

FILED
THOMAS A WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

MAY 14 2008

TIME _____
BY DEPUTY

NO. 1108904R

THE STATE OF TEXAS) IN THE DISTRICT COURT OF
VS.) TARRANT COUNTY, TEXAS
PEDRO ARIEL ZARATE LUCIO) 297TH DISTRICT COURT

MEMBERS OF THE JURY:

The Defendant, Pedro Ariel Zarate Lucio, stands charged by indictment in Count One with the offense of capital murder, and in Count Two of the indictment with the offense of murder, and in Count Three of the indictment with the offense of engaging in organized criminal activity, alleged to have been committed on or about the 5th day of May, 2006, in Tarrant County, Texas. To these charges, the Defendant has pleaded not guilty.

Our law provides that a person commits the offense of murder if he intentionally or knowingly causes the death of an individual.

Our law also provides that a person commits the offense of murder if he commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

A person commits the offense of capital murder if he intentionally or knowingly causes the death of an individual under six years of age.

"Individual" means a human being who is alive.

A "firearm" is a deadly weapon.

You are instructed that a person commits the offense of engaging in organized criminal activity if, with intent to establish, maintain or participate as a member of a criminal street gang, he commits the offense of murder.

A "criminal street gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.

"Act" means a bodily movement, whether voluntary or involuntary and includes speech.

A person commits the offense of deadly conduct if he knowingly discharges a firearm at or in the direction of a habitation and is reckless as to whether the habitation is occupied.

You are instructed that the offense of deadly conduct is a felony offense.

"Habitation" means a structure that is adapted for the overnight accommodation of persons.

You are further instructed as the law in this case that the State is not bound to prove the exact date alleged in the Indictment, but may prove the offense, if any, to have been committed at anytime prior to the filing of the indictment.

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.

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.

A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated, or risked is that a different person or persons were injured, harmed or otherwise affected.

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. 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 or encourages, directs, aids, or attempts to aid the other person to commit the offense.

A person is also criminally responsible for an offense committed by the conduct of another if, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

Mere presence alone will not constitute one a party to a crime.

You are instructed as a part of the law in this case that voluntary intoxication does not constitute a defense to commission of a crime.

An accomplice as the word is used in this charge, means anyone connected with the crime charged as a party to the offense.

A conviction cannot be had upon the testimony of an accomplice unless the jury first believes that the accomplice's testimony is true and that it shows the defendant is guilty of the offense charge against him, and even then you cannot convict unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

You are instructed that the witness, Ely Almendariz, is an accomplice as a matter of law, as that term has been defined to you in the foregoing instructions, and you are instructed that if you find beyond a reasonable doubt that an offense was committed, you cannot find the defendant, Pedro Ariel Zarate Lucio, guilty upon the testimony of the said Ely Almendariz unless you first believe

that the testimony of Ely Almendariz is true and that it shows the defendant is guilty as charged in the indictment; and even then you cannot convict the defendant unless you further believe that there is other evidence in this case, outside the evidence of Ely Almendariz, tending to connect the defendant with the commission of the offense charged in the indictment, and then from all the evidence you must believe beyond a reasonable doubt that the defendant is guilty.

COUNT ONE - CAPITAL MURDER

Now, therefore, if you find from the evidence beyond a reasonable doubt that the Defendant, Pedro Ariel Zarate Lucio, in the County of Tarrant and State of Texas, on or about the 5th day of May, 2006, with intent to cause the death of any individual by shooting them with a firearm, did then and there intentionally or knowingly cause the death of Daisy Prado, an individual who was under six years of age, by shooting her with a deadly weapon, to wit: a firearm, then you will find the defendant, Pedro Ariel Zarate Lucio, guilty of the offense of capital murder as charged in Count One of the indictment and next consider whether the Defendant is guilty or not guilty of the offense of engaging in organized criminal activity as charged in Count Three of the indictment;

OR

If you find from the evidence beyond a reasonable doubt that in the County of Tarrant and State of Texas, on or about the 5th day of May, 2006, Henry Gabrillo, with intent to cause the death of any individual by shooting them with a firearm, did then and there intentionally or knowingly cause the death of Daisy Prado, an individual who was under six years of age, by shooting her with a deadly weapon, to wit: a firearm, and that the defendant, Pedro Ariel Zarate Lucio, acting with intent to promote or assist the commission of the offense solicited, encouraged, directed, aided or attempted to aid Henry Gabrillo in the commission of the offense then you will find the defendant, Pedro Ariel Zarate Lucio, guilty of the offense of capital murder as charged in Count One of the

indictment and next consider whether the Defendant is guilty or not guilty of the offense of engaging in organized criminal activity as charged in Count Three of the indictment;

