

NO. 2020-CR-2721

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 226TH JUDICIAL DISTRICT
JILSON AVELAR-RODRIGUEZ § BEXAR COUNTY, TEXAS
AKA ANDRES RODRIGUEZ

FILED
O'CLOCK M
JAN 19 2024
GLORIA A. MARTINEZ
District Clerk, Bexar County, Texas
BY *[Signature]*
~~LEAH B. BERRY~~

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, stands charged in Counts I, II, and III of the indictment with the offense of capital murder, alleged to have been committed on or about the 30th Day of September, 2018, in Bexar County, Texas. The defendant has pleaded not guilty.

1.

Our law provides that a person commits the offense of murder if

- he intentionally or knowingly causes the death of an individual, or
- intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual, or
- 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.

Our law provides that a person commits the offense of capital murder if he

- intentionally or knowingly causes the death of more than one individual during the same criminal transaction, or
- if he intentionally causes the death of an individual in the course of committing or attempting to commit the offense of burglary.

Our law provides that a person commits the offense of manslaughter if he recklessly causes the death of an individual.

2.

The offenses of burglary and aggravated assault with a deadly weapon are felony offenses.

Our law provides that a person commits the offense of burglary if, without the effective consent of the owner, the person enters a habitation with intent to commit a felony, theft, or an assault; or enters a habitation and commits or attempts to commit a felony, theft, or an assault.

Our law provides that a person commits the offense of assault if the person intentionally, knowingly, or recklessly causes bodily injury to another; or if the person intentionally or knowingly threatens another with imminent bodily injury.

A person commits the offense of aggravated assault with a deadly weapon if the person commits an assault, as defined above, and uses or exhibits a deadly weapon during the commission of the assault.

A person commits the offense of theft if he unlawfully appropriates property with intent to deprive the owner of property.

3.

"Individual" means a human being who is alive.

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

"Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

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

"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.

"Effective consent" means assent in fact, whether express or apparent, and includes consent by a person legally authorized to act for the owner.

"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 defendant.

By the term "enter," as used above, is meant to intrude any part of the body or any physical object connected with the body into the habitation.

A "habitation" means a structure that is adapted for the overnight accommodation of persons, and includes each separately secured or occupied portion of the structure, and each structure appurtenant to or connected with the structure.

"Appropriation" and "appropriate" 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, or if the property is stolen and the actor appropriates the property knowing it was stolen by another.

"Property" 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 or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner.

4.

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

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 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 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. A person acts "recklessly", or is "reckless" with respect to the circumstances surrounding his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist. 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.

5. (The Law on Duress)

It is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another. Such compulsion, as applied in this case, exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure.

The defense of duress is unavailable if the actor intentionally, knowingly, or recklessly placed himself in a situation in which it was probable that he would be subjected to compulsion.

The burden of proof of the affirmative defense of duress rests upon the defendant, and to establish such defense, the defendant must prove the affirmative defense of duress by a preponderance of the evidence. The term "preponderance of the evidence" means the greater weight and degree of the credible evidence in this case.

Now keeping in mind these instructions regarding the affirmative defense of duress, upon consideration of each offense charged against Defendant as instructed herein, if you find from the evidence beyond a reasonable doubt that the defendant Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did

commit such offense as instructed in this charge, but you further find, as to that offense, that the defendant has proved by a preponderance of the evidence, each of the following elements of duress:

1. Jilson Avelar-Rodriguez, AKA Andres Rodriguez, was compelled to engage in the conduct by a threat of imminent death or serious bodily injury to himself; and
2. The threat would render a person of reasonable firmness incapable of resisting the pressure; and
3. Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did not intentionally, knowingly, or recklessly place himself in a situation in which it was probable that he would be subject to compulsion;

Then you will find in favor of the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, on his affirmative defense of duress and find that he acted under duress.

However, if, upon consideration of each offense being charged against Defendant as instructed herein, you find from the evidence beyond a reasonable doubt that the defendant Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did commit such offense as instructed in this charge, and you do not find that Jilson Avelar-Rodriguez, AKA Andres Rodriguez, has proved by a preponderance of the evidence each of the elements of the

defense of duress, as listed above;

Then you will find against the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, on the affirmative defense of duress and find that he did not prove that he acted under duress.

