Luis Gomez did then and there intentionally cause the death of an individual, namely Fernando Villasenor; by hitting him with a pipe; and the said Luis Gomez was then and there in the course of committing or attempting to commit the offense of Robbery of Fernando Villasenor; and that the Defendant, ADRIAN CASAS SANDOVAL, then and there knew of the intent, if any, of the said Luis Gomez to kill Fernando Villasenor by hitting him with a pipe; and that the Defendant acted with intent to promote or assist the commission of the offense by Luis Gomez by aiding or attempting to aid Luis Gomez to commit the offense of Capital Murder, then you will find the Defendant guilty of the offense of Capital Murder.

OR

If you find from the evidence beyond a reasonable doubt that on or about September 11, 2006, in Hidalgo County, Texas, Luis Gomez did then and there intentionally cause the death of an individual, namely Fernando Villasenor; by hitting him with an object unknown to the Grand Jurors; and the said Luis Gomez was then and there in the course of committing or attempting to commit the offense of Robbery of Fernando Villasenor; and that the Defendant, ADRIAN CASAS SANDOVAL, then and there knew of the intent, if any, of the said Luis Gomez to kill Fernando Villasenor by hitting him with an object unknown to the Grand Jurors; and that the Defendant acted with intent to promote or assist the

commission of the offense by Luis Gomez by aiding or attempting to aid Luis Gomez to commit the offense of Capital Murder, then you will find the Defendant Guilty of the offense of Capital Murder.

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

9.

You are instructed that to convict the Defendant, ADRIAN CASAS SANDOVAL, of the lesser offense of Murder in this case, you must find from the evidence beyond a reasonable doubt that Adrian Sandoval intentionally or knowingly hit Fernando Villasenor with a pipe or with an object unknown to the grand jurors, that such act was clearly dangerous to human life, and that such act caused the death of Fernando Villasenor; or you must find from the evidence beyond a reasonable doubt that the Defendant, with intent to promote or assist the commission of such offense by Luis Gomez, encouraged, directed, aided or attempted to aid Luis Gomez to Murder Fernando Villasenor by an act clearly dangerous to human life, to wit: hitting him with a pipe or with an object unknown to the grand jurors, and that such act caused the death of Fernando Villasenor.

10.

Now, if you find from the evidence beyond a reasonable doubt that on or about SEPTEMBER 11, 2006, in Hidalgo County, Texas, the Defendant, ADRIAN CASAS SANDOVAL, intending to cause serious bodily injury to Fernando Villasenor; did then and there commit an act clearly dangerous to human life, to wit: hitting him with a pipe; and the said act that caused the death of Fernando Villasenor, then you will find the Defendant Guilty of the lesser offense of Murder.

OR

If you find from the evidence beyond a reasonable doubt that on or about SEPTEMBER 11, 2006;

in Hidalgo County, Texas, the Defendant, ADRIAN CASAS SANDOVAL, intending to cause serious bodily injury to Fernando Villasenor; did then and there commit an act clearly dangerous to human life, to wit: hitting him with an object unknown to the grand jurors; and the said act caused the death of Fernando Villasenor, then you will find the Defendant Guilty of the lesser offense of Murder.

OR

If you find from the evidence beyond a reasonable doubt that on or about SEPTEMBER 11, 2006, in Hidalgo County, Texas, LUIS GOMEZ, intending to cause serious bodily injury to Fernando Villasenor, commit an act clearly dangerous to human life, to wit: hitting him with a pipe; and that the said act caused the death of Fernando Villasenor, and that the Defendant, ADRIAN CASAS SANDOVAL, then and there knew of the intent, if any, of the said LUIS GOMEZ to commit such act, and the Defendant acted with intent to promote or assist the commission of the offense by LUIS GOMEZ by aiding or attempting to aid LUIS GOMEZ to commit the offense of Murder, then you will find the Defendant Guilty of the lesser offense of Murder.

OR

If you find from the evidence beyond a reasonable doubt that on or about SEPTEMBER 11, 2006, in Hidalgo County, Texas, LUIS GOMEZ, intending to cause serious bodily injury to Fernando Villasenor, commit an act clearly dangerous to human life, to wit: hitting him with an object unknown to the Grand Jurors; and that the said act caused the death of Fernando Villasenor, and that the Defendant, ADRIAN CASAS SANDOVAL, then and there knew of the intent, if any, of the said LUIS GOMEZ to commit such act, and the Defendant acted with intent to promote or assist the commission of the offense by LUIS GOMEZ by aiding or attempting to aid LUIS GOMEZ to commit the offense of Murder, then you will find the Defendant Guilty of the lesser offense of Murder.

