

CAUSE NO.: 2023-DCR-01395

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
VS.	§	197TH JUDICIAL DISTRICT
	§	
FERNANDO ABUNDIZ AKA	§	CAMERON COUNTY, TEXAS
FERNANDO ABUNDEZ		

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, stands charged by indictment with the felony offenses of Count I Capital Murder, Count II Capital Murder, Count III Murder, Count IV Aggravated Robbery and Count V Aggravated Kidnapping to have been committed in Willacy County, Texas, on or about May 12, 2021.

To these charges, the defendant has pleaded not guilty. You are instructed that the law applicable to this case is as follows:

I.

A person commits the offense of Murder if the person intentionally causes the death of an individual.

A person commits the offense of Capital Murder if the person intentionally commits the murder in the course of committing or attempting to commit robbery or kidnapping.

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

intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

The offense is Aggravated Robbery if the person committing robbery uses or exhibits a deadly weapon.

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

The offense becomes Aggravated Kidnapping if a deadly weapon is used or exhibited during the commission of the offense.

II.

You are instructed that 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, 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 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.

III.

"In the course of committing" means conduct occurring in an attempt to commit, during the commission, or in the immediate flight after the attempt or commission of the offense.

A person commits a criminal attempt 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.

"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.

IV.

"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.

"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.

"Appropriate" means to acquire or otherwise exercise control over property. Appropriation of property is unlawful if it is without the owner's effective consent.

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"Coercion" means a threat, however communicated, to commit an offense or inflict bodily injury in the future on the person threatened or another.

"Consent" means assent in fact, whether express or apparent.

"Deadly force" means force that is intended or known by the person acting to cause, or in the manner of its use or intended use is capable of causing death or serious bodily injury.

"Deadly weapon" means anything that in the manner of its use or intended use is capable of causing death of serious bodily injury.

"Deprive" means to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner, or to dispose of property in a manner that makes recovery of the property by the owner unlikely.

"Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if it is induced by deception or coercion.

"Individual" means a human being who has been born and is alive.

"Owner" means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor, or is a holder in due course of a negotiable instrument.

"Person" means an individual, corporation, or association.

"Possession" means actual care, custody, control or management of property.

"Property" means tangible or intangible personal property or a document, including money that represents or embodies anything of value.

“Restrain” means to restrict a person’s movements without consent, so as to interfere substantially with his liberty, by moving him from one place to another or by confining him.

“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” means the unlawful appropriation of property with intent to deprive the owner of the property.

V.

Law of Parties

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.

Each party to an offense may be charged with the commission of the offense.

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.

VI.

COUNT I: CAPITAL MURDER

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, on or about **May 12, 2021**, in Willacy County, Texas, then and there intentionally caused the death of **MARTIN BENJAMIN PEÑA**, by blunt force trauma caused by **MARTIN BENJAMIN PEÑA's** head colliding forcefully with the roadway and throwing **MARTIN BENJAMIN PEÑA** out of a moving vehicle or causing **MARTIN BENJAMIN PEÑA** to exit a moving vehicle, and the defendant was in the course of committing or attempting to commit the offense of ROBBERY of **MARTIN BENJAMIN PEÑA**, then you will find the defendant guilty of the offense of Capital Murder, as alleged in Count I of the indictment, and so say by your verdict and proceed to consider Count II of the indictment.

But if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Capital Murder as alleged in Count One of the indictment, say by your verdict "Not Guilty," and proceed to consider Count II of the indictment.

VII.

COUNT II: CAPITAL MURDER

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, on or about **May 12, 2021**, in Willacy County,

Texas, then and there intentionally caused the death of **MARTIN BENJAMIN PEÑA**, by blunt force trauma caused by **MARTIN BENJAMIN PEÑA's** head colliding forcefully with the roadway and throwing **MARTIN BENJAMIN PEÑA** out of a moving vehicle or causing **MARTIN BENJAMIN PEÑA** to exit a moving vehicle, and the defendant was in the course of committing or attempting to commit the offense of Kidnapping of **MARTIN BENJAMIN PEÑA**, then you will find the defendant guilty of the offense of Capital Murder, as alleged in Count II of the indictment, and so say by your verdict and proceed to consider Count III of the indictment.

But if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Capital Murder as alleged in Count II of the indictment, say by your verdict "Not Guilty," and proceed to consider Count III of the indictment.

VIII.

