



**IN THE DISTRICT COURT
OF NUECES COUNTY, TEXAS
THE 148TH JUDICIAL DISTRICT OF TEXAS**

**THE STATE OF TEXAS
Vs.
DOMINGO VILLARREAL**

No. 16-FC-1703-E

CHARGE OF THE COURT ON PUNISHMENT

MEMBERS OF THE JURY:

By your verdict in the first part of the trial, you have found the Defendant, DOMINGO VILLARREAL, guilty of the lesser included offense of Manslaughter. You will now proceed to assess and fix punishment for this offense.

1.

In fixing the punishment for the Defendant, you may take into consideration all the facts shown by the evidence admitted before you in the full trial of this case, except those matters excluded by the Court.

2.

A person found guilty of the offense of Manslaughter shall be punished for a Second Degree Felony. Our law provides that a person convicted for a Second Degree felony shall be punished by imprisonment in the Institutional Division of the Texas Department of Criminal Justice (that is, the state penitentiary) for any term of not more than 20 Years or less than 2 years, and, in addition, by a fine not to exceed \$10,000.00. Therefore, you will assess punishment for the Defendant at imprisonment in the Institutional Division of the Texas Department of Criminal Justice for any term for not more than 20 Years or less than 2 years, and, in addition, you may assess a fine not to exceed \$10,000.00.

3.

You are instructed that if there is any evidence before you in this case regarding the Defendant's having committed an offense or offenses other than the offense alleged against him in the indictment in this case or any bad act or bad acts, you cannot consider said evidence for

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ANNE LOBENTZEN, CLERK
COUNTY CLERK DISTRICT CLERK, NUECES COUNTY, TEXAS
BY: _____ DEPUTY

any purpose whatsoever, unless you find and believe beyond a reasonable doubt that the defendant committed such other offense or offenses or bad act or bad acts, if any other offense or offenses or bad act or bad acts were committed, and even then you may only consider the same in assisting you determine the punishment for the Defendant in this case, and for no other purpose.

4.

The Defendant has filed a sworn motion stating that he has never before been convicted of a felony in this State or in any other State and requesting that he be placed on community supervision.

"Community supervision" means the placement of a defendant by a Court under a continuum of programs and sanctions, with conditions imposed by the Court for a specified period during which a sentence of imprisonment or imprisonment and fine is probated and the imposition of sentence is suspended in whole or in part. "Community supervision" was previously known and referred to as "probation."

The Jury may consider whether to recommend and to award community supervision to a defendant only when the term of imprisonment set by the Jury is 10 Years or less. If the sentence set by the Jury exceeds 10 Years, including a sentence of 10 Years and 1 day, then the Jury cannot consider nor recommend community supervision for the defendant.

Our law provides that where the Jury finds the defendant guilty of the offense of Manslaughter, a Second Degree Felony, and the Jury also finds that the Defendant has never before been convicted of a felony in this State or in any other State and the Jury sets the term of imprisonment at 10 Years or less, then the Jury may recommend to the Judge that the Judge suspend the imposition of the sentence and place the defendant on community supervision. Whether you do or do not recommend placement of the Defendant on community supervision is a matter that rests within the sound discretion of the Jury. If the Jury recommends that the Judge place the defendant on community supervision, then the Judge shall place the defendant on community supervision and the defendant will not be sent to the penitentiary for the term assessed. If the Jury does not recommend that the Judge place the defendant on community supervision, or if the term of imprisonment set by the Jury exceeds 10 Years, then the Judge shall not place the defendant on community supervision and the defendant will be sent to the penitentiary for the term assessed. In any case, the Court must follow the verdict of the Jury.

If the Jury recommends to the Judge that the Judge place the defendant on community supervision, then the Judge, and not the Jury, determines and sets the period of community supervision. Do not confuse the "period of community supervision" with the "term of imprisonment." The term of imprisonment is part of the punishment that the Defendant would be liable to serve in the penitentiary should his community supervision be revoked. The period of community supervision is the period of time that the defendant would be under the supervision of the Court while the defendant is on community supervision. In this case, the minimum period of community supervision is 2 years, and the maximum period of community supervision is 10 years.

The Judge, and not the Jury, determines and sets the conditions of community supervision as required by law and by the facts of the case, all of which are designed to rehabilitate the defendant and to protect society. The Court may, at any time during the period of community supervision, alter or modify the conditions of community supervision.

