

Case No. CR-1498-14-J  
(COUNT ONE)

**FILED**

AT 10:40 O'CLOCK A M

OCT 22 2014

IN THE DISTRICT COURT

LAURA HINOJOSA, CLERK

430<sup>TH</sup> District Court, Hidalgo County

By [Signature] Deputy #21

JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

THE STATE OF TEXAS

§  
§  
§  
§  
§

v.

GILBERTO DE JESUS LOPEZ VALDEZ

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, Gilberto De Jesus Lopez Valdez, stands charged in Count One of the indictment with the offense of Attempted Capital Murder, alleged to have been committed in Hidalgo County, Texas, on or about November 27, 2013. 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 if he intentionally commits the murder in the course of committing or attempting to committing robbery.

A person commits the offense of criminal attempt to commit capital murder if with specific intent to commit the offense of capital murder, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

2.

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 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.

3.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

4.

You are instructed that the Court has admitted testimony before you in this case regarding the Defendant's having committed offenses 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 offense, if any were committed, and even then, you may only consider the same in determining the intent, if any, or the state of mind, if any, of the Defendant or proof of motive, opportunity, preparation, plan, knowledge, identity in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

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 believe from the evidence beyond a reasonable doubt that on or about November 27, 2013, in Hidalgo County, Texas, the Defendant, Gilberto De Jesus Lopez Valdez, did then and there, with the specific intent to commit the offense of capital murder during the course of the robbery of Ivan De Jesus Garcia, do an act, to-wit: shooting a firearm at or in the direction of the said Ivan De Jesus Garcia, which amounted to more than mere preparation that tended but failed to effect the commission of the offense intended, then you will find the Defendant, Gilberto De Jesus Lopez Valdez, guilty of the offense of Attempted Capital Murder, as charged in Count One of the indictment. Unless you so find, or if you have a reasonable doubt thereof, you will acquit the Defendant, Gilberto De Jesus Lopez Valdez, of Attempted Capital Murder as charged in Count One of the indictment and next consider whether he is guilty of the lesser offense of Aggravated Assault.

7.

Our law provides that a person commits an assault if the person intentionally or knowingly causes bodily injury to another.

A person commits aggravated assault if the person uses or exhibits a deadly weapon during the commission of the assault.

8.

If you find from the evidence beyond a reasonable doubt that on or about November 27, 2013, in Hidalgo County, Texas, the Defendant Gilberto De Jesus Lopez Valdez did intentionally or knowingly cause bodily injury to Ivan De Jesus Garcia, the victim, and he used or exhibited a deadly weapon, then you will find the Defendant, Gilberto De Jesus Lopez Valdez guilty of the lesser offense of Aggravated Assault. Unless you so find beyond a reasonable doubt thereof, or if you have a reasonable doubt thereof, you will acquit the Defendant of the lesser offense of Aggravated Assault and say by your verdict "Not Guilty."

9.

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.

10.

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.

11.

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".

12.

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.

**13.**

**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.**

**14.**

**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.**

**15.**

**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.**

**16.**

**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.**

17.

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.

18.

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.

19.

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

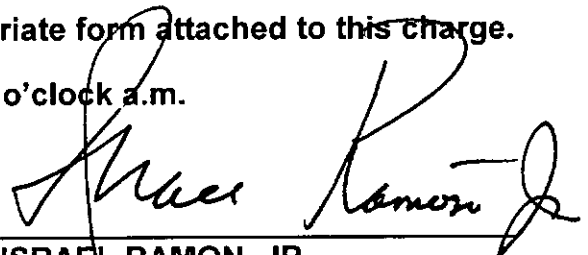
20.

Do not let bias, prejudice, or sympathy play any part in your deliberations.

21.

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 22<sup>nd</sup> day of October, 2014 at 10:40 o'clock a.m.



ISRAEL RAMON, JR.  
JUDGE PRESIDING  
430TH DISTRICT COURT  
HIDALGO COUNTY, TEXAS

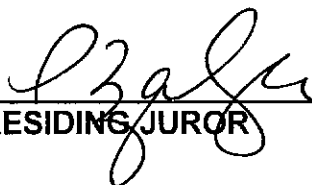
Case No. CR-1498-14-J

(Count One)

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
v.	§	430 <sup>TH</sup> JUDICIAL DISTRICT
GILBERTO DE JESUS LOPEZ VALDEZ	§	HIDALGO COUNTY, TEXAS

FORMS OF VERDICT

We, the Jury, find the Defendant, Gilberto De Jesus Lopez Valdez, GUILTY of the offense of Attempted Capital Murder, as charged in Count One of the indictment.

  
\_\_\_\_\_  
PRESIDING JUROR

OR

We, the Jury, find the Defendant, Gilberto De Jesus Lopez Valdez, guilty of the lesser offense of Aggravated Assault.

\_\_\_\_\_  
PRESIDING JUROR

OR

We, the Jury, find the Defendant, Gilberto De Jesus Lopez Valdez, NOT GUILTY.

\_\_\_\_\_  
PRESIDING JUROR

(Count One)

THE STATE OF TEXAS                    §        IN THE DISTRICT COURT  
v.    §        430<sup>TH</sup> JUDICIAL DISTRICT  
GILBERTO DE JESUS LOPEZ VALDEZ   §        HIDALGO COUNTY, TEXAS

SPECIAL ISSUE NUMBER ONE

“Deadly Weapon” means:

(A) A firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or seriously bodily injury;

(B) Anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

If you find beyond a reasonable doubt that the Defendant, Gilberto De Jesus Lopez Valdez, used or exhibited a deadly weapon during the commission of the offense, if any, then you will answer yes to Special Issue Number One. If you do not so find, or you have a reasonable doubt thereof, you will answer no to Special Issue Number One.

ANSWER “YES” or “NO.”

ANSWER:     yes    

  
\_\_\_\_\_  
PRESIDING JUROR