

CAUSE NO. 1487696

THE STATE OF TEXAS § IN THE CRIMINAL DISTRICT
VS. § COURT NUMBER FOUR OF
MARIO HERNAN LOPEZ GAMEZ § TARRANT COUNTY, TEXAS

THOMAS A WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS
APR 29 2019
M. J. 11:18A
DEPUTY

COURT'S CHARGE

MEMBERS OF THE JURY:

The Defendant, MARIO HERNAN LOPEZ GAMEZ, stands charged by indictment with the offense of the capital murder, alleged to have been committed in Tarrant County, Texas, on or about the 15th day of December 2016. To this charge, the defendant has pled not guilty.

A person commits the offense of "capital murder" if he intentionally commits the murder in the course of committing or attempting to commit the offense of robbery.

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 the 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 "manslaughter" if he recklessly causes the death of an individual.

A person commits the offense of "criminally negligent homicide" if he causes the death of an individual by criminal negligence.

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

The offense is "aggravated robbery" if the person committing robbery uses or exhibits a deadly weapon.

"Individual" means a human being who has been born and 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. A firearm is a deadly weapon.

"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.

The term "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.

"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 affect the commission of the offense intended.

"Theft" means to unlawfully appropriate property with the intent to deprive the owner of property.

"Appropriation" and "appropriate," as those terms are used herein, means 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.

"Owner" means a person who has a title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the Defendant.

"Possession" means actual care, custody, control, or management of property.

"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 force or threats.

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

Each party to an offense may be charged with commission of the 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. Mere presence alone will not constitute one a party to an offense.

A person is 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. In this situation 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.

The term "conspiracy" means an agreement with one or more persons that they or one or more of them engage in conduct that would constitute a felony. An agreement constituting a conspiracy may be inferred from the acts of the parties. You are instructed that robbery is a felony.

Mere presence alone will not constitute one a party to an offense.

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 knowingly, or with knowledge, with respect to the nature of his conduct or to the 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.

A person acts recklessly, or is reckless, as to the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

A person acts with criminal negligence, or is criminally negligent, with respect to the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the result complained of will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard care of that an ordinary person would exercise under all the circumstances, as viewed from the standpoint of the person charged.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of December 2016, in Tarrant County, Texas, the defendant, MARIO HERNAN LOPEZ GAMEZ, did then and there, either acting alone or with another as a party to the offense, as that term has heretofore been defined, intentionally cause the death of April VanCleave, by shooting her with a deadly weapon, to wit: a firearm, and the said defendant was in the course of committing or attempting to commit the offense of robbery of April VanCleave, then you will find the defendant guilty of capital murder.

Unless you find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder as charged in the indictment and next consider whether the Defendant is guilty of a lesser-included offense. If you, however, find from the evidence beyond a reasonable doubt that the defendant is guilty of capital murder, you need not proceed to the lesser included offenses below.

The offenses of murder and aggravated robbery are lesser-included offenses of capital murder.

If you are considering the lesser-included offense of murder, the following law applies.

You are instructed that, as it applies to murder, 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.

You are instructed that, as it applies to murder, 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.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of December 2016, in Tarrant County, Texas, the defendant, MARIO HERNAN LOPEZ GAMEZ, did then and there, either acting alone or with another as a party to the offense, as that term has heretofore been defined, intentionally or knowingly cause the death of April VanCleave; or intended to cause serious bodily injury and committed an act clearly dangerous to human life that caused the death of April VanCleave by shooting her with a deadly weapon, to wit: a firearm; or committed or attempted to commit a felony and in the course of and in furtherance of the commission or attempt, or immediate flight from the commission or attempt, he committed or attempted to commit an act clearly dangerous to human life that caused the death of April VanCleave by shooting her with a deadly weapon, to wit: a firearm, then you will find the defendant guilty of the lesser-included offense of murder.

Unless you find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of murder and next proceed to consider whether the Defendant is guilty of the lesser-included offense of manslaughter.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of December 2016, in Tarrant County, Texas, the defendant, MARIO HERNAN LOPEZ GAMEZ,

did then and there, either acting alone or with another as a party to the offense, as that term has heretofore been defined, recklessly cause the death of April VanCleave, then you will find the defendant guilty of the lesser-included offense of manslaughter.