When community supervision is granted to a defendant, it cannot be revoked so long as the defendant does not violate any of the conditions of community supervision. If a defendant violates any condition of community supervision, the Court may conduct a hearing, without a Jury, to determine whether the defendant has in fact violated a condition of community supervision and to determine the reasons, if any, for any such violation. If the Court finds that the defendant has violated a condition of community supervision, the Court may continue the defendant on community supervision, modify the conditions of community supervision, and/or impose one or more sanctions on the defendant, or revoke the defendant's community supervision.

If the defendant is continued on community supervision, in all probability the conditions of community supervision will be modified and/or the Court may impose one or more sanctions on the defendant. Doing so may result in the increased supervision of the defendant, including a period of confinement not to exceed 180 days. The defendant may be continued on community supervision by extending the period of his community supervision so that the original period of community supervision, including any extensions, does not exceed 10 years.

If the defendant's community supervision is revoked, the Court may proceed to dispose of the case as if there had been no community supervision and may order that the defendant be imprisoned in the penitentiary for the term assessed by the Jury and that he pay the fine, if any part of the fine was also suspended. If the Court determines, after revocation, that the best interest of society and of the defendant would be served by a shorter term of imprisonment, the Court may reduce the term of imprisonment originally assessed to any term of imprisonment not less than the minimum prescribed for the offense of which the defendant was convicted. No part of the time that the defendant is on community supervision, including any confinement in jail served as a condition of community supervision, is considered as any part of the sentence that he is required to serve.

6.

The indictment alleged that a firearm was used during the commission of the offense. Under our law, a "firearm" means a deadly weapon.

7.

Under the law applicable in this case, a defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

It is also possible that the length of time for which a defendant will be imprisoned might be reduced by the award of parole.

In its verdict in the first part of the trial, the Jury found that the Defendant, whether by his own conduct or as a party to the offense, used or exhibited a firearm during the commission of the offense for which the Jury found him guilty. Under the law applicable in this cause, if a defendant is sentenced to a term of imprisonment, and if the Jury finds that the Defendant used or exhibited a deadly weapon during the commission of the offense or was a party to the offense and knew that a deadly weapon would be used or exhibited, then the Defendant will not become eligible for parole until the actual time served equals one-half of the sentence imposed, without consideration of any good conduct time he may earn. If the Defendant is sentenced to a term of less than four years, the Defendant must serve at least two years before the Defendant is eligible for parole. However, if the Jury does not find that the Defendant used or exhibited a deadly weapon during the commission of the offense, or, although he was a party to the offense, that he did not know that a deadly weapon would be used or exhibited, then the Defendant will not become eligible for parole until the actual time served plus any good conduct time earned equals one-fourth of the sentence imposed. In either event, eligibility for parole does not guarantee that parole will be granted.

It cannot accurately be predicted today how the parole law and the good conduct time might be applied to the Defendant in this case if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions to be made by prison and parole authorities sometime in the future.

You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular Defendant. You are not to consider the manner in which the parole law may be applied to this particular Defendant.

8.

You shall not arrive at your verdict by lot or by drawing straws or by any other method of chance. Do not return a quotient verdict; that is, the Jurors should not agree to abide by the result to be reached by adding together each Juror's figures and dividing by the number of Jurors to get an average. Do not do any trading on your answers; that is, one Juror should not agree to answer a certain question one way if others will agree to answer another question another way.

9.

After you retire to the Jury room, the same Presiding Juror may continue to serve as Presiding Juror. Once again, it is the duty of the Presiding Juror to preside during your deliberations; to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this Charge; to write out and hand to the Bailiff any communications concerning the case that you desire to have delivered to the Judge; to vote with you; to speak for the Jury when it wishes to communicate with the Court; and, when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate verdict form attached hereto and signing the same as Presiding Juror.

10.

No one has any authority to communicate with you except the Bailiff. During your deliberations in this trial, 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 trial which is not shown by the evidence. You should not discuss the trial with anyone, not even with other members of the Jury, unless all of you are present and assembled in the privacy of the Jury room. You should not separate for any purpose, that is, leave the Jury room, without permission of the Court. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the Judge of this fact.

During your deliberations, you may communicate with this Court in writing signed by the Presiding Juror through the Bailiff. Do not attempt to talk to the Bailiff, or the attorneys, or the Court, or anyone else concerning any question you may have.

11.

I remind you that the Court may not grant a general request from the Jury that the testimony of a witness be read back to the Jury. But, if the Jury disagrees as to the statement of a witness and the Jury specifies the point on which the Jury disagrees, then the Court may have that testimony, and no other, read back to you from the Reporter's notes.