Unless you so find beyond a reasonable doubt that the Defendant is guilty of Murder as a lesser

offense of Capital Murder; or if you have a reasonable doubt thereof, you will acquit the Defendant of Murder and next consider if the Defendant is guilty of the lesser offense of Manslaughter.

You are instructed that if you find from the evidence beyond a reasonable doubt that the Defendant is guilty of ^{Either A} Capital Murder or of Murder under these instructions, but you have a reasonable doubt as to of which offense he is guilty, then you should resolve that doubt in the favor of the Defendant and, in such event, you will find the Defendant Guilty of the lesser offense of Murder.

11.

You are instructed that to convict the Defendant, ADRIAN CASAS SANDOVAL, of the lesser offense of Manslaughter in this case, you must find from the evidence beyond a reasonable doubt that ^{SANDOVAL} Adrian Casas recklessly cause the death of Fernando Villasenor by hitting him with a pipe or with an object unknown to the grand jurors; or you must find from the evidence beyond a reasonable doubt that the Defendant, with intent to promote or assist the commission of such offense by Luis Gomez, encouraged, directed, aided or attempted to aid Luis Gomez to commit Manslaughter against Fernando Villasenor by hitting him with a pipe or with an object unknown to the grand jurors.

12.

Now if you find from the evidence beyond a reasonable doubt that on or about September 11, 2006, in Hidalgo County, Texas, the Defendant, ADRIAN CASAS SANDOVAL, did then and there recklessly cause the death of Fernando Villasenor by hitting him with a pipe, then you will find the Defendant Guilty of Manslaughter;

OR

if you find from the evidence beyond a reasonable doubt that on or about September 11, 2006, in

Hidalgo County, Texas, the Defendant, ADRIAN CASAS SANDOVAL, did then and there recklessly cause the death of Fernando Villasenor by hitting him with an object unknown to the grand jurors , then you will find the Defendant Guilty of Manslaughter;

OR

If you find from the evidence beyond a reasonable doubt that on or about SEPTEMBER 11, 2006, in Hidalgo County, Texas, LUIS GOMEZ recklessly caused the death of Fernando Villasenor by hitting him with a pipe; and that the Defendant, ADRIAN CASAS SANDOVAL, then and there consciously disregarded a substantial and unjustifiable risk that the death of Fernando Villasenor would occur; and that the Defendant acted with intent to promote or assist the commission of the offense by LUIS GOMEZ^{IF ANY} by aiding or attempting to aid LUIS GOMEZ to commit the offense of Manslaughter, then you will find the Defendant Guilty of the lesser offense of Manslaughter;

OR

If you find from the evidence beyond a reasonable doubt that on or about SEPTEMBER 11, 2006, in Hidalgo County, Texas, LUIS GOMEZ recklessly caused the death of Fernando Villasenor by hitting him with an object unknown to the grand jurors; and that the Defendant, ADRIAN CASAS SANDOVAL, then and there consciously disregarded a substantial and unjustifiable risk that the death of Fernando Villasenor would occur; and that the Defendant acted with intent to promote or assist the commission of the offense by LUIS GOMEZ by aiding or attempting to aid LUIS GOMEZ to commit the offense of Manslaughter, then you will find the Defendant Guilty of the lesser offense of Manslaughter.

If you do not find from the evidence beyond a reasonable doubt that the Defendant is guilty of Capital Murder or of Murder or of Manslaughter, or if you have a reasonable doubt thereof, you will acquit the Defendant and say by your verdict 'Not Guilty.'

You are instructed that if you find from the evidence beyond a reasonable doubt that the

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Defendant is guilty of Murder or of Manslaughter under these instructions, but you have a reasonable doubt as to of which offense he is guilty, then you should resolve that doubt in the favor of the Defendant and, in such event, you will find the Defendant Guilty of the lesser offense of Manslaughter.

13.

You are 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 ^AOFFENSE in question, if any.

14.

You are instructed unless you believe from the evidence beyond a reasonable doubt that the alleged confession or statement introduced into evidence was freely and voluntarily made by the Defendant without compulsion or persuasion, or if you have a reasonable doubt thereof, you shall not consider such alleged statement or confession for any purpose nor any evidence obtained as a result thereof.

15.

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.

16.

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.

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.

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".

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.

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.

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.

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.

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 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.

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.

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 officer of the Court.

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

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 this the 2ND day of APRIL, 20 07, at 2:00 o'clock P.m.


FIDENCIO M. GUERRA, JR.
JUDGE PRESIDING
93RD DISTRICT COURT
HIDALGO COUNTY, TEXAS