6. (The Law on Self Defense)

You are instructed that it is a defense to this prosecution if the conduct of the defendant was justified by law.

A person is justified in using force against another when and to the degree the person reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

A person is justified in using deadly force against another:

(1) If the person would be justified in using force against the other in the first place, as set out above; and

(2) When and to the degree the person reasonably believes the deadly force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly force.

The use of force against another is not justified in response to verbal provocation alone.

"Reasonable belief" means a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

"Deadly force" means force that is intended or known by the person using it to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

The defendant is not required to prove self-defense. The state must prove beyond a reasonable doubt that the defendant did not act in self-defense.

A person

(1) who has a right to be present at the location where the deadly force is used, and

(2) who has not provoked the person against whom the deadly force is used, and

(3) who is not engaged in criminal activity at the time the deadly force

is used is not required to retreat before using deadly force. If all three of these factors are met, then in determining whether such actor reasonably believed that the use of deadly force was necessary, a finder of fact may not consider whether that actor failed to retreat.

You are instructed that a person's belief that deadly force was immediately necessary is presumed to be reasonable if that actor:

(1) knew or had reason to believe that the person against whom deadly force was used unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation; and

(2) that actor did not provoke the person against whom the force was used; and

(3) that actor was not otherwise engaged in criminal activity.

You are instructed that the facts giving rise to this presumption of reasonableness must be proven beyond a reasonable doubt. If such facts are proven beyond a reasonable doubt you may find that the element of the offense sought to be presumed exists, but you are not bound to so find; and even though you may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense that is charged against the defendant. If the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose.

Keeping in mind these instructions regarding self defense, upon consideration of the offense that charged against Defendant as instructed herein, if you find from the evidence beyond a reasonable doubt that the defendant Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did commit such offense as instructed in this charge, if instructed to do so, you must decide whether the State has proven beyond a reasonable doubt that the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did not act in self defense.

Therefore, upon consideration of the offense that is charged against Defendant as instructed herein, if you find from

the evidence beyond a reasonable doubt that the defendant Jilson Avelar-Rodriguez, AKA Andres Rodriguez did commit such offense as instructed herein;

But you further find from the evidence that, or you have a reasonable doubt as to whether, at the time he did so:

- (1) Jilson Avelar-Rodriguez, AKA Andres Rodriguez, reasonably believed that Nicholas Milanovich was using or attempting to use unlawful deadly force against Jilson Avelar-Rodriguez, AKA Andres Rodriguez; and
- (2) Jilson Avelar-Rodriguez, AKA Andres Rodriguez reasonably believed that his use of deadly force and the degree of deadly force used were immediately necessary to protect himself against Nicholas Milanovich's use or attempted use of unlawful deadly force; and
- (3) Jilson Avelar-Rodriguez's, AKA Andres Rodriguez's use of deadly force was not in response to verbal provocation alone;

Then, you will find in favor of the defendant on the law of self defense as to Nicholas Milanovich, finding that the defendant did act in self defense.

However, upon consideration of the offense that is charged against Defendant as instructed herein, if you find from the evidence beyond a reasonable doubt that the defendant Jilson

Avelar-Rodriguez, AKA Andres Rodriguez did commit such offense as instructed herein;

And you further find from the evidence beyond a reasonable doubt that:

1) Jilson Avelar-Rodriguez, AKA Andres Rodriguez did not reasonably believe that Nicholas Milanovich was using or attempting to use unlawful deadly force against Jilson Avelar-Rodriguez, AKA Andres Rodriguez; or

2) Jilson Avelar-Rodriguez, AKA Andres Rodriguez did not reasonably believe that the use of deadly force and degree of deadly force used was immediately necessary to protect himself against Nicholas Milanovich's use or attempted use of unlawful deadly force; or

3) Jilson Avelar-Rodriguez's, AKA Andres Rodriguez's use of deadly force was in response to verbal provocation alone;

Then, you will find against the defendant on his justification defense of self defense as to Nicholas Milanovich and find that the defendant did not act in self defense when shooting Nicholas Milanovich.

