

FILED

CASE NO. CR-5763-09-E (COUNT TWO)

AT 1:00 O'CLOCK 4 M

THE STATE OF TEXAS
VS
RAY VINCENT VALLEJO

§
§
§
CHARGE OF THE COURT

IN THE 275TH DISTRICT COURT
OF
LAURA HINOJOSA, CLERK
HIDALGO COUNTY, TEXAS
By [Signature] Deputy

MAR 02 2011

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, RAY VINCENT VALLEJO, stands charged by indictment with the offense of Attempted Capital Murder alleged to have been committed on or about JUNE 21, 2009, in Hidalgo County, Texas. To this charge, the Defendant has pleaded not guilty.

1.

You are instructed that our law provides that a person commits the offense of Capital Murder if he intentionally or knowingly 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 an offense, if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends, but fails, to effect the commission of the offense intended. This is an attempt to commit an offense.

3.

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.

A person commits the offense of Aggravated Robbery if he commits Robbery as defined above and he uses or exhibits a deadly weapon.

"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.

Deadly Weapon means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or seriously bodily injury;

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, including death.

"Deprive" as used herein means to withhold property from the owner permanently.

"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.

4.

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.

A person acts knowingly, or with knowledge, with respect to the nature of his conduct when he is aware of the nature of his conduct. 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 the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that 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 is criminally responsible if the result would not have occurred but for his conduct.

5.

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. Mere presence alone will not constitute one a party to an offense.

6.

Now if you find from the evidence beyond a reasonable doubt that on or about JUNE 21, 2009, in Hidalgo County, Texas, the Defendant, RAY VINCENT VALLEJO, did then and there with the specific intent to commit the offense capital murder of more than one person during the same criminal transaction, to do act, to-wit shot DONNA LEE BOCANEGRA and MANUELA BOCANEGRA with a firearm, said act amounting to more than mere preparation that tended but failed to effect the commission of the offense;

OR

If you find from the evidence beyond a reasonable doubt that on or about JUNE 21, 2009, in Hidalgo County, Texas, LIONZO CANTU, did then and there with the specific intent to commit the offense capital murder of more than one person during the same criminal transaction, to do an act, to-wit: shot DONNA LEE BOCANEGRA and MANUELA BOCANEGRA with a firearm, said act amounting to more than mere preparation that tended but failed to effect the commission of the offense, and that the Defendant, RAY VINCENT VALLEJO, then and there knew of the intent, if any, of the said LIONZO CANTU to shoot the said MANUELA BOCANEGRA, and the Defendant RAY VINCENT VALLEJO acted with intent to promote or assist the commission of the offense by LIONZO CANTU by encouraging, directing, aiding or attempting to aid LIONZO CANTU to commit the offense of attempting to cause the death of MANUELA BOCANEGRA, then you will find the Defendant, RAY VINCENT VALLEJO, guilty of Attempted Capital Murder as charged in the indictment.

7.

You are instructed that an intent to kill is an essential element of the offense of attempt to commit capital murder, and, unless you find from the evidence beyond a reasonable doubt that at the time the Defendant shot MANUELA BOCANEGRA, if he did, the Defendant RAY VINCENT VALLEJO had the specific intent then and there to cause the death of MANUELA BOCANEGRA, or if you have a reasonable doubt as to whether he had the specific intent to so cause the death of the said MANUELA BOCANEGRA, you cannot convict the Defendant of Attempted Capital Murder. In such event of a reasonable doubt thereof, you will acquit the Defendant of Attempted Capital Murder, and say by your verdict not guilty.

8.

You are further instructed that you may consider all relevant facts and circumstances surrounding the alleged attempted killing, if any, and the previous relationship existing between the accused and MANUELA BOCANEGRA, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense alleged in the indictment.

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, 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.

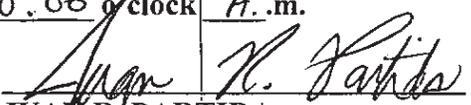
While you are deliberating, no one has authority to communicate with you except the officer who has you in charge, that being the Bailiff. However, after you have retired, you may communicate with the Court as to any questions you may have, but that communication must be in writing through the officer 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 the 2nd of March, 2011, at 10:00 o'clock A..m.


JUAN R. PARTIDA
JUDGE PRESIDING
275TH DISTRICT COURT
HIDALGO COUNTY, TEXAS