

THE STATE OF TEXAS
v. NELSON GARCIA DELGADO,
DEFENDANT

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§

IN THE 332ND JUDICIAL
DISTRICT COURT OF
HIDALGO COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, NELSON GARCIA DELGADO, stands charged by indictment with the offense of CAPITAL MURDER, alleged to have been committed in Hidalgo County, Texas, on or about OCTOBER 1, 2007, and to this charge the Defendant has pled, "Not guilty."

1.

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

A person commits the offense of Capital Murder when such person murders more than one person during the same criminal transaction.

2.

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

A person acts knowingly or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person is criminally responsible if the result would not have occurred but for his conduct.

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

3.

Now, if you believe from the evidence beyond a reasonable doubt that on or about OCTOBER 1, 2007 in Hidalgo County, Texas, the Defendant, did then and there intentionally or knowingly cause the death of an individual, to-wit: CLAUDIA LORENA ZAMORA, by choking her with his hand, and during the same criminal transaction the defendant did then and there intentionally or knowingly cause the death of another individual, to-wit: an unborn child of CLAUDIA LORENA ZAMORA, while said unborn child was in gestation in CLAUDIA LORENA ZAMORA, by choking CLAUDIA LORENA ZAMORA with his hand;

Or

If you believe from the evidence beyond a reasonable doubt that on or about OCTOBER 1, 2007 in Hidalgo County, Texas, the Defendant, did then and there intentionally or knowingly cause the death of an individual, to-wit: CLAUDIA LORENA ZAMORA, by choking her with his arm, and during the same criminal transaction the defendant did then and there intentionally or knowingly cause the death of another individual, to-wit: an unborn child of CLAUDIA LORENA ZAMORA, while said unborn child was in gestation in CLAUDIA LORENA ZAMORA, by choking CLAUDIA LORENA ZAMORA with his arm, then you will find the Defendant guilty of the offense of Capital Murder as alleged in the indictment.

Unless you so find, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Capital Murder, and next proceed to consider whether Defendant is guilty of the lesser included offense of Murder.

4.

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

5.

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

A person acts knowingly or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person is criminally responsible if the result would not have occurred but for his conduct.

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

6.

Now, if you believe from the evidence beyond a reasonable doubt that on or about OCTOBER 1, 2007 in Hidalgo County, Texas, the Defendant, did then and there intentionally or knowingly cause the death of an individual, to-wit: CLAUDIA LORENA ZAMORA, by choking her with his hand;

OR

If, you believe from the evidence beyond a reasonable doubt that on or about OCTOBER 1, 2007 in Hidalgo County, Texas, the Defendant, did then and there intentionally or knowingly cause the death of an individual, to-wit: CLAUDIA LORENA ZAMORA, by choking her with his arm, then you will find the Defendant guilty of the lesser included offense of Murder;

Unless you so find, or if you have a reasonable doubt thereof, you will acquit the Defendant of the lesser included offense of Murder and say by your verdict, “NOT GUILTY”

7.

Your 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, if any, together with all relevant facts and circumstances going to show the condition of the mind of the accused

at the time of the choking in question, if any.

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.

8.

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 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.

A "reasonable doubt" is a doubt based on reason and common sense after a careful and impartial consideration of all the evidence in the case. It is the kind of doubt that would make a reasonable person hesitate to act in the most important of his own affairs.

Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

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 Defendant and say by your verdict "Not Guilty".

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

When you retire to the jury room, you should first select one of your members as Presiding Juror. It is the Presiding Juror's 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 thereto, and signing the same as Presiding Juror.

In order to return a verdict, each juror must agree thereto, but jurors have a duty to consult with each other and to deliberate with a view of reaching an agreement, if it can be done without violence to individual judgment.

Each juror must decide the case for himself or herself, but only after an impartial consideration of the evidence with his or her fellow jurors.

In the course of deliberations, a juror should not hesitate to re-examine his or her own views and change his or her opinion if convinced it is erroneous. However, no juror should surrender his or her honest conviction as to the weight or effect of the evidence solely because of the opinion of his or her fellow jurors, or for the mere purpose of returning a verdict.

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.

You should not discuss or consider punishment for the offense charged for any purpose. You must concern yourselves solely with the question of guilt or innocence of the Defendant under these written instructions without regard to any possible punishment imposed by law for the offense charged.

During your deliberations, you are instructed that you should not consider the remarks, rulings or actions of the presiding judge during this trial as any indication of the Court's opinion as to the guilt or innocence of the Defendant. The remarks, rulings and actions of the presiding judge were upon matters of the law only and were not upon the facts which you, and you alone, must determine.