COUNT III: MURDER

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, on or about **May 12, 2021** in Willacy County, Texas, then and there commit or attempt to commit an act clearly dangerous to human life, namely by blunt force trauma caused by **MARTIN BENJAMIN PEÑA's** head colliding forcefully with the roadway and throwing **MARTIN BENJAMIN PEÑA** out of a moving vehicle or causing **MARTIN BENJAMIN PEÑA** to exit a moving vehicle, that caused the death of **MARTIN BENJAMIN PEÑA**, hereafter styled

the complainant, then you will find the defendant guilty of the offense of Murder, as alleged in Count III of the indictment, and so say by your verdict and proceed to consider Count IV of the indictment.

But if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Murder as alleged in Count III of the indictment, say by your verdict "Not Guilty," and proceed to consider Count IV of the indictment.

IX.

COUNT IV: AGGRAVATED ROBBERY

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, on or about **May 12, 2021** in Willacy County, Texas, then and there, while in the course of committing theft of property and with the intent to obtain or maintain control of the property, intentionally and knowingly cause bodily injury to **MARTIN BENJAMIN PEÑA**, hereafter styled the complainant, by blunt force trauma caused by **MARTIN BENJAMIN PEÑA's** head colliding forcefully with the roadway and throwing **MARTIN BENJAMIN PEÑA** out of a moving vehicle or causing **MARTIN BENJAMIN PENA** to exit a moving vehicle, and the defend thereby caused serious bodily injury to the complainant, then you will find the defendant guilty of the offense of Aggravated Robbery, as alleged in Count IV of the indictment, and so say by your verdict and proceed to consider Count V of the indictment.

But if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Aggravated Robbery as alleged in Count IV of the indictment, say by your verdict "Not Guilty," and proceed to consider Count V of the indictment.

X.

COUNT V: AGGRAVATED KIDNAPPING

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, on or about **May 12, 2021** in Willacy County, Texas, then and there, with the intent to inflict bodily injury on MARTIN BENJAMIN PEÑA, intentionally and knowingly abduct MARTIN BENJAMIN PENA, hereafter styled the complainant, by restricting the movements of the complainant without his consent so as to interfere substantially with his liberty, by moving him from one place to another, with the intent to prevent his liberation, by secreting or holding him in a place where he was not likely to be found then you will find the defendant guilty of the offense of Aggravated Kidnapping, as alleged in Count V of the indictment, and so say by your verdict.

But if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Aggravated Kidnapping as alleged in Count V of the indictment, say by your verdict "Not Guilty,".

XI.

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.

XII.

In a criminal case the law permits the defendant to testify in his own behalf. However, the same law provides that the fact that a defendant has not testified shall not be considered as a circumstance against him. You will, therefore, not consider the fact that the defendant has not testified as a circumstance against him. You will not, in your retirement to consider your verdict, allude to, comment on, or in any manner refer to the fact that the defendant has not testified.

XIII.

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 State 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 State prove the defendant's guilt beyond all possible doubt. It is required that the State'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 further instructed as a part of the law in this case that the indictment against the defendant is not evidence in the case. The true and sole use of the indictment is to charge the offense and to inform the defendant of the offense alleged. The reading of the indictment to the jury in the statement of the case of the State against the defendant cannot be considered as a fact or circumstance against the defendant in your deliberations.

In deliberating on the cause you are not to refer to or discuss any matter or issue not in evidence before you. In determining the guilt or innocence of the defendant, you shall not discuss or consider punishment, if any, which may be assessed against the defendant in the event the defendant is found guilty beyond a reasonable doubt.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, or any witness therein. No juror is permitted to communicate to any other juror anything he may have heard

regarding the case or any witness therein from any source other than the witness stand.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the testimony, but you are bound to receive the law from the Court, which is herein given to you, and be governed thereby.

After the reading of this Charge, you shall not be permitted to separate from each other, nor shall you talk with anyone not of your jury. After argument of counsel, you will retire and select one of your members as presiding juror. It is the duty of the presiding juror to preside at your deliberations and to vote with you in arriving at a unanimous verdict. After you have arrived at your verdict, you may use the forms attached hereto by having the presiding juror sign his or her name to the particular form or forms that conform to your verdict, but in no event shall the presiding juror sign more than four of such forms.

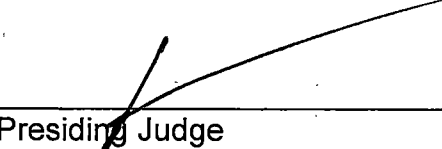
After you have retired to consider your verdict, no one has any authority to communicate with you except the officer who has you in charge. You may communicate with this Court in writing, signed by your presiding juror, through the officer who has you in charge. Do not attempt to talk to the officer, the attorneys, or the Court concerning questions you may have.

FILED 1:36 o'clock P M
LAURA PEREZ-REYES - DISTRICT CLERK

SEP 26 2024

DISTRICT COURT OF CAMERON COUNTY, TEXAS

By Mariana Jimenez Deputy


Presiding Judge
197th Judicial District Court

CAUSE NO.: 2023-DCR-01395

THE STATE OF TEXAS

VS.

