

NO. 2009-CR-12648A

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
VS.	§	290TH JUDICIAL DISTRICT
JAMES GARZA	§	BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, James Garza, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 6th Day of September, 2009, in Bexar County, Texas. The defendant has pleaded not guilty.

I.

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

II.

"Individual" means a human being who has been born and is alive.

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

"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.

"Deadly weapon" means anything that in the manner of its

use or intended use is capable of causing death or serious bodily injury.

"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.

III.

For the offenses of murder and capital murder, 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.

IV.

A person commits a robbery if, in the course of committing theft, as defined hereinafter, and with intent to obtain or maintain control of the property, he intentionally, knowingly, or recklessly causes bodily injury to another.

A person commits aggravated robbery if the person commits a robbery, as defined above, and uses or exhibits a deadly weapon.

V.

"In the course of committing" as defined in paragraph II applies and has the same meaning here.

"Attempt" as defined in paragraph II applies and has the same meaning here.

"Bodily injury" as defined in paragraph II applies and has

the same meaning here.

"Deadly weapon" means anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

"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.

VI.

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

VII.

"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.

"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.

"Effective consent" means assent in fact, whether express

or apparent, and includes consent by a person legally authorized to act for the owner. Consent is not effective if induced by deception or coercion.

"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.

VIII.

For the offenses of robbery, aggravated robbery, and theft, 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.

For the offenses robbery and aggravated robbery, 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.

For the offenses of robbery and aggravated robbery, 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.

Our law provides a person is criminally responsible as a party to an offense if the offense is committed by his own conduct, or by the conduct of another for which he is criminally responsible, or by both. Each party to an offense may be charged with commission of the offense.

Mere presence alone will not make a person a party to an offense. A person is criminally responsible for an offense committed by the conduct of another if acting with intent to promote or assist the commission of the offense he solicits, encourages, directs, aids or attempts to aid the other person to commit the offense.

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.

Capital murder, aggravated robbery, and robbery are felony offenses.

The term "conspiracy", as used in these instructions, means an agreement between two or more persons, with intent that a felony be committed, that they, or one or more of them, engage in conduct that would constitute the offense and he or one or more of them performs an overt act in pursuance of the agreement. An agreement constituting a conspiracy may be inferred from acts of the parties.

IX.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 6th Day of September, 2009, in Bexar County, Texas, the defendant, James Garza, did, either acting alone or together as a party with Stephen Vogt, intentionally cause the death of an individual, namely, Mario Alberto Raygoza, by cutting or stabbing Mario Alberto Raygoza with a deadly weapon, namely, a knife, that in the manner of its use or intended use was capable of causing death or serious bodily injury, and James Garza, either acting alone or together as a party with Stephen Vogt, was in the course of committing or attempting to commit robbery of Mario Alberto Raygoza,

Or, if you find from the evidence beyond a reasonable doubt that James Garza entered into a conspiracy with Stephen Vogt to commit the felony offense of aggravated robbery or robbery and that on or about the 6th Day of September, 2009, in Bexar County, Texas, in an attempt to carry out this agreement, Stephen Vogt, did intentionally cause the death of Mario Alberto Raygoza, by cutting or stabbing Mario Alberto Raygoza with a deadly weapon, namely, a knife, that in the manner of its use or intended use was capable of causing death or serious bodily injury, and James Garza, either acting alone or together as a party with Stephen Vogt, were in the course of committing or attempting to commit robbery of Mario Alberto Raygoza, and that such offense of

capital murder was committed in furtherance of the unlawful purpose to commit aggravated robbery or robbery and was an offense that should have been anticipated as a result of the carrying out of the conspiracy to commit aggravated robbery or robbery;

Then you will find the defendant guilty of capital murder as charged in the indictment and skip paragraph X.

If you do not so find beyond a reasonable doubt, if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether the defendant is guilty of the lesser included offense of aggravated robbery and proceed to paragraph X.

X.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 6th Day of September, 2009, in Bexar County, Texas, the defendant, James Garza, did, either acting alone or together as a party with Stephen Vogt, intentionally, knowingly or recklessly cause bodily injury to another, namely: Mario Alberto Raygoza, by using or exhibiting a deadly weapon, namely: a knife, that in the manner of its use or intended use was capable of causing death or serious bodily injury, while James Garza, either acting alone or together as a party with Stephen Vogt, was in the course of committing theft of property, namely: one (1) vehicle from Mario Alberto Raygoza, the owner of said property, without the effective consent of Mario Alberto Raygoza, and said acts were committed by James Garza either acting alone or together as a party with Stephen Vogt, with the intent to obtain or maintain control of the said property, then you will find the defendant guilty of aggravated robbery with a deadly weapon.

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.

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.

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. I can send only statements and reports received in evidence to the jury room.

You are instructed that the statements of counsel made during the course of the trial or during the argument, if not supported by evidence, or statements of law made by counsel, if not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

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 is intended.

You are instructed that 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 passing upon whether this 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.

After you have retired to your jury room, you should select one of your members as your "foreperson". 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 "foreperson."

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 by that law.

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."

A suitable form for your verdict is attached to the charge for your convenience if you care to use it, but it is not intended to suggest to you in any way what your verdict should be, and you may

or may not, as you see fit, make use of it. At any rate, your verdict must be in writing and signed by your foreperson. Your only duty at this time is to determine whether the defendant is guilty or not guilty under the indictment in this cause, and you must restrict your deliberations to the issue of whether the defendant is guilty or not guilty, and nothing else. After you have retired to the jury room, no one has any authority to communicate with you except the officer who has you in charge. Do not attempt to talk to the officer, or anyone else concerning any question you may have; instead address your question to the Court in writing. If you want to communicate with the Court, notify the bailiff. Any communication relative to the case must be written, prepared by the foreperson, and submitted to the Court through the bailiff.

Respectfully submitted,

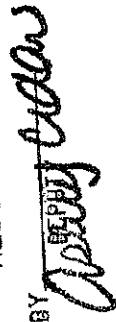

JUDGE MELISA SKINNER (for DICK ALCALA)
290th Judicial District Court
Bexar County, Texas

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IN THE DISTRICT COURT

VS.

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290TH JUDICIAL DISTRICT

JAMES GARZA

§

BEXAR COUNTY, TEXAS

VERDICT FORM

We, the Jury, find the defendant, James Garza, not guilty.

FOREPERSON

VERDICT FORM

We, the Jury, find the defendant, James Garza, guilty of capital murder as charged in the indictment.


FOREPERSON

VERDICT FORM

We, the Jury, find the defendant, James Garza, guilty of the lesser included offense of aggravated robbery.


FOREPERSON

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VERDICT FORM

We, the Jury, find the defendant, James Garza, not guilty.

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VERDICT FORM

We, the Jury, find the defendant, James Garza, guilty of capital murder as charged in the indictment.


FOREPERSON

VERDICT FORM

We, the Jury, find the defendant, James Garza, guilty of the lesser included offense of aggravated robbery.

FOREPERSON