Count I - Capital Murder (More Than One Individual During The Same Criminal Transaction)

Now, if you unanimously find from the evidence beyond a reasonable doubt that

- on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally or knowingly cause the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm, and
- on or about the 30th Day of September, 2018, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally or knowingly cause the death of another individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm, and
- both murders were committed during the same criminal transaction;

But you also find by a preponderance of the evidence that the defendant was acting under duress (as instructed in Paragraph 5) at that time;

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "not guilty" of the offense of capital murder as charged in Count I of the indictment, and do not

consider Paragraphs 8 or 9, but proceed to Paragraph 10.

OR,

If you unanimously find from the evidence beyond a reasonable doubt that

- on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally or knowingly cause the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm, and
- on or about the 30th Day of September, 2018, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally or knowingly cause the death of another individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm, and
- both murders were committed during the same criminal transaction;

And you do not find by a preponderance of the evidence that the defendant was acting under duress at that time;

But you find that the defendant acted in self defense (as instructed in Paragraph 6) when shooting Nicholas Milanovich with a deadly weapon, namely, a firearm;

Then you will acquit the defendant of the offense of capital murder as charged in Count I of the indictment, say by

your verdict "not guilty" of the charged offense of capital murder in Count I, and next consider Paragraph 8 to decide whether the defendant is guilty of a lesser included offense in Count I.

OR,

If you unanimously find from the evidence beyond a reasonable doubt that

- on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally or knowingly cause the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm, and
- on or about the 30th Day of September, 2018, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally or knowingly cause the death of another individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm, and
- both murders were committed during the same criminal transaction;

And you do not find by a preponderance of the evidence that the defendant was acting under duress at that time;

And you find beyond a reasonable doubt that the defendant was not acting in self defense at that time;

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "guilty" of the offense of capital murder as alleged in Count I of the indictment, and do not consider Paragraphs 8 or 9, but proceed to Paragraph 10.

OR,

If you do not find beyond a reasonable doubt, or you have a reasonable doubt as to whether,

- on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally or knowingly cause the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm, and
- on or about the 30th Day of September, 2018, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally or knowingly cause the death of another individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm, and
- both murders were committed during the same criminal transaction;

Then you will acquit the defendant of the offense of capital murder as charged in Count I of the indictment, say by your verdict "not guilty" of the charged offense of capital murder in Count I, do not consider Paragraph 8, but next

consider Paragraph 9 to decide whether the defendant is guilty of the lesser included offense of murder in Count I.

(Count I - Lesser Included Offenses - Julia Wright)

Having found that the defendant did not act under duress, and having found that the defendant acted in self defense when shooting Nicholas Milanovich, you will now consider the following lesser included offense:

If you unanimously find from the evidence beyond a reasonable doubt that on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez,

- did intentionally or knowingly cause the death of an individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm; or
- did intend to cause serious bodily injury and committed an act clearly dangerous to human life that caused the death of an individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm; or
- did commit or attempt to commit a felony, other than manslaughter, namely, burglary, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, the defendant committed or attempted to commit an act

clearly dangerous to human life that caused the death of an individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm;

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "guilty" of the lesser included offense of murder in Count I.

If you do not find beyond a reasonable doubt, or you have a reasonable doubt thereof, then you will acquit the defendant of the lesser included offense of murder in Count I, say by your verdict "not guilty" of the lesser included offense of murder in Count I, and next consider whether the defendant is guilty of the lesser included offense of manslaughter in Count I.

If you unanimously find from the evidence beyond a reasonable doubt that on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did recklessly cause the death of an individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm;

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "guilty" of the lesser included offense of manslaughter in Count I, do not consider Paragraph .9, but proceed to Paragraph 10.

If you do not find beyond a reasonable doubt, or you have a reasonable doubt thereof, then you will find the defendant "not

guilty" of the lesser included offense of manslaughter in Count I, do not consider Paragraph 9, but proceed to Paragraph 10.

