

THE STATE OF TEXAS  
VS  
HAZAEL GONZALEZ

§  
§  
§

IN THE 139TH DISTRICT COURT  
OF  
HIDALGO COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, HAZAEL GONZALEZ, stands charged by indictment with the offense of Capital Murder alleged to have been committed in Hidalgo County, Texas, on or about AUGUST 6, 2008, and to this charge the Defendant has pleaded not guilty.

1.

A person commits the offense of Capital Murder when such person intentionally commits the murder in the course of committing or attempting to commit the offense of Robbery.

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

A person commits the offense of Aggravated Robbery if he commits a robbery and causes serious bodily injury to another.

A person commits the offense of Robbery if during the course of committing a theft and with intent to obtain property an individual intentionally or knowingly causes bodily injury to another.

2.

"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 effect the commission of the offense intended.

**"Bodily injury"** means physical pain, illness, or any impairment of physical condition, including death.

**"Serious Bodily injury"** means bodily injury that creates a substantial risk of death or that causes death.

**"Theft"** as used herein is the unlawful appropriation of the corporeal personal property of another, with the intent to deprive such other person of said property.

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

**"Property"** as used herein means tangible or intangible personal property or documents, including money that represent or embody anything of value.

**"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.

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

3.

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

when he is aware that his conduct is reasonably certain to cause the result.

4.

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.

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, 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.

By the term "conspiracy", as used in these instructions, is meant 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. An agreement constituting a conspiracy may be inferred from acts of the parties. You are instructed that the offenses of capital murder, murder, aggravated robbery, and robbery are all felony offenses.

The mere presence, if any, of the Defendant, HAZAEL GONZALEZ, at the scene of the alleged offense, alone by itself, would not constitute him a party to the offense.

5.

Now, if you find from the evidence beyond a reasonable doubt that on or about AUGUST 6, 2008, in Hidalgo County, Texas, the Defendant, HAZAEL GONZALEZ, did then and there intentionally cause the death of an individual, namely, Miguel Cahue, by striking the victim with his hand or kicking the victim with his foot or striking the victim with an object unknown to the grand jurors, and the defendant was then and there in the course of committing or attempting to commit the offense of robbery of Miguel

Cahue, then you will find the Defendant guilty of the offense of CAPITAL MURDER, as charged in the indictment,

OR

If you find from the evidence beyond a reasonable doubt that on or about AUGUST 6, 2008, in Hidalgo County, Texas, MICHAEL MANCHA, did then and there intentionally cause the death of an individual, namely, Miguel Cahue, by striking the victim with his hand or kicking the victim with his foot or striking the victim with an object unknown to the grand jurors, and MICHAEL MANCHA was then and there in the course of committing or attempting to commit the offense of robbery of Miguel Cahue; and that the Defendant, HAZAEL GONZALEZ, then and there knew of the intent, if any, of MICHAEL MANCHA to cause the death of Miguel Cahue by striking him with his hand or kicking him with his foot or striking him with an object unknown to the grand jurors while committing or attempting to commit the offense of robbery of Miguel Cahue; and that with intent to promote or assist the commission of the offense of Capital Murder by Michael Mancha, the Defendant, HAZAEL GONZALEZ encouraged, directed, aided or attempted to aid MICHAEL MANCHA to commit said offense of Capital Murder, then you will find the Defendant guilty of the offense of CAPITAL MURDER,

OR

If you find from the evidence beyond a reasonable doubt that the Defendant, HAZAEL GONZALEZ and Alfredo Gomez, Wendy Gomez, Michael Mancha, Jose Martinez, and Marvin Gomez, entered into an agreement to commit the felony offense of robbery of Miguel Cahue, and pursuant to that agreement, if any, they did carry out such conspiracy to commit robbery on or about AUGUST 6, 2008, in Hidalgo County, Texas, and while in the course of committing such robbery of Miguel Cahue, MICHAEL MANCHA intentionally caused the death of Miguel Cahue by striking him with his hand or kicking him with his foot or striking him with an object unknown to the Grand Jurors, and such murder of Miguel Cahue was

committed in furtherance of the conspiracy to commit robbery, if any, and was an offense that should have been anticipated by HAZAEL GONZALEZ as a result of carrying out the conspiracy, then you will find the defendant guilty of CAPITAL MURDER, ✓

Unless you unanimously so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of CAPITAL MURDER and next proceed to the lesser included offense of MURDER.

6.

If you find from the evidence beyond a reasonable doubt that on or about AUGUST 6, 2008, in Hidalgo County, Texas, the Defendant, HAZAEL GONZALEZ, did intentionally or knowingly cause the death of MIGUEL CAHUE by striking the victim with his hand or kicking the victim with his foot or striking the victim with an object unknown to the Grand Jurors, but you have a reasonable doubt as to whether the Defendant was then and there engaged in the commission of robbery of MIGUEL CAHUE at the time of the said striking with his hand or kicking with his foot or striking with an object unknown to the Grand Jurors, if any, then you will find the Defendant guilty of MURDER, but not CAPITAL MURDER,

OR

If you find from the evidence beyond a reasonable doubt that on or about AUGUST 6, 2008, in Hidalgo County, Texas, MICHAEL MANCHA, did then and there intentionally or knowingly cause the death of an individual, namely, Miguel Cahue, by striking the victim with his hand or kicking him with his foot or striking him with an object unknown to the Grand Jurors, but you have a reasonable doubt as to whether MICHAEL MANCHA was then and there engaged in the commission of robbery of MIGUEL CAHUE at the time of the said striking with his hand or kicking with his foot or striking with an object unknown to the Grand Jurors, and that the Defendant, HAZAEL GONZALEZ, then and there knew of

the intent, if any, of MICHAEL MANCHA to cause the death of Miguel Cahue by striking him with his hand or kicking him with his foot or striking him with an object unknown to the Grand Jurors and that with intent to promote or assist the commission of the offense of Murder by Michael Mancha, the Defendant, HAZAEL GONZALEZ encouraged, directed, aided or attempted to aid MICHAEL MANCHA to commit said offense of Murder, then you will find the Defendant guilty of the offense of MURDER but not CAPITAL MURDER,

Unless you unanimously so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of MURDER and next proceed to the lesser included offense of AGGRAVATED ROBBERY.