12.

I must again give instructions concerning note-taking.

For those of you who took notes, any notes that you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. If any juror starts to read his or her notes aloud or wants to share his or her notes, the presiding juror or any other juror shall remind that juror that he or she cannot do so.

You must leave your notes with the Bailiff when you are not deliberating. The Bailiff will give your notes to me promptly after collecting them from you. I will make sure that your notes are kept in a safe, secure location and not be disclosed to anyone. After you complete your deliberations, the Bailiff will collect your notes. When you are released from jury duty, the Bailiff will promptly destroy your notes so that nobody can read what you wrote.

13.

As before, no statement or ruling or remark which I may have made during the presentation of testimony was intended to indicate my opinion as to what the facts are. You are to determine the facts. In this determination, you alone must decide upon the believability of the evidence and its weight and value. Thus, you may give the testimony of any witness just such weight and value as you may believe the testimony of such witness is entitled to receive.

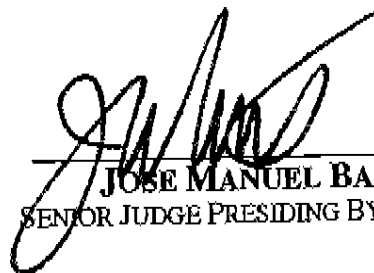
These instructions are given to you because, as before, your conduct is subject to review the same as that of the witnesses, the parties, the attorneys and the Judge. If it should be found that you have disregarded any of these instructions, it will be Jury misconduct and it may require another trial by another Jury; then all of our time will have been wasted.

The Presiding Juror or any other who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the Juror not to do so again.

When you have reached a unanimous verdict on punishment and answered the questions the Jury is required to answer, and your Presiding Juror has signed accordingly for the Jury, you will advise the Bailiff at the door of the Jury room that you have reached a verdict. You will then return into Court with your verdict.

After the attorneys have argued the case, you will then go into the Jury room to begin your deliberations.

Signed May 3, 2018.



JOSE MANUEL BAÑALES
SENIOR JUDGE PRESIDING BY ASSIGNMENT



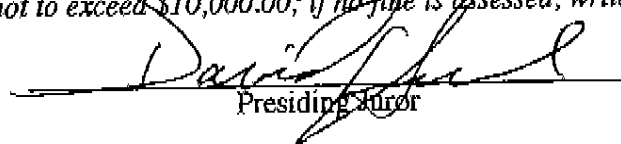
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VERDICT FORM ON PUNISHMENT

We, the Jury, having found the Defendant, DOMINGO VILLARREAL, guilty of the offense of Manslaughter, assess the Defendant's punishment at imprisonment in the Institutional Division of the Texas Department of Criminal Justice for 20 yrs [write in a term of not more than 20 Years or less than 2 years, inclusive], and, in addition, by a fine of \$ 10 000 [write in an amount not to exceed \$10,000.00; if no fine is assessed, write 0 or "none"].

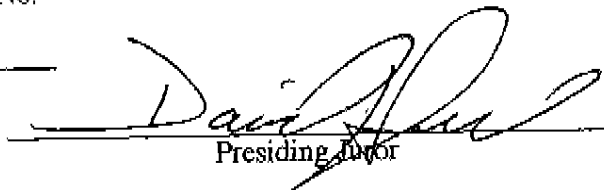

Presiding Juror

QUESTION NO. 1. DEADLY WEAPON ISSUE

Do you find beyond a reasonable doubt that a deadly weapon was used or exhibited during the commission of the offense and that the Defendant used or exhibited the deadly weapon and was a party to the offense and knew that a deadly weapon would be used or exhibited during the commission of the offense?

Answer "Yes" or "No."

Answer: yes


Presiding Juror

If the term of imprisonment is set at 10 years or less, then answer Question No. 2; otherwise, do not answer Question No. 2.

VERDICT ON QUESTIONS ON COMMUNITY SUPERVISION

QUESTION NO. 2.

Do you find that the Defendant has never before been convicted of a felony in this State or in any other State?

Answer "Yes" or "No."

Answer: _____

Presiding Juror

If you have answered Question No. 2 "Yes," then answer Question No. 3; otherwise, do not answer Question No. 3.

QUESTION NO. 3:

Do you recommend to the Judge that the Judge should suspend the imposition of the imprisonment and should place the Defendant on community supervision?

Answer "Yes" or "No."

Answer: _____

Presiding Juror