(Count I - Lesser Included Offense of Murder)

If you unanimously find from the evidence beyond a reasonable doubt that on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez,

- did intend to cause serious bodily injury and committed an act clearly dangerous to human life that caused the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm; or
- did commit or attempt to commit a felony, other than manslaughter, namely, burglary, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, the defendant committed or attempted to commit an act clearly dangerous to human life that caused the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm;

And you do not find by a preponderance of the evidence that the defendant was acting under duress (as instructed in Paragraph 5) at that time;

And you find beyond a reasonable doubt that the defendant was not acting in self defense;

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "guilty" of the lesser included offense of murder in Count I, and proceed to Paragraph 10.

If you do not so unanimously find the above as to Nicholas Milanovich, or you have a reasonable doubt thereof,

Or you find that the defendant was acting in self defense as to Nicholas Milanovich;

Or you find that he was acting under duress as to Nicholas Milanovich,

You will next consider the following lesser included offense:

If you unanimously find from the evidence beyond a reasonable doubt that on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez,

- did intend to cause serious bodily injury and committed an act clearly dangerous to human life that caused the death of an individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm; or
- did commit or attempt to commit a felony, other than manslaughter, namely, burglary, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, the defendant committed or attempted to commit an act clearly dangerous

to human life that caused the death of an individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm;

And you do not find by a preponderance of the evidence that the defendant was acting under duress (as instructed in Paragraph 5) at that time;

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "guilty" of the lesser included offense of murder in Count I, and proceed to Paragraph 10.

If you do not find beyond a reasonable doubt, or you have a reasonable doubt thereof, or you find that he was acting under duress as to Julia Wright;

Then you will find the defendant "not guilty" of the lesser included offense of murder in Count I.

Count II - (Capital Murder of Nicholas Milanovich)

Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant,

- Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally cause the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm, and
- Jilson Avelar-Rodriguez, AKA Andres Rodriguez, was in the course of committing or attempting to commit the offense of burglary of a habitation;

But you also find by a preponderance of the evidence that the defendant was acting under duress (as instructed in Paragraph 5) at that time;

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "not guilty" of the offense of capital murder as charged in Count II of the indictment, and do not consider Paragraphs 11 or 12, but proceed to Paragraph 13.

OR,

If you unanimously find from the evidence beyond a reasonable doubt that

- Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did

intentionally cause the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm, and

- Jilson Avelar-Rodriguez, AKA Andres Rodriguez, was in the course of committing or attempting to commit the offense of burglary of a habitation;

And you do not find by a preponderance of the evidence that the defendant was acting under duress at that time;

But you find that the defendant acted in self defense (as instructed in Paragraph 6) when shooting Nicholas Milanovich with a deadly weapon, namely, a firearm;

Then you will acquit the defendant of the offense of capital murder as charged in Count II of the indictment, say by your verdict "not guilty" of the charged offense of capital murder in Count II, and next consider Paragraph 11 to decide whether the defendant is guilty of the lesser included offense of burglary in Count II.

OR,

If you unanimously find from the evidence beyond a reasonable doubt that

- Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally cause the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm, and

- Jilson Avelar-Rodriguez, AKA Andres Rodriguez, was in the course of committing or attempting to commit the offense of burglary of a habitation;

And you do not find by a preponderance of the evidence that the defendant was acting under duress at that time;

And you find beyond a reasonable doubt that the defendant was not acting in self defense at that time;

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "guilty" of the offense of capital murder as alleged in Count II of the indictment, and do not consider Paragraphs 11 or 12, but proceed to Paragraph 13.

OR,

If you do not find beyond a reasonable doubt, or you have a reasonable doubt as to whether,

- Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally cause the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm, and
- Jilson Avelar-Rodriguez, AKA Andres Rodriguez, was in the course of committing or attempting to commit the offense of burglary of a habitation;

Then you will acquit the defendant of the offense of capital murder as charged in Count II of the indictment, say by your verdict "not guilty" of the charged offense of capital

murder in Count II, do not consider Paragraph 11, but proceed to Paragraph 12 to decide whether the defendant is guilty of the lesser included offense of murder in Count II.

