

CASE NUMBER CR-2413-08-E

Filed:
3-25-10
10:06 A.M.
[Signature]
Judge

THE STATE OF TEXAS

*

IN THE 275th DISTRICT COURT

VS

*

OF

JOSE ALBERTO RAMIREZ

*

HIDALGO COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, JOSE ALBERTO RAMIREZ, stands charged by indictment with the offense of CAPITAL MURDER, alleged to have been committed in Hidalgo County, Texas, on or about April 15, 2008, and to this charge the Defendant has pled, "Not guilty."

1.

Our law provides that a person commits the offense of Murder when the person intentionally or knowingly causes the death of an individual; or when a person, with intent to cause serious bodily injury, commits an act clearly dangerous to human life that causes the death of an individual.

Our law provides that 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 Manslaughter if the person recklessly causes the death of an individual.

2.

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.

"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.

"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 the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or 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 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.

4.

To warrant a conviction of the Defendant for the offense of Capital Murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the Defendant was engaged in the commission or attempted commission of the robbery, if any, of Gabriel Garcia; but also that the Defendant struck Gabriel Garcia with a metal canister with the intention of thereby killing Gabriel Garcia.

5.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of April, 2008, in Hidalgo County, Texas, the Defendant, JOSE ALBERTO RAMIREZ, did then and there intentionally cause the death of an individual, namely, Gabriel Garcia, by striking Gabriel Garcia with a metal canister, and the Defendant was then and there in the course of committing or attempting to commit the offense of Robbery of Gabriel Garcia, then you will find the defendant Guilty of Capital Murder.

Unless you find beyond a reasonable doubt that the defendant is Guilty of Capital Murder as defined in the paragraph immediately above; or if you have a reasonable doubt thereof, you will acquit him of Capital Murder as defined in the paragraph immediately above and next consider whether the defendant is guilty of Murder under the further instructions contained in this Charge of the Court.

6.

You are instructed that to convict the Defendant, JOSE ALBERTO RAMIREZ, of the lesser offense of Murder in this case, you must find from the evidence beyond a reasonable doubt that JOSE ALBERTO RAMIREZ intentionally or knowingly caused the death of Gabriel Garcia by striking him with a metal canister, but that the killing, was not the intentional commission of murder of Gabriel Garcia by JOSE ALBERTO RAMIREZ committed in the course of committing or attempting to commit the offense of Robbery of Gabriel Garcia; or you must find from the evidence beyond a reasonable doubt that JOSE ALBERTO RAMIREZ knowingly, but not intentionally, caused the death of Gabriel Garcia; or you must find beyond a reasonable doubt that JOSE ALBERTO RAMIREZ, with intent to cause serious bodily injury to Gabriel Garcia, committed an act clearly dangerous to human life that caused the death of Gabriel Garcia.

7.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 15th day of April, 2008, in Hidalgo County, Texas, the Defendant, JOSE ALBERTO RAMIREZ, did then and there intentionally or knowingly cause the death of Gabriel Garcia by striking him with a metal canister; but that the killing was not the intentional killing of Gabriel Garcia committed by JOSE ALBERTO RAMIREZ in the course of committing or attempting to commit the offense of Robbery of Gabriel Garcia by JOSE ALBERTO RAMIREZ,

OR

If you find from the evidence beyond a reasonable doubt that on or about the 15th day of April, 2008, in Hidalgo County, Texas, the Defendant, JOSE ALBERTO RAMIREZ, did then and there knowingly, but not intentionally, cause the death of Gabriel Garcia by striking him with a metal canister;

OR

If you find from the evidence beyond a reasonable doubt that on or about the 15th day of April, 2008, in Hidalgo County, Texas, the Defendant, JOSE ALBERTO RAMIREZ, did then and there, with intent to cause serious bodily injury to Gabriel Garcia, commit an act clearly dangerous to human life that caused the death of Gabriel Garcia, to wit: striking him with a metal canister, then you will find the Defendant Guilty of the lesser offense of Murder.

Unless you so find beyond a reasonable doubt that the Defendant is guilty of Murder as a lesser offense of Capital Murder; or if you have a reasonable doubt thereof, you will acquit him of Murder as defined in this charge and next consider whether the defendant is guilty of Manslaughter under ~~under~~ the further instructions contained in this Charge of the Court.

8.

You are instructed that to convict the Defendant, JOSE ALBERTO RAMIREZ, of the lesser offense of Manslaughter in this case, you must find from the evidence beyond a reasonable doubt that JOSE ALBERTO RAMIREZ recklessly caused the death of Gabriel Garcia by striking him with a metal canister.

9.

Now if you find from the evidence beyond a reasonable doubt that on or about the 15th day of April, 2008, in Hidalgo County, Texas, the Defendant, JOSE ALBERTO RAMIREZ, did then and there, recklessly cause the death of Gabriel Garcia by striking him with a metal canister, then you will find the Defendant Guilty of the lesser offense of Manslaughter.

Unless you so find beyond a reasonable doubt that the Defendant is guilty of Manslaughter as a lesser offense of Capital Murder; or if you have a reasonable doubt thereof, you will acquit him the defendant and say by your verdict, 'Not Guilty.'

10.

You are instructed that if you find from the evidence beyond a reasonable doubt that the Defendant is guilty of Capital Murder or of Murder under these instructions, but you have a reasonable doubt as to of which offense he is guilty, then you should resolve that doubt in the favor of the Defendant and, in such event, you will find the Defendant Guilty of the lesser offense of Murder.

11.

cont
You are instructed that unless you believe from the evidence beyond a reasonable doubt that the alleged confession or statement introduced into evidence was freely and voluntarily made by the defendant without compulsion or persuasion, or if you have a reasonable doubt thereof, you shall not consider such alleged statement or confession for any purpose nor any evidence obtained as a result thereof.

12.

Upon the law of self-defense you are instructed that a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

A person is justified in using deadly force against another if he would be justified in using force against the other person in the first place, as above set out, and when he reasonably believes that such deadly force is immediately necessary to prevent the other person's imminent commission of sexual assault or aggravated sexual assault upon him, and if a reasonable person in the defendant's situation would not have retreated.

By the term "reasonable belief" as used herein is meant a belief that would be held by an ordinary and prudent person in the same circumstances as defendant.

By the term "deadly force" is meant force that is intended or known by the persons using it to

cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

You are instructed that it is your duty to consider the evidence of all relevant facts and circumstances surrounding the alleged killing 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 defendant at the time of the alleged offense. In considering such matters you should place yourselves in the defendant's position at that time and view the situation from his standpoint alone.

13.

Now, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, JOSE ALBERTO RAMIREZ, committed any act that would constitute the murder of Gabriel Garcia by the defendant as defined in this charge; or if you find from the evidence beyond a reasonable doubt that the defendant, JOSE ALBERTO RAMIREZ recklessly caused the death of Gabriel Garcia, but you further find from the evidence, or you have a reasonable doubt thereof, that at the time he did so the defendant reasonably believed that the deceased, Gabriel Garcia, was then and there committing or attempting to commit a sexual assault upon him, and he killed him to prevent the imminent commission of such sexual assault or aggravated sexual assault upon his person, and that a reasonable person in defendant's situation would not have retreated, then you will find the defendant not guilty.

14.

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.

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 25th day of MARCH, 2010, at 10:06 o'clock A.m.



JAIME GARZA

JUDGE PRESIDING

275th DISTRICT COURT

HIDALGO COUNTY, TEXAS