OR

If you find from the evidence beyond a reasonable doubt that the Defendant, Pedro Ariel Zarate Lucio, in the County of Tarrant and State of Texas, on or about the 5th day of May, 2006, entered into a conspiracy with Henry Gabrillo to commit the felony offense of deadly conduct and that in the attempt to carry out this conspiracy, Henry Gabrillo, with intent to cause the death of any person by shooting them with a firearm, did then and there intentionally or knowingly cause the death of Daisy Prado, an individual, who was under six years of age by shooting her with a deadly weapon, to wit: a firearm, and the murder of Daisy Prado was committed in furtherance of the unlawful purpose and was an offense that should have been anticipated by the defendant as a result of the carrying out of the conspiracy, then you will find the defendant, Pedro Ariel Zarate Lucio, guilty of the offense of capital murder as charged in Count One of the indictment, though he may have had no intent to commit it, and next consider whether the Defendant is guilty or not guilty of the offense of engaging in organized criminal activity as charged in Count Three of the indictment.

Unless you so find from the evidence beyond a reasonable doubt that the Defendant is guilty of capital murder as charged in Count One of the indictment, or if you have a reasonable doubt thereof, then you will acquit the Defendant of capital murder as charged in Count One of the indictment and say by your verdict "Not Guilty" and next consider whether the Defendant is guilty or not guilty of the offense of murder as charged in Count Two of the indictment.

COUNT TWO - MURDER

Now, therefore, if you find from the evidence beyond a reasonable doubt that the Defendant, Pedro Ariel Zarate Lucio, in the County of Tarrant and State of Texas, on or about the 5th day

of May, 2006, did then and there commit a felony offense, to wit: deadly conduct, and during the commission of and in furtherance of that felony, the defendant intentionally or knowingly committed an act which was clearly dangerous to human life, namely, shooting a firearm at or in the direction of a habitation, which caused the death of Daisy Prado, an individual, then you will find the defendant, Pedro Ariel Zarate Lucio, guilty of the offense of murder as charged in Count Two of the indictment and next consider whether the Defendant is guilty or not guilty of the offense of engaging in organized criminal activity as charged in Count Three of the indictment;

OR

If you find from the evidence beyond a reasonable doubt that, in the County of Tarrant and State of Texas, on or about the 5th day of May, 2006, Henry Gabrillo did then and there commit a felony offense, to wit: deadly conduct, and during the commission of and in furtherance of that felony, Henry Gabrillo intentionally or knowingly committed an act which was clearly dangerous to human life, namely, shooting a firearm at or in the direction of a habitation, which caused the death of Daisy Prado, an individual, and that the defendant, Pedro Ariel Zarate Lucio, acting with intent to promote or assist the commission of the offense solicited, encouraged, directed, aided or attempted to aid Henry Gabrillo in the commission of the offense, then you will find the defendant, Pedro Ariel Zarate Lucio, guilty of the offense of murder as charged in Count Two of the indictment and next consider whether the Defendant is guilty or not guilty of the offense of engaging in organized criminal activity as charged in Count Three of the indictment;

OR

If you find from the evidence beyond a reasonable doubt that the Defendant, Pedro Ariel Zarate Lucio, in the County of Tarrant and State of Texas, on or about the 5th day of May, 2006, entered into a conspiracy with Henry Gabrillo to commit the felony offense

of deadly conduct, and that in the attempt to carry out this conspiracy Henry Gabrillo intentionally or knowingly committed an act which was clearly dangerous to human life, namely shooting a firearm at or in the direction of a habitation, which caused the death of Daisy Prado, an individual, and if the offense of murder was committed in furtherance of the unlawful purpose and was one that should have been anticipated by the defendant as a result of the carrying out of the conspiracy, then you will find the defendant, Pedro Ariel Zarate Lucio, guilty of the offense of murder as charged in Count Two of the indictment, though he may have had no intent to commit it, and next consider whether the Defendant is guilty or not guilty of the offense of engaging in organized criminal activity as charged in Count Three of the indictment.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of murder as charged in Count Two of the indictment and say by your verdict "Not Guilty" and next consider whether the Defendant is guilty or not guilty of the offense of engaging in organized criminal activity as charged in Count Three of the indictment.

COUNT THREE - ENGAGING IN ORGANIZED CRIMINAL ACTIVITY

Now, therefore, if you find from the evidence beyond a reasonable doubt that the Defendant, Pedro Ariel Zarate Lucio, in the County of Tarrant and State of Texas, on or about the 5th day of May, 2006, did with intent to establish, maintain or participate as a member of a criminal street gang, commit the offense of murder by committing a felony offense, to wit: deadly conduct, and during the commission of and in furtherance of that felony, the Defendant intentionally or knowingly committed an act which was clearly dangerous to human life, namely, shooting a firearm at or in the direction of a habitation, which caused the death of Daisy Prado, an individual, then you will find the defendant, Pedro Ariel Zarate Lucio, guilty of the offense of engaging in organized criminal activity as charged in Count Three of the indictment;

