

FILED

Case No. CR-2109-16-J

AT 10:05 O'CLOCK A M

THE STATE OF TEXAS

§

IN THE DISTRICT COURT JUN 23 2017

v.

§

430TH JUDICIAL DISTRICT, CLERK

ADALBERTO MOSQUEDA GUARDADO

§

HIDALGO COUNTY, TEXAS Deputy#32

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, Adalberto Mosqueda Guardado, stands charged by indictment with the offense of CAPITAL MURDER, alleged to have been committed in Hidalgo County, Texas, on or about the 6th day of April, 2016. 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 murder as defined above in the course of committing or attempting to commit kidnapping.

A person commits the offense of Aggravated Kidnapping if he intentionally or knowingly abducts another person and uses or exhibits a deadly weapon during the commission of the offense.

A person commits the offense of kidnapping if he intentionally or knowingly abducts another person.

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

2.

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 the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to the result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

“Abduct” means to restrain a person with intent to prevent his liberation by: (a) secreting or holding him in a place where he is not likely to be found; or (b) using or threatening to use deadly force.

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

“Firearm” means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or

burning substance or any device readily convertible to that use.

3.

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.

If, in an attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy. Capital Murder, Murder and Kidnapping are felonies.

"Conspiracy" as used in these instructions, means an agreement between two or more persons, with intent that a felony be committed, that they, or one or more of them, engage in conduct that would constitute the offense. An agreement constituting a conspiracy may be written or oral, and express or

inferred from acts of the parties.

4.

You are instructed that under our law, a confession or statement of a defendant made in a language that he can read or understand while the defendant was in jail or other place of confinement or in the custody of an officer shall be admissible in evidence if it appears that the same was freely and voluntarily made, without compulsion or persuasion, provided, however, that it be made in writing and signed by the accused, in a language that he can read or understand and shows that the accused has been warned prior to making such statement or confession, by the person to whom the same is made that (1) he has the right to remain silent and not make any statement at all and that any statement he makes may be used against him at his trial; (2) any statement he makes may be used as evidence against him in court; (3) he has the right to have a lawyer present to advise him prior to and during any questioning; (4) he may have his own lawyer, or, if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning; and (5) he has the right to terminate the interview or questioning at any time.

So, in this case, if you find from the evidence, or if you have a reasonable doubt thereof, that prior to the time the defendant gave the alleged statement or confession to Investigator Javier Vargas, in a language that he can read or

understand, if he did give it, the said Investigator Javier Vargas did not warn the defendant in the respects just outlined, or as to any one of such requirements just outlined, then you will wholly disregard the alleged statement or confession and not consider it for any purpose nor any evidence obtained as a result thereof. If, however, you find beyond a reasonable doubt that the aforementioned warnings were given to the defendant prior to his having made such statement, if he did make it, still, before you may consider such statement as evidence in this case, you must find from the evidence beyond a reasonable doubt that prior to and during such statement, if any, the defendant knowingly, intelligently and voluntarily waived the rights hereinabove set out in the said warnings and unless you so find, or if you have a reasonable doubt thereof, you will not consider the statement or confession for any purpose whatsoever or any evidence obtained as a result of same.

5.

Now, if you believe from the evidence beyond a reasonable doubt that on or about the 6th day of April A.D. 2016, in Hidalgo County, Texas, the Defendant Adalberto Mosqueda Guardado, acting alone or as a party (as herein defined), did then and there intentionally cause the death of an individual namely, Gilberto Garces, by shooting him with a firearm, and the Defendant Adalberto Mosqueda Guardado was then and there in the course of committing or attempting to commit the offense of kidnapping of Gilberto Garces, then

you will find the Defendant Adalberto Mosqueda Guardado guilty of Capital Murder as charged in the indictment.

Unless you so find, or if you have a reasonable doubt thereof, you will acquit the Defendant Adalberto Mosqueda Guardado of the offense of Capital Murder, and next consider whether he is guilty of the lesser offense of Murder.

6.

