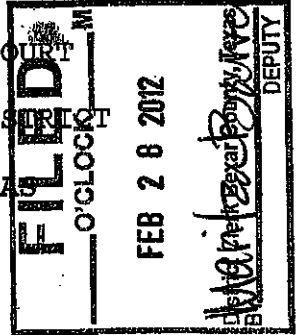


NO. 2009-CR-5141

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 227TH JUDICIAL DISTRICT
ERIC MENDOZA § BEXAR COUNTY, TEXAS



CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, Eric Mendoza, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 21st Day of February, 2009, in Bexar County, Texas. The defendant has pleaded not guilty.

I.

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 capital murder when such person murders more than one person during the same criminal transaction.

II.

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

"Same criminal transaction" means a continuous and uninterrupted chain of conduct occurring over a very short period of time in a rapid sequence of unbroken events.

"Deadly weapon" means a firearm.

"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.

A person commits the offense of unlawful carrying of a weapon if he intentionally or knowingly carries on or about his person a handgun if the person is not on the person's own premises or premises under the person's control or inside or directly en route to a motor vehicle that is owned by the person or under the person's control.

A "handgun" means any firearm that is designed, made, or adapted to be fired with one hand.

III.

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.

IV.

It is a defense to this prosecution if the defendant's conduct was justified by law.

You are instructed that a person is justified in using force against another when and to the degree that that person reasonably believes the force is immediately necessary to protect himself against the other person's use or attempted use of unlawful force.

A person is justified in using deadly force against another if he would be justified in using force against the other in the first place, as above set out, and when and to the degree he reasonably believes that such deadly force is immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

You are instructed that under our law a person is justified in using deadly force against another to protect a third person or third persons if, under the circumstances as he reasonably believes them to be, such person would be justified in using deadly force to protect himself against the unlawful deadly force of another which he reasonably believes to be threatening the third person or persons he seeks to protect, provided he also reasonably believes that his intervention is immediately necessary to protect the third person or persons.

A person who has a right to be present at the location where the deadly force is used, who has not provoked the person

against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force as described herein.

The use of force against another is not justified in response to verbal provocation alone.

By the term "reasonable belief" as used herein is meant a belief that would be held by an ordinary and prudent person in the same circumstances as defendant.

By the term "deadly force" as used herein is meant force that is intended or known by the person using it to cause, or 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.

"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.

When a person is attacked with unlawful deadly force, or he reasonably believes he is under attack or attempted attack with unlawful deadly force, by one or more persons, and there is created in the mind of such person a reasonable expectation or fear of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means

at his command to the degree that he reasonably believes immediately necessary, viewed from his standpoint at the time, to protect himself from such attack or attempted attack by one or more person. And it is not necessary that there be an actual attack or attempted attack, as a person has a right to defend his life and person from apparent danger as fully and to the same extent as he would had the danger been real, provided that he acted upon a reasonable apprehension of danger, as it appeared to him from his standpoint at the time, and that he reasonably believed such deadly force was immediately necessary to protect himself against the other person's or persons' use or attempted use of unlawful deadly force.

When a person reasonably believes a third person and/or persons are being attacked with unlawful deadly force by one or more persons, and there is created in the mind of that person a reasonable expectation or fear that death or serious bodily injury will occur to that third person and/or to those third persons at the hands of one or more of the assailants, then the law excuses or justifies the person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, viewed from his standpoint at the time, to protect the third person and/or persons from such attack or attempted attack. It is not necessary that there be an actual attack or attempted attack, as a person has a right to defend the life of a third person or lives of third persons from apparent

danger as fully and to the same extent as he would had the danger been real, provided that he acted upon a reasonable apprehension of danger, as it appeared to him from his standpoint at the time, and that he reasonably believed such deadly force was immediately necessary to protect that third person and/or those third persons against the use or attempted use of unlawful deadly force by one or more of the assailants.

In determining the existence of real or apparent danger, you should consider all the facts and circumstances in the case in evidence before you, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the occurrence in question, and in considering such circumstances, you should place yourselves in defendant's position at that time and view them from his standpoint alone.

V.

Now, if you find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, Eric Mendoza, did intentionally or knowingly cause the deaths of Jason Garay and Christopher Baxter, by shooting Jason Garay and Christopher Baxter with a deadly weapon, namely, a firearm, as alleged in the indictment, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct, or both, of Jason Garay and Christopher Baxter it reasonably appeared to the defendant

that his life or person and/or the life or person of another and/or the lives or persons of others were in danger and there was created in his mind a reasonable expectation or fear of death or serious bodily injury to himself and/or to another or others from the use of unlawful deadly force at the hands of both Jason Garay and Christopher Baxter and that acting under such apprehension and reasonably believing that the use of deadly force on Eric Mendoza's part was immediately necessary to protect himself and/or another or others against Jason Garay's and Christopher Baxter's use or attempted use of unlawful deadly force, he shot Jason Garay and Christopher Baxter with a firearm, then you should acquit the defendant on the grounds of self defense and/or defense of another; or if you have a reasonable doubt as to whether or not the defendant was acting in self defense and/or defense of another on said occasion and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict not guilty, and do not consider Paragraphs VIII, IX, or X.