OR

If you find from the evidence beyond a reasonable doubt that in the County of Tarrant and State of Texas, on or about the 5th day of May, 2006, Henry Gabrillo did with intent to establish, maintain or participate as a member of a criminal street gang, commit the offense of murder by committing a felony offense, to wit: deadly conduct, and during the commission of and in furtherance of that felony, Henry Gabrillo intentionally or knowingly committed an act which was clearly dangerous to human life, namely, shooting a firearm at or in the direction of a habitation, which caused the death of Daisy Prado, an individual, and that the Defendant, Pedro Ariel Zarate Lucio, acting with intent to promote or assist the commission of the offense solicited, encouraged, directed, aided or attempted to aid Henry Gabrillo in the commission of the offense, then you will find the defendant, Pedro Ariel Zarate Lucio, guilty of the offense of engaging in organized criminal activity as charged in Count Three of the indictment;

OR

If you find from the evidence beyond a reasonable doubt that the Defendant, Pedro Ariel Zarate Lucio, in the County of Tarrant and State of Texas, on or about the 5th day of May, 2006, with the intent to establish, maintain or participate as a member of a criminal street gang, entered into a conspiracy with Henry Gabrillo to commit the felony offense of deadly conduct and that in the attempt to carry out this conspiracy Henry Gabrillo, during the commission of and in furtherance of that felony, intentionally or knowingly committed an act which was clearly dangerous to human life, namely, shooting a firearm at or in the direction of a habitation, which caused the death of Daisy Prado, an individual, and if the offense of murder of Daisy Prado was committed in furtherance of the unlawful purpose and was an offense that should have been anticipated by the defendant as a result of the carrying out of the conspiracy, then you will find the defendant, Pedro Ariel Zarate Lucio, guilty of the offense of engaging in organized criminal activity as charged in Count Three of the indictment though he may have had no intent to commit it.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of engaging in organized criminal activity as charged in Count Three of the indictment and say by your verdict "Not Guilty" with respect to Count Three of the indictment.

Our law provides that 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 the Defendant.

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.

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.

You are instructed that the grand jury indictment is no 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 passing upon the innocence or guilt of the Defendant.

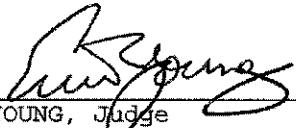
During your deliberations in this case, you must not consider, discuss, or relate any matters not in evidence before you. You should not consider or mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

If the Jury wishes to communicate with the Court, they shall so notify the Bailiff in writing, who shall inform the Court thereof; and they may be brought before the Court, and through their foreman, shall state to the Court in writing what they desire to communicate.

After you have retired to your Jury Room, you should select

one of your members as your foreman. 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 foreman.

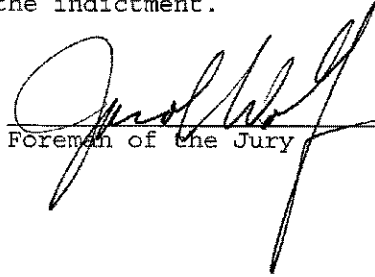
Suitable forms for your verdict are hereto attached. Your verdict must be in writing and signed by your foreman. Your sole duty at this time is to determine the guilt or innocence of the Defendant under the indictment in this case. Please restrict your deliberations solely to the issue of guilt or innocence of the Defendant.



EVERETT YOUNG, Judge
297th District Court
Tarrant County, Texas

VERDICT FORMS

We, the Jury find the Defendant, Pedro Ariel Zarate Lucio,
guilty of the offense of engaging in organized criminal activity
as charged in Count Three of the indictment.


Foreman of the Jury

OR

We, the Jury find the Defendant, Pedro Ariel Zarate Lucio,
not guilty of the offense of engaging in organized criminal
activity as charged in Count Three of the indictment.

Foreman of the Jury

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TIME 4:38 P
BY am DEPUTY

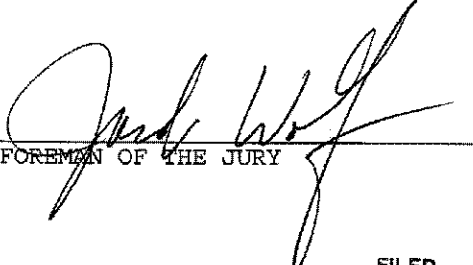
The Court instructs you to consider the following Special Issue and answer either yes or no unanimously to the same.

SPECIAL ISSUE NO. 1

Do you find beyond a reasonable doubt that a deadly weapon, to-wit: a firearm, was used or exhibited during the commission of the felony offense, or felony offenses, and that the Defendant, Pedro Ariel Zarate Lucio, used or exhibited the deadly weapon or was a party to the offense or offenses and knew that a deadly weapon would be used or exhibited?

ANSWER: "Yes" or "No."

ANSWER: Yes


FOREMAN OF THE JURY

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