FERNANDO ABUNDIZ AKA
FERNANDO ABUNDEZ

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IN THE DISTRICT COURT

197TH JUDICIAL DISTRICT

CAMERON COUNTY, TEXAS

VERDICT OF THE JURY

COUNT I: CAPITAL MURDER

We, the Jury, find the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, not guilty of the offense of Capital Murder as alleged in Count I of the Indictment.

Presiding Juror

OR

We, the Jury, find the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, guilty of the offense of Capital Murder as alleged in Count I of the indictment.

FILED 11:40 o'clock A M
LAURA PEREZ-REYES - DISTRICT CLERK

Presiding Juror

Soshua Lehman

SEP 27 2024

DISTRICT COURT OF CAMERON COUNTY, TEXAS

By *Ariana Ramirez* Deputy

CAUSE NO.: 2023-DCR-01395

THE STATE OF TEXAS

VS.

FERNANDO ABUNDIZ AKA
FERNANDO ABUNDEZ

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IN THE DISTRICT COURT

197TH JUDICIAL DISTRICT

CAMERON COUNTY, TEXAS

VERDICT OF THE JURY

COUNT II: CAPITAL MURDER

We, the Jury, find the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, not guilty of the offense of Capital Murder, as alleged in Count II of the indictment.

Presiding Juror

OR

We, the Jury, find the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, guilty of the offense of Capital Murder, as alleged in Count II of the indictment.

FILED 11:40 o'clock A M
LAURA PEREZ-REYES - DISTRICT CLERK

Presiding Juror
Joshua Lehman

SEP 27 2024

DISTRICT COURT OF CAMERON COUNTY, TEXAS

By *Guerra Tamariz* Deputy

CAUSE NO.: 2023-DCR-01395

THE STATE OF TEXAS

VS.

FERNANDO ABUNDIZ AKA
FERNANDO ABUNDEZ

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IN THE DISTRICT COURT

197TH JUDICIAL DISTRICT

CAMERON COUNTY, TEXAS

VERDICT OF THE JURY

COUNT III: MURDER

We, the Jury, find the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, not guilty of the offense of Murder, as alleged in Count III of the indictment.

Presiding Juror

OR

We, the Jury, find the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, guilty of the offense of Murder, as alleged in Count III of the indictment.

FILED 11:40 o'clock A M
LAURA PEREZ-REYES - DISTRICT CLERK

SEP 27 2024

DISTRICT COURT OF CAMERON COUNTY, TEXAS

By *Arianne Tamayo* Deputy

[Signature]
Presiding Juror

Sasha Lehman

CAUSE NO.: 2023-DCR-01395

THE STATE OF TEXAS

VS.

FERNANDO ABUNDIZ AKA
FERNANDO ABUNDEZ

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IN THE DISTRICT COURT

197TH JUDICIAL DISTRICT

CAMERON COUNTY, TEXAS

VERDICT OF THE JURY

COUNT IV: AGGRAVATED ROBBERY

We, the Jury, find the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, not guilty of the offense of Aggravated Robbery, as alleged in Count IV of the indictment.

Presiding Juror

OR

We, the Jury, find the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, guilty of the offense of Aggravated Robbery, as alleged in Count IV of the indictment.

FILED 11:40 o'clock A M
LAURA PEREZ-REYES - DISTRICT CLERK

Presiding Juror
Joshua Lehman

SEP 27 2024

DISTRICT COURT OF CAMERON COUNTY, TEXAS

By *Miauna Lemay* Deputy

CAUSE NO.: 2023-DCR-01395

THE STATE OF TEXAS

VS.

FERNANDO ABUNDIZ AKA
FERNANDO ABUNDEZ

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IN THE DISTRICT COURT

197TH JUDICIAL DISTRICT

CAMERON COUNTY, TEXAS

VERDICT OF THE JURY

COUNT V: AGGRAVATED KIDNAPPING

We, the Jury, find the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, not guilty of the offense of Aggravated Kidnapping, as alleged in Count V of the indictment.

Presiding Juror

OR

We, the Jury, find the defendant, **FERNANDO ABUNDIZ AKA FERNANDO ABUNDEZ**, guilty of the offense of Aggravated Kidnapping, as alleged in Count V of the indictment.

FILED 11:40 o'clock A M
LAURA PEREZ-REYES - DISTRICT CLERK

Presiding Juror Joshua Lehman

SEP 27 2024

DISTRICT COURT OF CAMERON COUNTY, TEXAS

By Aniana Lomago Deputy