However, if you find from the evidence beyond a reasonable doubt that at the time and place in question the defendant did not reasonably believe that he and/or another and/or others were in danger of death or serious bodily injury at the hands of both Jason Garay and Christopher Baxter, or that defendant, under the circumstances as viewed by him from his standpoint at the time, did not reasonably believe that the degree of force actually

used by him was immediately necessary to protect himself and/or another or others against Jason Garay's and Christopher Baxter's use or attempted use of unlawful deadly force, then you should next consider whether Eric Mendoza was acting in self defense as to either Jason Garay or Christopher Baxter.

VI.

Now, if you find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, Eric Mendoza, did intentionally or knowingly cause the death of Jason Garay, by shooting Jason Garay with a deadly weapon, namely, a firearm, as alleged in the indictment, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct, or both, of Jason Garay, it reasonably appeared to the defendant that his life or person and/or the life or person of another and/or the lives or persons of others were in danger and there was created in his mind a reasonable expectation or fear of death or serious bodily injury to himself and/or another or others from the use of unlawful deadly force at the hands of Jason Garay and that acting under such apprehension and reasonably believing that the use of deadly force on Eric Mendoza's part was immediately necessary to protect himself against Jason Garay's use or attempted use of unlawful deadly force, and/or reasonably believing that his intervention was immediately necessary to protect the third person or persons from Jason Garay's use or

attempted use of unlawful deadly force, he shot Jason Garay with a firearm, then you should not find the defendant guilty of capital murder as charged in the indictment, but you may consider the possibility that the defendant is guilty of a lesser included offense and proceed on to Paragraph X and do not consider Paragraphs VIII or IX.

However, if you find from the evidence beyond a reasonable doubt that at the time and place in question the defendant did not reasonably believe that he and/or another and/or others were in danger of death or serious bodily injury at the hands of Jason Garay, or that defendant, under the circumstances as viewed by him from his standpoint at the time, did not reasonably believe that the degree of force actually used by him was immediately necessary to protect himself and/or another and/or others against Jason Garay's use or attempted use of unlawful deadly force, then you should next consider whether the defendant acted in self defense as to Christopher Baxter.

VII.

Now, if you find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, Eric Mendoza, did intentionally or knowingly cause the death of Christopher Baxter, by shooting Christopher Baxter with a deadly weapon, namely, a firearm, as alleged in the indictment, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct, or

both, of Christopher Baxter, it reasonably appeared to the defendant that his life or person and/or the life or person of another and/or the lives or persons of others was in danger and there was created in his mind a reasonable expectation or fear of death or serious bodily injury to himself and/or another or others from the use of unlawful deadly force at the hands of Christopher Baxter and that acting under such apprehension and reasonably believing that the use of deadly force on Eric Mendoza's part was immediately necessary to protect himself against Christopher Baxter's use or attempted use of unlawful deadly force, and/or reasonably believing that his intervention was immediately necessary to protect the third person or persons from Christopher Baxter's use or attempted use of unlawful deadly force, he shot Christopher Baxter with a firearm, then you should not find the defendant guilty of capital murder as charged in the indictment, but you may consider the possibility that the defendant is guilty of a lesser included offense and proceed on to Paragraph IX and do not consider Paragraphs VIII or X.

However, if you find from the evidence beyond a reasonable doubt that at the time and place in question the defendant did not reasonably believe that he and/or another and/or others were in danger of death or serious bodily injury at the hands of Christopher Baxter, or that defendant, under the circumstances as viewed by him from his standpoint at the time, did not

reasonably believe that the degree of force actually used by him was immediately necessary to protect himself and/or another and/or others against Christopher Baxter's use or attempted use of unlawful deadly force, then you will find against the defendant on the issues of self defense and defense of another or others, and proceed on to Paragraph VIII.

VIII.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 21st Day of February, 2009, in Bexar County, Texas, the defendant, Eric Mendoza, did intentionally or knowingly cause the death of an individual, namely, Jason Garay, by shooting Jason Garay with a deadly weapon, namely, a firearm, and did intentionally or knowingly cause the death of another individual, namely, Christopher Baxter, by shooting Christopher Baxter with a deadly weapon, namely, a firearm, and both murders were committed during the same criminal transaction, then you will find the defendant guilty of capital murder as charged in the indictment.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, then you should next consider whether the defendant is guilty of the lesser included offense of either the murder of Jason Garay or the murder of Christopher Baxter.

