

FILED
AT 2:58 O'CLOCK M
AUG 12 2010
LAURA MENDOZA, CLERK
District Court, Hidalgo County
By [Signature] Deputy

THE STATE OF TEXAS

§

IN THE 430TH JUDICIAL

v.

§

DISTRICT COURT OF

JOSUE GONZALEZ RODRIGUEZ

§

HIDALGO COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, Josue Gonzalez Rodriguez, stands charged by indictment with the offense of CAPITAL MURDER, alleged to have been committed in Hidalgo County, Texas, on or about February 26, 2008. To this charge 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.

A person commits the offense of Capital Murder if he commits murder as defined above and the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration.

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.

The term "remuneration" means payment by one person to another person in compensation for a specific service or services pursuant to an agreement.

3.

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.

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.

If, in an 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 is a felony.

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.

4.

Now, if you believe from the evidence beyond a reasonable doubt that on or about February 26, 2008, in Hidalgo County, Texas, the Defendant, Josue Gonzalez Rodriguez, did then and there intentionally or knowingly cause the death of a individual, namely, Ruben Varela, by shooting him with a firearm, for remuneration or the promise of remuneration from Marco Antonio Hernandez, to-wit: money,

OR

If you find from the evidence beyond a reasonable doubt that on or about February 26, 2008, in Hidalgo County, Texas, the Defendant Josue Gonzalez Rodriguez did then and there intentionally or knowingly cause the death of an individual, namely, Ruben Varela, by shooting him with a firearm, for remuneration or the promise of remuneration from Jose Juan Cruz Varela, to-wit: money,

then you will find the Defendant Josue Gonzalez Rodriguez 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 consider whether he is guilty of the lesser offense of Murder.

5.

If you find from the evidence beyond a reasonable doubt that on or about February 26, 2008, in Hidalgo County, Texas, the Defendant, Josue Gonzalez Rodriguez, did intentionally or knowingly cause the death of Ruben Varela, by shooting Ruben Varela with a firearm, but you do not find that the shooting was done for remuneration or you have a reasonable doubt thereof, then you will find the Defendant Josue Gonzalez Rodriguez guilty of murder, but not Capital Murder.

6.

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 the 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.

7.

You 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 shooting in question, if any.

8.

You are further instructed that a conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the Defendant Josue Gonzalez Rodriguez with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense. Marco Antonio Hernandez was an accomplice in the conduct that would constitute the offense.

9.

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.

10.

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.

11.

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.

12.

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 Defendant and say by your verdict "Not Guilty".

13.

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.

14.

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.

15.

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.

16.

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.

17.

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.

18.

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.

19.

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.

20.

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.

21.

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

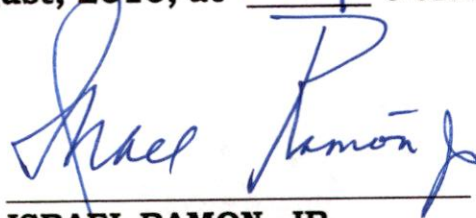
22.

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

23.

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 12th day of August, 2010, at 2:58 PM o'clock P.m.



ISRAEL RAMON, JR.
JUDGE PRESIDING
430TH DISTRICT COURT
HIDALGO COUNTY, TEXAS