(Count II - Lesser Included Offense of Burglary)

Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally or knowingly enter a habitation, with intent to commit the felony offense of aggravated assault with a deadly weapon, or theft, or an assault, without the effective consent of Nicholas Milanovich and/or Julia Wright, the owner(s);

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "guilty" of the lesser included offense of burglary in Count II, and proceed to Paragraph 13.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant "not guilty" of the lesser included offense of burglary in Count II, and proceed to Paragraph 13.

(Count II - Lesser Included Offense of Murder)

If you unanimously find from the evidence beyond a reasonable doubt that on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez,

- did intend to cause serious bodily injury and committed an act clearly dangerous to human life that caused the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm; or
- did commit or attempt to commit a felony, other than manslaughter, namely, burglary, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, the defendant committed or attempted to commit an act clearly dangerous to human life that caused the death of an individual, namely, Nicholas Milanovich, by shooting Nicholas Milanovich with a deadly weapon, namely, a firearm;

And you do not find by a preponderance of the evidence that the defendant was acting under duress (as instructed in Paragraph 5) at that time;

And you find beyond a reasonable doubt that the defendant was not acting in self defense;

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "guilty" of the lesser included offense of murder in Count II, and proceed to Paragraph 13.

If you do not find beyond a reasonable doubt, or you have a reasonable doubt thereof, then you will find the defendant "not guilty" of the lesser included offense of murder in Count II, and proceed to Paragraph 13.

Count III - (Capital Murder of Julia Wright)

Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant,

- Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally cause the death of an individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm, and
- Jilson Avelar-Rodriguez, AKA Andres Rodriguez, was in the course of committing or attempting to commit the offense of burglary of a habitation;

But you also find by a preponderance of the evidence that the defendant was acting under duress (as instructed in Paragraph 5) at that time;

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "not guilty" of the offense of capital murder as charged in Count III of the indictment, and do not consider Paragraph 14.

But if you do not so find, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of capital murder as charged in Count III of the indictment, say by

your verdict "not guilty" of the charged offense of capital murder in Count III, and next consider Paragraph 14 to decide whether the defendant is guilty of a lesser included offense.

(Count III - Lesser Included Offenses)

If you unanimously find from the evidence beyond a reasonable doubt that on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez,

- did intend to cause serious bodily injury and committed an act clearly dangerous to human life that caused the death of an individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm; or
- did commit or attempt to commit a felony, other than manslaughter, namely, burglary, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, the defendant committed or attempted to commit an act clearly dangerous to human life that caused the death of an individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm;

And you do not find by a preponderance of the evidence that the defendant was acting under duress (as instructed in Paragraph 5) at that time;

Then you will find the defendant, Jilson Avelar-Rodriguez,

AKA Andres Rodriguez, "guilty" of the lesser included offense of murder in Count III, and proceed to Paragraph 15.

If you do not find beyond a reasonable doubt, or you have a reasonable doubt thereof, then you will find the defendant "not guilty" of the lesser included offense of murder in Count III, but next consider the different lesser included offense of manslaughter in Count III.

If you unanimously find from the evidence beyond a reasonable doubt that on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did recklessly cause the death of an individual, namely, Julia Wright, by shooting Julia Wright with a deadly weapon, namely, a firearm;

And you do not find by a preponderance of the evidence that the defendant was acting under duress (as instructed in Paragraph 5) at that time;

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "guilty" of the lesser included offense of manslaughter in Count III, and proceed to Paragraph 15.

If you do not find beyond a reasonable doubt, or you have a reasonable doubt thereof, then you will find the defendant "not guilty" of the lesser included offense of manslaughter in Count III, but next consider the different lesser included offense of

burglary in Count III.

If you unanimously find from the evidence beyond a reasonable doubt that on or about the 30th Day of September, 2018, in Bexar County, Texas, the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, did intentionally or knowingly enter a habitation, with intent to commit the felony offense of aggravated assault with a deadly weapon, or theft, or an assault, without the effective consent of Nicholas Milanovich and/or Julia Wright, the owner(s);

Then you will find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, "guilty" of the lesser included offense of burglary in Count III.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant "not guilty" of the lesser included offense of burglary in Count III, and proceed to Paragraph 15.

Our law provides 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 him.