If you believe from the evidence beyond a reasonable doubt that on or about April 6, 2016, in Hidalgo County, Texas, the Defendant, Adalberto Mosqueda Guardado, acting alone or as a party (as herein defined), intentionally or knowingly cause the death of Gilberto Garces, by shooting Gilberto Garces with a firearm, but you do not believe beyond a reasonable doubt or you have a reasonable doubt that the Defendant Adalberto Mosqueda Guardado was then and there in the course of committing or attempting to commit the offense of kidnapping, then you will find the Defendant Adalberto Mosqueda Guardado guilty of Murder. Unless you so find, or if you have a reasonable doubt thereof, you will acquit the Defendant Adalberto Mosqueda Guardado of the offense of Murder and next consider whether he is guilty of the lesser offense of Aggravated Kidnapping.

7.

If you believe from the evidence beyond a reasonable doubt that on or about April 6, 2016, in Hidalgo County, Texas, the Defendant Adalberto

Mosqueda Guardado, acting alone or as a party (as herein defined), intentionally or knowingly abducted another person, to-wit: Gilberto Garces and the Defendant Adalberto Mosqueda Guardado uses or exhibits a deadly weapon during the commission of the offense but you do not believe beyond a reasonable doubt or you have a reasonable doubt that the Defendant Adalberto Mosqueda Guardado intentionally or knowingly caused the death of Gilberto Garces by shooting Gilberto Garces with a firearm, then you will find him guilty of the lesser offense of Aggravated Kidnapping. Unless you so find, or if you have a reasonable doubt thereof, you will acquit the Defendant Adalberto Mosqueda Guardado of the offense of Aggravated Kidnapping and next consider whether he is guilty of the lesser offense of Kidnapping.

8.

If you believe from the evidence beyond a reasonable doubt that on or about April 6, 2016, in Hidalgo County, Texas, the Defendant Adalberto Mosqueda Guardado intentionally or knowingly abducted another person, to wit: Gilberto Garces but you do not find or believe beyond a reasonable doubt or you have a reasonable doubt that the Defendant Adalberto Mosqueda Guardado intentionally or knowingly caused the death of Gilberto Garces by shooting Gilberto Garces with a firearm, then you will find him guilty of the lesser offense of Kidnapping. Unless you so find, or if you have a reasonable doubt thereof, you will acquit the Defendant Adalberto Mosqueda Guardado of

the offense of Kidnapping and say by your verdict “Not Guilty.”

9.

If you should believe from the evidence beyond a reasonable doubt that the Defendant is either guilty of Capital Murder or Murder, but you have a reasonable doubt as to which offense the Defendant is guilty of, then you should resolve that doubt in the Defendant’s favor, and in such event, you will find the Defendant guilty of the lesser offense of Murder.

10.

If you should believe from the evidence beyond a reasonable doubt that the Defendant is either guilty of Capital Murder or Aggravated Kidnapping, but you have a reasonable doubt as to which offense the Defendant is guilty of, then you should resolve that doubt in the Defendant’s favor, and in such event, you will find the Defendant guilty of the lesser offense of Aggravated Kidnapping.

11.

If you should believe from the evidence beyond a reasonable doubt that the Defendant is either guilty of Capital Murder or Kidnapping, but you have a reasonable doubt as to which offense the Defendant is guilty of, then you should resolve that doubt in the Defendant’s favor, and in such event, you will find the Defendant guilty of the lesser offense of Kidnapping.

12.

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 shooting in question, if any.

13.

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 offenses, 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 knowledge, if any, alleged against him in the indictment in this case, and for no other purpose.

14.

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.

15.

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.

16.

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.

17.

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".

18.

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 receive in these written instructions.

19.

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.

20.

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.

21.

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.

22.

During your deliberations in this case, you must not consider, discuss or relate any matters not in evidence before you. You should not consider or 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.

23.

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.

24.

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.

25.

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.

26.

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

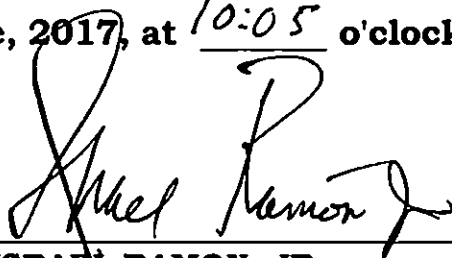
27.

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

28.

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 23rd day of June, 2017, at 10:05 o'clock a.m.

A handwritten signature in black ink, appearing to read "Israel Ramon Jr.", written over a horizontal line.

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