IX.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 21st Day of February, 2009, in Bexar County, Texas, the defendant, Eric Mendoza, did intentionally or knowingly cause the death of an individual, namely, Jason Garay, by shooting Jason Garay with a deadly weapon, namely, a firearm, then you will find the defendant guilty of the offense of the murder of Jason Garay.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, then you should next consider whether the defendant is guilty of the offense of the murder of Christopher Baxter.

X.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 21st Day of February, 2009, in Bexar County, Texas, the defendant, Eric Mendoza, did intentionally or knowingly cause the death of an individual, namely, Christopher Baxter, by shooting Christopher Baxter with a deadly weapon, namely, a firearm, then you will find the defendant guilty of the offense of the murder of Christopher Baxter.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, then you will find the defendant not guilty.

You are instructed that any testimony before you in this case regarding the defendant having any alleged gang affiliation was allowed for a contextual purpose and has no bearing upon assessing the defendant's guilt, if any, as alleged in this case, and is not to be considered by you for any purpose as direct evidence of the defendant's guilt or innocence.

In the course of this trial you were instructed to disregard certain testimony from the witness stand about "ex-cons" and the defendant being "locked up." You are reminded that you cannot consider that specific testimony for any purpose. You were also instructed to disregard certain additional questions and responses during the trial, and I am reminding you that you cannot consider those matters for any purpose.

You are instructed that the questions of counsel are not evidence. You will be guided solely by the evidence you hear from the witness stand. You will not assume something is true because it is included in a question asked of a witness by one of the attorneys in this case.

Our law provides a defendant may testify in his own behalf if he elects to do so. This, however, is a right 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 him.

Written statements made by a witness to investigators or other officers or police reports made by officers and tendered by the prosecution to the defense for purposes of cross-examination are not part of the evidence unless introduced in evidence. Many times statements and reports may be marked with an exhibit number but are neither offered nor received in evidence. I can send only statements and reports received in evidence to the jury room.

You are instructed that the Grand Jury indictment is not evidence of guilt. It is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence, nor can it be considered by you in determining whether the defendant is guilty or not guilty.

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.

After you have retired to your jury room, you should select one of your members as your "presiding juror." It is his or her duty to preside at your deliberations, vote with you and, when you have unanimously agreed upon a verdict, to certify to your verdict by signing the same as "presiding juror."

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.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor whether the Defendant is guilty or not guilty. The Court has not intended to express any such opinion, and if you have observed anything which you have interpreted or may interpret as the Court's opinion upon any matter of fact in this case or of whether the Defendant is guilty or not guilty, you must wholly disregard it.

You are instructed that the statements of counsel made during the course of the trial or during the argument, if not supported by evidence, or statements of law made by counsel, if not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

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 him and say by your verdict "Not Guilty."

Suitable forms for your verdict are hereto attached for your convenience if you desire to use the same, but such forms are not intended to suggest to you in any way what your verdict should be, and you may or may not, as you see fit, make use of the same. However, your verdict must be unanimous, in writing, and signed by your presiding juror. Your sole duty at this time is to determine whether the defendant is guilty or not guilty under the indictment in this cause and you must restrict your deliberations to the issue of whether the defendant is guilty or not guilty, and nothing else. After you have retired, no one

has any authority to communicate with you except the officer who has you in charge. Do not attempt to talk to the officer, or anyone else concerning any question you may have; instead address your inquiry to the Court in writing. If the jury wishes to communicate with the Court, they shall notify the bailiff; any communication relative to the case must be written, prepared by the presiding juror, and shall be submitted to the Court through the bailiff.

Respectfully submitted,



Judge PHILIP A. KAZEN, Jr.
227TH Judicial District
Bexar County, Texas

NO. 2009-CR-5141

THE STATE OF TEXAS

§

IN THE DISTRICT COURT

VS.

§

227TH JUDICIAL DISTRICT

ERIC MENDOZA

§

BEXAR COUNTY, TEXAS

VERDICT FORM

~~We, the Jury, find the defendant, Eric Mendoza, not guilty.~~

PRESIDING JUROR

OR

VERDICT FORM

We, the Jury, find the defendant, Eric Mendoza, guilty of capital murder as charged in the indictment.



PRESIDING JUROR

OR

VERDICT FORM

~~We, the Jury, find the defendant, Eric Mendoza, guilty of the murder of only Jason Garay.~~

PRESIDING JUROR

OR

VERDICT FORM

~~We, the Jury, find the defendant, Eric Mendoza, guilty of the murder of only Christopher Baxter.~~

PRESIDING JUROR

