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**IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
409TH JUDICIAL DISTRICT**

FILED
MAR 28 2019
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EL PASO COUNTY, TEXAS
BY *[Signature]*

THE STATE OF TEXAS)
)
VS.)
)
EDUARDO GARZA)

NO. 20190D02537

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

After the attorneys have presented their summations, you will go to the jury room. You will then select one of your members as your presiding juror. It shall be your presiding juror's duty to preside over your discussions of and deliberations upon the case, vote with you and, when you have unanimously agreed upon a verdict by signing the same as your presiding juror.

You will have this charge with you in the jury room, and shall refer to it for guidance during your deliberations. Suitable forms for your verdict are attached hereto; your verdict must be in writing and signed by your presiding juror. Your sole duty at this time is to determine the guilt or innocence of the Defendant under the indictment in this case; and restrict your deliberations solely to the issue of whether the Defendant is guilty or not guilty.

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 as it is given to you in this charge, and you are bound to be governed thereby.

You shall consider only the evidence and exhibits presented here in the courtroom through the witnesses who have testified. If you want to have the exhibits with you in the jury room for your deliberations, advise the bailiff. In deliberating on this case, you shall not talk to anyone except the members of the jury about it until you have been finally discharged from service on this jury.

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, who will deliver it to the Court. Do not orally explain to the bailiff what you want.

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.

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 does not give rise to any inference of guilt at the 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

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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.

Our law provides that a Defendant may testify on 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 into consideration for any purpose whatsoever as a circumstance against him.

Boldface lettering of words or phrases in this charge indicate that such words or phrases are defined in this charge and nothing else.

DEFINITIONS

You are instructed that 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 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 the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that 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.

A person commits "**Capital Murder**" if he intentionally causes the death of an individual in the course of committing or attempting to commit Aggravated Robbery, Burglary of Habitation, or Burglary of Building.

A person commits "**Murder**" if he intentionally or knowingly causes the death of an individual;

A person commits "**Robbery**" if, in the course of committing theft, and with the intent to obtain or maintain control of property, he intentionally or knowingly causes bodily injury to another.

A person commits "**Aggravated Robbery**", if he commits robbery as previously defined and he causes serious bodily injury to another, or uses or exhibits a deadly weapon in the commission of the offense.

The term "**in the course of**" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission.

“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.

“Property” means real property, tangible or intangible personal property including anything severed from land; or a document, including money, that represents or embodies anything of value.

“Deadly Weapon” means a firearm.

“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 the death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

A person commits the offense of **Burglary** if, without the effective consent of the owner, he: (1) enters a habitation, with intent to commit a felony or theft; or (2) enters a habitation and commits or attempts to commit a felony or theft.

“Building” means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

“Habitation” means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes:

1. Each separately secured or occupied portion of the structure or vehicle; and
2. Each structure appurtenant to or connected with the structure or vehicle.

“Consent” means assent in fact, whether expressed or apparent.

“Effective consent” includes consent by a person legally authorized to act for the owner. Consent is not effective if (1) induced by force, threat or fraud; (2) given by a person the other knows is not legally authorized to act for the owner; (3) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the other to be unable to make reasonable decisions; or (4) given solely to detect commission of an offense.

“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 other.

“Enter” means to intrude any part of the body or any physical object connected with the body.

The Defendant, **EDUARDO GARZA** stands charged with the offense of Count I: CAPITAL MURDER BY TERROR THREAT/OTHER FELONY and Count II: AGGRAVATED ROBBERY, alleged to have occurred on or about the 25th day of July 2018. To this charge the Defendant has pleaded not guilty.

Now if you find from the evidence beyond a reasonable doubt that on or about the 25th day of July 2018 in El Paso County, Texas the Defendant **EDUARDO GARZA**:

Count I:

Paragraph A

did then and there intentionally cause the death of an individual, namely, **MIGUEL RIVERA**, by shooting **MIGUEL RIVERA** with a firearm and the Defendant was then and there in the course of committing or attempting to commit the offense of burglary of a habitation,

Or

Paragraph B

did then and there intentionally cause the death of an individual, namely, **MIGUEL RIVERA**, by shooting **MIGUEL RIVERA** with a firearm and the Defendant was then and there in the course of committing or attempting to commit the offense of burglary of a building,

Or

Paragraph C

did then and there intentionally cause the death of an individual, namely, **MIGUEL RIVERA**, by shooting **MIGUEL RIVERA** with a firearm and the Defendant was then and there in the course of committing or attempting to commit the offense of aggravated robbery, and it is further presented that the Defendant used or exhibited a deadly weapon, to wit: a firearm, during the commission of or immediate flight from said offense,

then you will find the Defendant Guilty of Count I: Capital Murder By Terror Threat/Other Felony as charged in the Indictment (**VERDICT FORM A**)

Unless you so find from the evidence beyond a reasonable doubt or you have a reasonable doubt of, you shall acquit the defendant and say by your verdict, Not Guilty, (**Verdict Form B**)

Count II:

did then and there, in the course of committing theft, and with intent to obtain or maintain control of property, intentionally, knowingly, or recklessly cause bodily injury to **ABELARDO MORENO** with a firearm, and the Defendant did use or exhibit a deadly weapon, to wit: a firearm, during the commission of the offense,

then you will find the Defendant Guilty of Count II: Aggravated Robbery as charged in the Indictment (**VERDICT FORM A**)

Unless you so find from the evidence beyond a reasonable doubt or you have a reasonable doubt of, you shall acquit the defendant and say by your verdict, Not Guilty, (**Verdict Form B**)

MANNER OF DELIBERATIONS

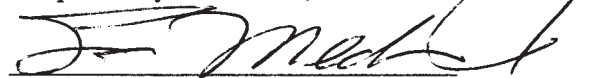
- a. In order to return a verdict, each juror must agree thereto.
- b. Jurors have a duty to consult with one another to deliberate with a view of reaching an agreement, if it can be done without abrogating individual judgement.
- c. Each juror must decide the case for themselves, but only after an impartial consideration of the evidence with their fellow jurors.
- d. In the course of deliberations, a juror should not hesitate to re-examine their own views and change their opinion if convinced it is erroneous.
- e. No juror should surrender their honest conviction as to the weight or effect of the evidence only because of the opinion of fellow jurors, or for the mere purpose of returning a verdict.
- f. In arriving at your verdict, it will not be proper to fix the same by lot, chance, or any other method than by full, fair and free exercise of the opinion of the individual jurors under evidence admitted before you.
- g. Do not let bias, prejudice, or sympathy play any part in your deliberations.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog or website such as Facebook, My Space, LinkedIn, You Tube or Twitter, to communicate to anyone any information about this case or to conduct any research about this until I accept your 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.

After you have arrived at your verdict, you will notify the bailiff that you have reached your verdict.

Respectfully submitted,



JUDGE SAM MEDRANO, JR.
409th DISTRICT COURT