Unless you find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of manslaughter and next consider whether the Defendant is guilty of the lesser-included offense criminally negligent homicide.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of December 2016, in Tarrant County, Texas, the defendant, MARIO HERNAN LOPEZ GAMEZ, did then and there, either acting alone or with another as a party to the offense, as that term has heretofore been defined, caused the death of April VanCleave, by criminal negligence then you will find the defendant guilty of the lesser-offense of criminally negligent homicide.

Unless you 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."

If you are considering the lesser-included offense of aggravated robbery, the following law applies.

Unless you find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder and next proceed to consider whether the Defendant is guilty of the lesser-included offense of aggravated robbery.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of December 2016, in Tarrant County, Texas, the defendant, MARIO HERNAN LOPEZ GAMEZ, did then and there, either acting alone or with another as a party to the offense, as that term has heretofore been defined, intentionally or knowingly, while in the course of committing theft of

property, and with intent to obtain or maintain control of said property, threaten or place April VanCleave in fear of imminent bodily injury or death; and the defendant did then and there use or exhibit a deadly weapon, to wit: a firearm, then you will find the defendant guilty of the lesser-included offense of aggravated robbery with a deadly weapon.

Unless you find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of aggravated robbery with a deadly weapon and next consider whether the Defendant is guilty of the lesser-included offense of robbery.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of December 2016, in Tarrant County, Texas, the defendant, MARIO HERNAN LOPEZ GAMEZ, did then and there, either acting alone or with another as a party to the offense, as that term has heretofore been defined, intentionally or knowingly, while in the course of committing theft of property, and with intent to obtain or maintain control of said property, threaten or place April VanCleave in fear of imminent bodily injury or death, then you will find the defendant guilty of the lesser-included offense of robbery.

Unless you 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."

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.

A grand jury indictment is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence of guilt nor can it be considered by you in passing upon the issue of guilt of the defendant. 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 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.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and the weight to be given their testimony, but the law you must be governed by you shall receive in these written instructions.

After you retire to the jury room, you should select one of your members as your Presiding Juror. 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 using the appropriate form attached hereto, and signing the same as Presiding Juror.

No one has any authority to communicate with you except the officer who has you in charge. 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, you may communicate with this court in writing through the officer who has you in charge. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the court, or anyone else concerning any question you may have. After you have reached a unanimous verdict, the Presiding Juror will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as Presiding Juror. You may now retire to consider your verdict.

A handwritten signature in black ink that reads "Mike Thomas". The signature is written in a cursive, slightly slanted style. Below the signature is a horizontal line.

MIKE THOMAS, PRESIDING JUDGE

VERDICT FORMS

We, the jury, find the defendant, MARIO HERNAN LOPEZ GAMEZ, guilty of the offense of capital murder as alleged in the indictment.

FILED
THOMAS A WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS
APR 29 2019
4:15P
TIME
BY [Signature] DEPUTY

Brent B. Lovelady
PRESIDING JUROR

-OR-

We, the jury, find the defendant, MARIO HERNAN LOPEZ GAMEZ, guilty of the lesser-included offense of murder.

PRESIDING JUROR

-OR-

We, the jury, find the defendant, MARIO HERNAN LOPEZ GAMEZ, guilty of the lesser-included offense of manslaughter.

PRESIDING JUROR

-OR-

VERDICT FORMS CONTINUED

We, the jury, find the defendant, MARIO HERNAN LOPEZ GAMEZ, guilty of the lesser-included offense of criminally negligent homicide.

PRESIDING JUROR

-OR-

We, the jury, find the defendant, MARIO HERNAN LOPEZ GAMEZ, guilty of the lesser-included offense of aggravated robbery.

PRESIDING JUROR

-OR-

We, the jury, find the defendant, MARIO HERNAN LOPEZ GAMEZ, guilty of the lesser-included offense of robbery.

PRESIDING JUROR

-OR-

VERDICT FORMS CONTINUED

We, the jury, find the defendant, MARIO HERNAN LOPEZ GAMEZ,
not guilty.

PRESIDING JUROR