

CASE NO. CR-0064-15-C (COUNT ONE)

THE STATE OF TEXAS
VS
SANDY PEREZ HERNANDEZ

§
§
§

IN THE 139TH DISTRICT COURT
OF
HIDALGO COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, SANDY PEREZ HERNANDEZ, stands charged by indictment with the offense of Capital Murder alleged to have been committed in Hidalgo County, Texas, on or about October 17, 2014, and to this charge the Defendant has pleaded not guilty.

1.

Our law provides that 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 when such person commits the murder, if any, to an individual under ten years of age.

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

A person commits the offense of Criminally Negligent Homicide if he causes the death of an individual by criminal negligence.

2.

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

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 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 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.

A person acts with criminal negligence, or is criminally negligent, with respect to the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that the failure to perceive it 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.

Now, if you find from the evidence beyond a reasonable doubt that on or about October 17, 2014, in Hidalgo County, Texas, the Defendant, SANDY PEREZ HERNANDEZ, did intentionally or knowingly cause the death of an individual, namely, Joel Lionel Jimenez, an individual younger than 10 years of age, by manner and means unknown or unknowable to the grand jurors, or by striking him against an object unknown to the grand jurors, or by striking him with an object unknown to the grand jurors, then you will find the Defendant guilty of CAPITAL MURDER,

Unless you unanimously so find from the evidence beyond a reasonable doubt, or if you are unable to agree, you will next consider, the lesser included offense of MANSLAUGHTER.

5.

Now, if you find from the evidence beyond a reasonable doubt that on or about October 17, 2014, in Hidalgo County, Texas, the Defendant, SANDY PEREZ HERNANDEZ, did recklessly cause the death of Joel Lionel Jimenez by manner and means unknown or unknowable to the grand jurors, or by striking him against an object unknown to the grand jurors, or by striking him with an object unknown to the grand jurors, then you will find the Defendant guilty of MANSLAUGHTER,

Unless you unanimously so find from the evidence beyond a reasonable doubt, or if you are unable to agree, you will next consider, the lesser included offense of CRIMINALLY NEGLIGENT HOMICIDE.

6.

Now, if you find from the evidence beyond a reasonable doubt that on or about October 17, 2014, in Hidalgo County, Texas, the Defendant, SANDY PEREZ HERNANDEZ, did negligently cause the death of Joel Lionel Jimenez by manner and means unknown or unknowable to the grand jurors, or by striking him against an object unknown to the grand jurors, or by striking him with an object unknown to the grand jurors, then you will find the Defendant guilty of CRIMINALLY NEGLIGENT HOMICIDE,

Unless you unanimously so find from the evidence beyond a reasonable doubt, you will acquit the Defendant of the lesser included offense of CRIMINALLY NEGLIGENT HOMICIDE and say by your verdict "Not guilty."

7.

You are instructed that the Defendant may be convicted of only one of the offenses defined in these instructions, to wit: Capital Murder, Manslaughter, or Criminally Negligent Homicide and that the Defendant can be convicted only as to that offense, if any, which is proved beyond a reasonable doubt.

8.

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 offense in question, if any.

9.

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.

10.

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, 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 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. 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.

Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube or Twitter, to communicate with anyone any information about this case or to conduct any research about this case until I accept your 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.

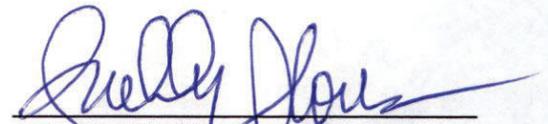
While you are deliberating, no one has authority to communicate with you except the officer who has you in charge being the Bailiff. However, after you have retired, you may communicate with the Court as to any questions you may have, but that communication must be in writing through the officer of the 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 16th day of September, 20 16, at 10:15 o'clock A.m.



J.R. "BOBBY" FLORES
JUDGE PRESIDING
139TH DISTRICT COURT
HIDALGO COUNTY, TEXAS

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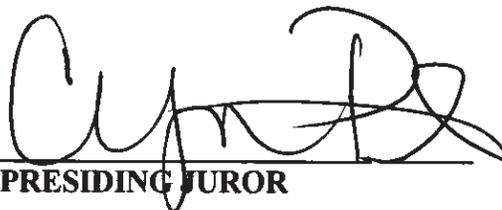
JURY VERDICT

We, the Jury, find the Defendant, SANDY PEREZ HERNANDEZ, GUILTY of the offense of CAPITAL MURDER.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, SANDY PEREZ HERNANDEZ, GUILTY of the lesser included offense of MANSLAUGHTER.



PRESIDING JUROR

OR

We, the Jury, find the Defendant, SANDY PEREZ HERNANDEZ, GUILTY of the lesser included offense of CRIMINALLY NEGLIGENT HOMICIDE.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, SANDY PEREZ HERNANDEZ, NOT GUILTY.

PRESIDING JUROR