You are instructed that you must not communicate with or provide any information to anyone or receive any information from anyone by any means about this case. You may not use any electronic device or media, such as telephone, cell phone, smart phone, iPhone, Blackberry, iPad, tablet, or computer; the internet, any internet service, or any text or instant messaging service; or any social media platform, internet chat room, blog, or website to include, but not limited to, Facebook, My Space, Instagram, Snapchat, LinkedIn, YouTube, TikTok, Twitter or X, to communicate with anyone any information or receive any information from anyone about this case or to conduct any research about this case until I accept your verdict.

Written statements made by a witness to investigators or other officers or police reports made by officers and tendered by the prosecution to the defense for purposes of cross-examination are not part of the evidence unless introduced in evidence. Many times statements and reports may be marked with an exhibit number but are neither offered nor received in evidence. The Court can send only statements and reports received in evidence to the jury room.

The Grand Jury Indictment is not 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 determining whether the defendant is guilty or not guilty.

During your deliberations in this case, 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 case which is not shown by the evidence.

The burden of proof in all criminal cases rests upon the State throughout the trial, and never shifts to 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 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.

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."

You are instructed that you are not to let bias, prejudice, or sympathy play any part in your deliberations.

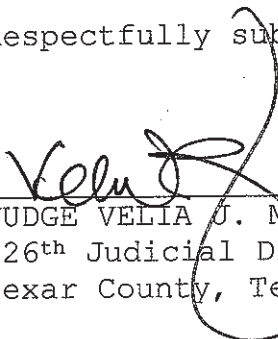
You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given the testimony but the law of the case you must receive from the Court as contained in these instructions and be governed thereby. You must disregard any comment or statement made by the Court during the trial or in these instructions which may seem to indicate an opinion with respect to any fact, item of evidence or verdict to be reached in this case. No such indication was intended.

After argument of counsel, you will retire to the jury room, select your own Presiding Juror and proceed with your deliberations. After you have reached a unanimous verdict the Presiding Juror will certify thereto by filling in the appropriate forms attached to this charge and signing his or her name as Presiding Juror. The forms are not intended to suggest to you what your verdict should be.

Your sole duty at this time is to determine whether the defendant is guilty or not guilty under the indictment in this cause and restrict your deliberations to the issue of whether the defendant is guilty or not guilty, and nothing else. If the Jury wishes to communicate with the Court, they shall notify the bailiff.

Any and all communication relative to the case must be written, prepared by the presiding juror, and submitted to the Court through the bailiff.

Respectfully submitted,



JUDGE VELIA J. MEZA
226th Judicial District
Bexar County, Texas

NO. 2020-CR-2721

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 226TH JUDICIAL DISTRICT
JILSON AVELAR-RODRIGUEZ § BEXAR COUNTY, TEXAS
AKA ANDRES RODRIGUEZ

COUNT I

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, not guilty of the offense of capital murder as alleged in Count I of the indictment and as instructed in Paragraph 7.

PRESIDING JUROR

OR

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, guilty of the offense of capital murder as alleged in Count I of the indictment and as instructed in Paragraph 7.



PRESIDING JUROR

NO. 2020-CR-2721

| | | |
|---|---|-------------------------|
| THE STATE OF TEXAS | § | IN THE DISTRICT COURT |
| VS. | § | 226TH JUDICIAL DISTRICT |
| JILSON AVELAR-RODRIGUEZ AKA ANDRES RODRIGUEZ | § | BEXAR COUNTY, TEXAS |

Complete this verdict form only if you have completed the previous verdict form on Count I by finding the defendant "not guilty" of the offense of capital murder as charged in Count I.

COUNT I (LESSER INCLUDED OFFENSE OF THE MURDER OF JULIA WRIGHT)

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, not guilty of the lesser included offense of the murder of Julia Wright in Count I as instructed in Paragraph 8 or Paragraph 9.

PRESIDING JUROR

OR

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, guilty of the lesser included offense of the murder of Julia Wright in Count I as instructed in Paragraph 8 or Paragraph 9.

PRESIDING JUROR

NO. 2020-CR-2721

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 226TH JUDICIAL DISTRICT
JILSON AVELAR-RODRIGUEZ § BEXAR COUNTY, TEXAS
AKA ANDRES RODRIGUEZ

Complete this verdict form only if you have completed the previous two verdict forms on Count I by finding the defendant "not guilty" of the offense of capital murder as charged in Count I and "not guilty" of the lesser included offense of the murder of Julia Wright in Count I.