While you are deliberating, no one has authority to communicate with you except the officer who has you in charge being the Bailiff. However, after you have retired, you may communicate with the Court as to any questions you may have, but that communication must be in writing through the officer of the Court.

When you have reached a verdict you will notify the bailiff in writing, as to reaching a verdict, but not what the verdict is.

Do not let bias, prejudice, or sympathy play any part in your deliberations.

Your verdict must be unanimous, and after you have reached a unanimous verdict, the Presiding Juror will certify thereto by signing the appropriate form attached to this charge.

Filed on this the 31st day of June, 2008, at 10:31 o'clock A.m.



MARIO E. RAMIREZ
JUDGE PRESIDING
332ND DISTRICT COURT
HIDALGO COUNTY, TEXAS

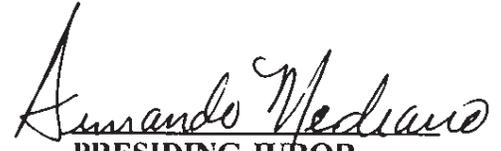
THE STATE OF TEXAS
v. NELSON GARCIA DELGADO,
DEFENDANT

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IN THE 332ND JUDICIAL
DISTRICT COURT OF
HIDALGO COUNTY, TEXAS

FORMS OF VERDICT

We, the Jury, find the Defendant, NELSON GARCIA DELGADO, GUILTY of the offense of CAPITAL MURDER as charged in the indictment.


PRESIDING JUROR

OR

We, the Jury, find the Defendant, NELSON GARCIA DELGADO, GUILTY of the lesser included offense of MURDER as charged in the indictment

PRESIDING JUROR

OR

We, the Jury, find the Defendant, NELSON GARCIA DELGADO, NOT GUILTY.

PRESIDING JUROR

FILED
AT 8:48 AM
OCT 10 2017

CAUSE NO. CR-5205-07-F

THE STATE OF TEXAS
VS.
NELSON GARCIA DELGADO

IN THE DISTRICT COURT
HIDALGO COUNTY, TEXAS
332ND JUDICIAL DISTRICT

**DEFENDANT'S PROPOSED JURY INSTRUCTION
(MANSLAUGHTER)**

MEMBERS OF THE JURY:

Unless you so find, or if you have a reasonable doubt thereof, you will acquit the Defendant, NELSON GARCIA DELGADO, of the offense of murder, and next proceed to consider whether the Defendant is guilty of the lesser included offense of Manslaughter.

I.

A person commits the offense of manslaughter if he recklessly causes the death of an individual.

II.

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

III.

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

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IV.

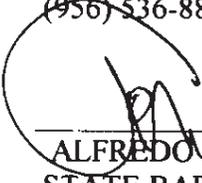
Now, if you find from the evidence beyond a reasonable doubt that on or about October 1, 2007, in Hidalgo County, Texas, the Defendant, NELSON GARCIA DELGADO, did recklessly cause the death of an individual, namely CLAUDIA LORENA ZAMORA, by choking her with his arm, then you will find the Defendant guilty of the lesser included offense of manslaughter.

Unless you find that the Defendant is guilty of manslaughter beyond a reasonable doubt thereof, you will acquit the Defendant and say by your verdict "Not Guilty."

Wherefore, the Defendant NELSON GARCIA DELGADO, respectfully requests that the charge of the lesser included offense of manslaughter be submitted to the jury for its consideration and deliberation.

Respectfully Submitted,

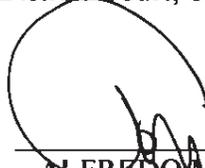
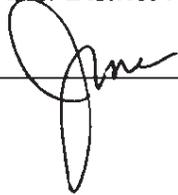
Alfredo Morales, Jr.
Attorney at Law
324 W. University Drive
Edinburg, TX 78539
(956) 682-8380 TEL
(956) 536-8800 BUS CELL



ALFREDO MORALES, JR.
STATE BAR NO. 14417290

CERTIFICATE OF SERVICE

I, Alfredo Morales, Jr., hereby certify that a true and correct copy of the foregoing Defendant's Proposed Jury Instruction was hand-delivered to the Hon. Monica Auguer, Felony Asst. District Attorney for the 332nd Judicial District Court, on this the 3rd day of June, 2008.



ALFREDO MORALES, JR.

David -
Johnny
Pamela Jones