7.

If you find from the evidence beyond a reasonable doubt that on or about AUGUST 6, 2008, in Hidalgo County, Texas, the Defendant, HAZAEL GONZALEZ, did intentionally or knowingly commit a theft of MIGUEL CAHUE with intent to obtain property and during the theft he caused serious bodily injury to MIGUEL CAHUE by striking the victim with his hand or kicking him with his foot or striking him with an object unknown to the Grand Jurors, then you will find the Defendant guilty of AGGRAVATED ROBBERY,

OR

If you find from the evidence beyond a reasonable doubt that on or about AUGUST 6, 2008, in Hidalgo County, Texas, MICHAEL MANCHA did then and there intentionally or knowingly commit a theft of Miguel Cahue with intent to obtain property and during the theft MICHAEL MANCHA caused serious bodily injury to MIGUEL CAHUE by striking the victim with his hand or kicking him with his foot or striking him with an object unknown to the Grand Jurors, and that the Defendant, HAZAEL GONZALEZ, then and there knew of the intent, if any, of MICHAEL MANCHA to commit a theft of

Miguel Cahue with intent to obtain property by striking him with his hand or kicking him with his foot or striking him with an object unknown to the Grand Jurors and that with intent to promote or assist the commission of the offense of Aggravated Robbery by Michael Mancha, the Defendant, HAZAEL GONZALEZ encouraged, directed, aided or attempted to aid MICHAEL MANCHA to commit said offense of Aggravated Robbery, then you will find the Defendant guilty of the offense of AGGRAVATED ROBBERY,

Unless you unanimously so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of AGGRAVATED ROBBERY.

8.

You are instructed that the Defendant may be convicted of only one of the offenses defined in these instructions, to wit: Capital Murder, Murder, or Aggravated Robbery, and that the Defendant can be convicted only as to that offense, if any, which is proved beyond a reasonable doubt.

9.

If you should find from the evidence beyond a reasonable doubt that the Defendant is either guilty of Capital Murder or Murder, but you have a reasonable doubt as to which offense Defendant is guilty of, then you should resolve that doubt in the Defendant's favor, and in such event, you will find the Defendant guilty of the lesser offense of Murder.

If you should find from the evidence beyond a reasonable doubt that the Defendant is either guilty of Capital Murder or Aggravated Robbery, but you have a reasonable doubt as to which offense Defendant is guilty of, then you should resolve that doubt in the Defendant's favor, and in such event, you will find the Defendant guilty of the lesser offense of Aggravated Robbery.

If you should find from the evidence that Defendant is guilty of neither Capital Murder nor Murder nor Aggravated Robbery, or if you have a reasonable doubt thereof, you will find the Defendant

not guilty.

10.

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

The burden of proof for the affirmative defense of duress rests upon the Defendant; to establish such defense, the Defendant must prove it by a preponderance of the evidence. By the term "preponderance of the evidence" is meant the greater weight and degree of the credible evidence in the case.

Now, if you find from the evidence beyond a reasonable doubt that the defendant did commit any offense, as alleged in the indictment and herein before defined in this charge, but you further find by a preponderance of the evidence that Wendy Gomez or Alfredo Gomez or Marvin Gomez or Michael Mancha or Jose Martinez had threatened to kill the Defendant if he did not participate in said offense, and that these threats were such threats of force as would render a person of reasonable firmness incapable of resisting the pressure, and that the Defendant was in fear of imminent loss of his life or serious bodily injury at the hands of Wendy Gomez or Alfredo Gomez or Marvin Gomez or Michael Mancha or Jose Martinez if he did not participate in the offense and that, so believing, he did participate therein, then you will acquit the Defendant and say by your verdict "Not Guilty."

11.

A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the Defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

Upon the law of accomplice witness testimony, you are instructed that Marvin Gomez was an accomplice, if any offense was committed, as alleged in the indictment. With this in mind, you are further instructed that you cannot convict the Defendant upon Marvin Gomez' testimony, unless you first believe that his testimony is true and shows the guilt of the Defendant as charged in the indictment, and then you cannot convict the Defendant unless Marvin Gomez' testimony is corroborated by other evidence tending to connect the Defendant with the offense charged. The corroboration is not sufficient if it merely shows the commission of an offense, but it must tend to connect the Defendant with its commission, and then from all the evidence, you must believe beyond a reasonable doubt that the Defendant is guilty of the offense charged.

12.

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 killing in question, if any.

13.

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 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 proves 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 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.

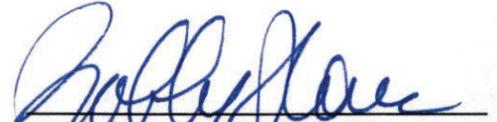
While you are deliberating, no one has authority to communicate with you except the officer who has you in charge being the Bailiff. However, after you have retired, you may communicate with the Court as to any questions you may have, but that communication must be in writing through the officer of the 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 22<sup>nd</sup> day of October, 2009, at 10:55 o'clock A.m.

  
J.R. "BOBBY" FLORES  
JUDGE PRESIDING  
139TH DISTRICT COURT  
HIDALGO COUNTY, TEXAS