COUNT I (LESSER INCLUDED OFFENSE OF MANSLAUGHTER)

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, not guilty of the lesser included offense of manslaughter of Julia Wright in Count I as instructed in Paragraph 8.

PRESIDING JUROR

OR

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, guilty of the lesser included offense of manslaughter of Julia Wright in Count I as instructed in Paragraph 8.

PRESIDING JUROR

NO. 2020-CR-2721

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 226TH JUDICIAL DISTRICT
JILSON AVELAR-RODRIGUEZ § BEXAR COUNTY, TEXAS
AKA ANDRES RODRIGUEZ

Complete this verdict form only if you have completed Count I verdict form by finding the defendant "not guilty" of the offense of capital murder as charged in Count I.

COUNT I
(LESSER INCLUDED OFFENSE OF MURDER OF NICHOLAS MILANOVICH)

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, not guilty of the lesser included offense of the murder of Nicholas Milanovich in Count I as instructed in Paragraph 9.

PRESIDING JUROR

OR

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, guilty of the lesser included offense of the murder of Nicholas Milanovich in Count I as instructed in Paragraph 9.

PRESIDING JUROR

NO. 2020-CR-2721

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 226TH JUDICIAL DISTRICT
JILSON AVELAR-RODRIGUEZ § BEXAR COUNTY, TEXAS
AKA ANDRES RODRIGUEZ

COUNT II

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, not guilty of the offense of capital murder as alleged in Count II of the indictment and as instructed in Paragraph 10.

PRESIDING JUROR

OR

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, guilty of the offense of capital murder as alleged in Count II of the indictment and as instructed in Paragraph 10.



PRESIDING JUROR

NO. 2020-CR-2721

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 226TH JUDICIAL DISTRICT
JILSON AVELAR-RODRIGUEZ § BEXAR COUNTY, TEXAS
AKA ANDRES RODRIGUEZ

Complete this verdict form only if you have completed the previous verdict form on Count II by finding the defendant "not guilty" of the offense of capital murder as charged in Count II.

COUNT II (LESSER INCLUDED OFFENSE OF BURGLARY)

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, not guilty of the lesser included offense of burglary in Count II as instructed in Paragraph 11.

PRESIDING JUROR

OR

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, guilty of the lesser included offense of burglary in Count II as instructed in Paragraph 11.

PRESIDING JUROR

NO. 2020-CR-2721

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 226TH JUDICIAL DISTRICT
JILSON AVELAR-RODRIGUEZ § BEXAR COUNTY, TEXAS
AKA ANDRES RODRIGUEZ

Complete this verdict form only if you have completed the previous two verdict forms on Count II by finding the defendant "not guilty" of the offense of capital murder as charged in Count I and "not guilty" of the lesser included offense of burglary in Count II.

COUNT II (LESSER INCLUDED OFFENSE OF MURDER)

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, not guilty of the lesser included offense of murder in Count II as instructed in Paragraph 12.

PRESIDING JUROR

OR

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, guilty of the lesser included offense of murder in Count II as instructed in Paragraph 12.

PRESIDING JUROR

NO. 2020-CR-2721

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 226TH JUDICIAL DISTRICT
JILSON AVELAR-RODRIGUEZ § BEXAR COUNTY, TEXAS
AKA ANDRES RODRIGUEZ

Complete this verdict form only if you have completed the previous two verdict forms on Count III by finding the defendant "not guilty" of the offense of capital murder as charged in Count III and "not guilty" of the lesser included offense of murder in Count III.

COUNT III (LESSER INCLUDED OFFENSE OF BURGLARY)

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, not guilty of the lesser included offense of burglary in Count III as instructed in Paragraph 14.

PRESIDING JUROR

OR

VERDICT FORM

We, the Jury, find the defendant, Jilson Avelar-Rodriguez, AKA Andres Rodriguez, guilty of the lesser included offense of burglary in Count III as instructed in Paragraph 14.

PRESIDING JUROR