

FILED

TIME 1:30 P.M.

NO. 2012-434,109

DATE May 15, 2014

THE STATE OF TEXAS

§ IN THE DISTRICT COURT
JAMES B. DWYER, JUDGE

VS.

§ OF LUBBOCK COUNTY, TEXAS

BRIAN SUNIGA

§ 140TH JUDICIAL DISTRICT

COURT'S CHARGE

MEMBERS OF THE JURY:

The defendant, BRIAN SUNIGA, stands charged by indictment with the offense of capital murder, alleged to have been committed in Lubbock County, Texas, on or about December 26, 2011. The defendant has entered a plea of not guilty to the indictment which was read to you.

You are instructed that you will consider only the guilt or innocence of the defendant from the evidence admitted before you and from the law as given to you in charge by the Court.

You are instructed that the law applicable to this case is as follows:

1.

A person commits the offense of murder when he intentionally or knowingly causes the death of an individual.

A person commits capital murder when such person intentionally commits the murder in the course of committing or attempting to commit the offense of robbery.



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CCJR - COURT CHARGE TO THE JURY
Case No: 2012434109

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2.

A person commits robbery if, in the course of committing theft and with intent to obtain or maintain control of the property, he:

- (1) intentionally, knowingly or recklessly causes bodily injury to another;
or
- (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

3.

“Individual” means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

“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.

“In the course of committing theft” means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

4.

“Theft,” as used herein, is the unlawful appropriation of the property of another with the intent to deprive the owner of said property.

“Appropriation” and “appropriate,” as those terms are used herein, mean to acquire or otherwise exercise control over property other than real property. Appropriation of property is unlawful if it is without the owner’s effective consent.

“Property,” as used herein, means tangible or intangible personal property or documents, including money, that represents or embodies anything of value.

“Deprive” means to withhold property from the owner permanently.

“Owner” means a person who has title to the property, possession of the property, or a greater right to possession of the property than the person charged.

“Possession” means actual care, custody, control or management of the property.

5.

The following definitions apply to the mental state in causing the death of an individual:

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.

The following definitions apply to the offense of robbery:

A person acts “intentionally,” or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

A person acts “knowingly,” or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. 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.

6.

All persons are parties to an offense who are guilty of acting together in the commission of the offense. 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.

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 constitute one a party to an offense.

7.

Voluntary intoxication does not constitute a defense to the commission of a crime.

“Intoxication” means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

8.

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about December 26, 2011, in Lubbock County, Texas, BRIAN SUNIGA, acting alone, or acting with intent to promote or assist the commission of the offense by Sesilio Lopez, Jr, by encouraging, directing, aiding or attempting to aid Sesilio Lopez, Jr, to commit the offense, if any, by his own actions and conduct during the commission of said offense, did then and there, intentionally cause the death of an individual, namely, David Rowser, by shooting the said David Rowser, and the defendant was then and there in the course of committing or attempting to commit the offense of robbery of Jonathan Rowser, then you will find the defendant guilty of capital murder as charged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict “Not Guilty.”

9.

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, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense, if any.

10.

You are further charged that if there is any evidence before you in this case tending to show that the defendant herein committed offenses other than the offense alleged against him in the indictment, you cannot consider said testimony for any purpose unless you find and believe, beyond a reasonable doubt, that the defendant committed such other offenses, if any were committed; and if you find and believe beyond a reasonable doubt from such testimony that other offenses were committed, you may then consider the same in determining the preparation, plan, identity and for no other purpose.

11.

Our law provides that a defendant may testify in 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 it into consideration for any purpose whatsoever as a circumstance against the defendant.

12.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not allow other jurors to read your notes, and you should not permit the other jurors to give you their notes. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors if there is a dispute as to that testimony.

In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial if there is a dispute as to that testimony.

Occasionally, during jury deliberations, a dispute arises as to the testimony of a particular witness. If this should occur in this case, you shall inform the Court and request that the Court read the portion of disputed testimony to you from the court reporter's notes. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts.

The dispute must be settled by the court reporter's notes, for it is the official record, rather than any juror's notes, upon which you must base your determination of the facts and, ultimately, your verdicts in this case.

13.

In your deliberations, you will consider this charge as a whole. You are instructed that the indictment in this case is of itself a mere accusation or charge against this defendant, and is not any evidence of the defendant's guilt; no juror in this case should permit himself/herself to be to any extent influenced against this defendant because of, or on account of, said indictment.

14.

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 case until I accept your verdict.

15.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, and no juror is permitted to communicate to any other juror anything he/she may have heard regarding the case from any source

other than the witness stand.

16.

In deliberating on the cause you are not to refer to or discuss any matter or issue not in evidence before you; nor talk about this case to anyone not of your jury; and after the reading of this Charge you shall not separate from each other until you have reached a verdict.

17.

Your verdict, if any, will be by unanimous vote.

18.

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 of 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."

19.

When the jury wishes to communicate with the Court, it shall so notify the Bailiff, who shall inform the Court thereof. Any communication relative to the cause must be written, signed by the Foreman, and shall be submitted to the Court through the Bailiff.

20.

You are the exclusive judges of the facts proven, of the credibility of the witnesses, and of the weight to be given to their testimony; but you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

21.

After argument of counsel, you will retire and select one of your members as your Foreman. It is his/her duty to preside at your deliberations and to vote with you in arriving at a verdict. Your verdict, if any, must be unanimous; and after you have arrived at your verdict, you may use one of the forms attached hereto by having your Foreman sign his/her name to the particular form that conforms to your verdict.

The above and foregoing is the Charge in this case, and the same is hereby signed and certified by the Court, this the 15 day of May, 2014.


Judge Presiding

NO. 2012-434,109

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

BRIAN SUNIGA

§ 140TH JUDICIAL DISTRICT

VERDICT

We, the jury, find from the evidence beyond a reasonable doubt the defendant is guilty of the offense of capital murder, as charged in the indictment.


Foreman of the Jury

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BRIAN SUNIGA

§ 140TH JUDICIAL DISTRICT

VERDICT

We, the jury, find the defendant not guilty.

Foreman of the Jury