

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

171st JUDICIAL DISTRICT

CAUSE NO. 20160D04843

THE STATE OF TEXAS

Vs.

VICENTE CUELLAR

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, VICENTE CUELLAR, stands charged by Count I of the indictment with the offense of CAPITAL MURDER, alleged to have been committed on or about the 7th day of December, 2015 in El Paso County, Texas. The defendant has pleaded not guilty.

I.

The Court will now instruct you on the law applicable in this case.

A. LAW APPLICABLE TO THE OFFENSE OF CAPITAL MURDER

Our law provides that a person commits Murder when he intentionally or knowingly causes the death of an individual.

A person commits Capital Murder when he intentionally or knowingly causes the death of two or more individuals in the same criminal transaction.

II.

DEFINITIONS

“Individual” means a human being who is alive.

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.

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III.

OTHER INSTRUCTIONS

A.

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 offense.

B.

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

C.

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 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 make a person a party to an offense.

D.

Texas law provides that a defendant may testify in his own behalf if he elects so to do. 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 him.

E.

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 trial. The law in this case 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's guilt 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 exclude 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".

IV.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 7TH day of December, 2015, in El Paso County, Texas, the defendant, **VICENTE CUELLAR**, acting alone or by soliciting, encouraging, directing, aiding or attempting to aid **ALAN FRAIRE**, did then and there intentionally or knowingly cause the death of an individual, namely, **MARIA CUELLAR**

by shooting **MARIA CUELLAR** with a firearm, and did then and there intentionally or knowingly cause the death of another individual, namely, **DAVID MIRANDA** by shooting **DAVID MIRANDA** with a firearm, and the murders were committed during the same criminal transaction, then you will find the defendant, **VICENTE CUELLAR**, GUILTY of CAPITAL MURDER, as alleged in Count I of the indictment (Verdict Form "A").

Unless you so find from the evidence beyond a reasonable doubt that the defendant, **VICENTE CUELLAR**, is GUILTY OF CAPITAL MURDER, or you have reasonable doubt thereof, you will acquit the defendant **VICENTE CUELLAR**, and say by your verdict NOT GUILTY (Verdict Form "B").

V.

After the attorneys have presented their summations, you will go to the jury room. You will then select one of your members, either male or female, Presiding Juror. It shall be your Presiding Juror's duty to preside over your discussions and deliberations of this case, vote with you and, when you unanimously agree upon a verdict, to certify to your verdict by signing the same as Presiding Juror.

You will have this charge with you in the jury room, and you shall refer to it for guidance during your deliberations.

Suitable forms for your verdict are hereto attached. Your verdict must be unanimous, in writing and signed by your Presiding Juror. Your sole duty at this time is to determine the guilt or non-guilt of the defendant under the indictment in this cause and restrict your deliberations solely to the issue of whether the defendant is guilty or not guilty.

If you want to communicate with the Court, explain what you want in writing and deliver your message, signed by your Presiding Juror, to the bailiff. He will deliver it to the Court. **Do not orally explain to the bailiff what you want.**


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. You are bound to receive the law from the Court as it is given you in these instructions, or any other the Court may give you, and to be governed by the law as so given by the Court.

Concerning manner of deliberations:

- (a) in order to return a verdict, each juror must agree thereto;
- (b) Jurors have a duty to consult with one another to deliberate with a view of reaching an agreement, if it can be done without violence to individual judgment.
- (c) each juror must decide the case for himself or herself, but only after an impartial consideration of the evidence with their fellow jurors.
- (d) in the course of deliberations, jurors should not hesitate to re-examine their own views and change their opinion if convinced it is erroneous.
- (e) no juror should surrender his or her honest conviction as to the weight or effect of the evidence solely because of the opinion of their fellow jurors, or for the mere purpose of returning a verdict.

The Presiding Juror or any other juror 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.

In arriving at your verdict, it will not be proper to fix the same by lot, chance, or any other method than by a full, fair and free exercise of the opinion of the individual jurors under the evidence admitted before you.


JUDGE BONNIE RANGEL
171ST Judicial District Court

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
171st JUDICIAL DISTRICT

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THE STATE OF TEXAS

Vs.

CAUSE NO. 20160D04843

VICENTE CUELLAR

VERDICT FORM "A"

We the jury, in the above styled and numbered cause, find the defendant, VICENTE CUELLAR, "GUILTY" of the offense of CAPITAL MURDER as alleged in Count I of the indictment.

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PRESIDING JUROR

**IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
171st JUDICIAL DISTRICT**

THE STATE OF TEXAS

Vs.

CAUSE NO. 20160D04843

VICENTE CUELLAR

VERDICT FORM "B"

We the jury, in the above styled and numbered cause, find the defendant, **VICENTE CUELLAR**, "NOT GUILTY" of the offense of CAPITAL MURDER, as alleged in Count I of the indictment.

PRESIDING JUROR