

**FILED**  
AT 10:27 O'CLOCK AM

MAY 24 2007

CASE NUMBER CR-1607-06-E (COUNT ONE)

THE STATE OF TEXAS  
VS  
MISAEEL GONZALEZ

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\*  
\*

IN THE 275TH DISTRICT COURT  
OF LAURA HINOJOSA, CLERK  
District Courts, Hidalgo County  
HIDALGO COUNTY, TEXAS  
By: [Signature] Deputy

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, MISAEEL GONZALEZ, stands charged by indictment with the offense of CAPITAL MURDER, alleged to have been committed in Hidalgo County, Texas, on or about JANUARY 1, 2006, 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 an individual under six years of age.

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. A person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient.

Now, if you believe from the evidence beyond a reasonable doubt that on or about JANUARY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there intentionally or knowingly cause the death of an individual, namely, JACOB ALEXANDER GONZALEZ, by dropping the child on the floor, and the said JACOB ALEXANDER GONZALEZ was then and there an individual younger than six years of age;

OR

If you believe from the evidence beyond a reasonable doubt that on or about JANUARY 1, 2006 in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there intentionally or knowingly cause the death of an individual, namely, JACOB ALEXANDER GONZALEZ, by throwing the child on the floor, and the said JACOB ALEXANDER GONZALEZ was then and there an individual younger than six years of age;

OR

If you believe from the evidence beyond a reasonable doubt that on or about JANUARY 1, 2006 in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there intentionally or knowingly cause the death of an individual, namely, JACOB ALEXANDER GONZALEZ, by striking the child on the floor, and the said JACOB ALEXANDER GONZALEZ was then and there an individual younger than six years of age;

OR

If you believe from the evidence beyond a reasonable doubt that on or about JANUARY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there intentionally or knowingly cause the death of an individual, namely, JACOB ALEXANDER GONZALEZ, by striking the child with an object unknown to the Grand Jury, and the said JACOB ALEXANDER GONZALEZ was

**then and there an individual younger than six years of age;**

**OR**

**If you believe from the evidence beyond a reasonable doubt that on or about JANUARY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there intentionally or knowingly cause the death of an individual, namely, JACOB ALEXANDER GONZALEZ, by manner and means unknown to the Grand Jury, and the said JACOB ALEXANDER GONZALEZ was then and there an individual younger than six years of age;**

**OR**

**If you believe from the evidence beyond a reasonable doubt that on or about JANUARY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there intentionally or knowingly cause the death of an individual, namely, JACOB ALEXANDER GONZALEZ, by shaking the child, and the said JACOB ALEXANDER GONZALEZ was then and there an individual younger than six years of age; 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.**

**Now, if you find from the evidence beyond a reasonable doubt that on or about JANUARY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there knowingly commit or attempt to commit a Felony, to-wit: Injury to a Child, and in the course of and in furtherance of the commission or attempt, the defendant committed or attempted to commit an act clearly dangerous to human life, to-wit: striking JACOB ALEXANDER GONZALEZ, against the floor, which caused the death of an individual, namely JACOB ALEXANDER GONZALEZ;**

**OR**

**If you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there knowingly commit or attempt to commit a Felony, to-wit: Injury to a Child, and in the course of and in furtherance of the commission or attempt, the defendant committed or attempted to commit an act clearly dangerous to human life, to-wit: throwing JACOB ALEXANDER GONZALEZ against the floor, which caused the death of an individual, namely JACOB ALEXANDER GONZALEZ;**

**OR**

**If you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there knowingly commit or attempt to commit a Felony, to-wit: Injury to a Child, and in the course of and in furtherance of the commission or attempt, the defendant committed or attempted to commit an act clearly dangerous to human life, to-wit: striking JACOB ALEXANDER GONZALEZ with or against an object unknown, which caused the death of an individual, namely JACOB ALEXANDER GONZALEZ;**

**OR**

**If you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there knowingly commit or attempt to commit a Felony, to-wit: Injury to a Child, and in the course of and in furtherance of the commission or attempt, the defendant committed or attempted to commit an act clearly dangerous to human life, to-wit: throwing JACOB ALEXANDER GONZALEZ against an object unknown, which caused the death of an individual, namely JACOB ALEXANDER GONZALEZ; then you will find the Defendant, MISAEL GONZALEZ, guilty of the lesser included offense of Murder.**

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

5.

Our law provides that a person commits the offense of Manslaughter if he recklessly causes the death of an individual.

6.

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.

7.

Now, if you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEEL GONZALEZ, did then and there recklessly cause the death of an individual, namely JACOB ALEXANDER GONZALEZ, by dropping him on the floor;

OR

If you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEEL GONZALEZ, did then and there recklessly cause the death of an individual, namely JACOB ALEXANDER GONZALEZ, by throwing him on the floor;

OR

Now, if you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEEL GONZALEZ, did then and there recklessly cause the death of an individual, namely JACOB ALEXANDER GONZALEZ, by striking him on the floor;

OR

Now, if you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEEL GONZALEZ, did then and there recklessly cause the

death of an individual, namely JACOB ALEXANDER GONZALEZ, by striking him with an object  
unknown<sup>to</sup> the Grand Jury; ~~408~~

OR

Now, if you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEEL GONZALEZ, did then and there recklessly cause the death of an individual, namely JACOB ALEXANDER GONZALEZ, by manner and means unknown to the Grand Jury;

OR

Now, if you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEEL GONZALEZ, did then and there recklessly cause the death of an individual, namely JACOB ALEXANDER GONZALEZ, by shaking him; then you will find the Defendant, MISAEEL GONZALEZ, guilty of the lesser included offense of Manslaughter.

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

8.

Our law provides that a person commits criminally negligent homicide if he causes the death of an individual by criminal negligence.

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 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 of care that an ordinary person would exercise under all the circumstances as viewed from the standpoint of the person so acting.

For a person to be deemed "criminally negligent" there must actually be both a substantial and an

unjustifiable risk that the result will occur, and that the person acting should, under all the circumstances as viewed from his standpoint, have perceived the risk, and if you have a reasonable doubt as to whether such matters have been established, then you would be bound to acquit the defendant.

9.

Now, if you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there by criminal negligence cause the death of an individual, namely JACOB ALEXANDER GONZALEZ, by dropping him on the floor;

OR

If you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there by criminal negligence cause the death of an individual, namely JACOB ALEXANDER GONZALEZ, by throwing him on the floor;

OR

Now, if you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there by criminal negligence cause the death of an individual, namely JACOB ALEXANDER GONZALEZ, by striking him on the floor;

OR

Now, if you find from the evidence beyond a reasonable doubt that on or about JANAURY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there by criminal negligence cause the death of an individual, namely JACOB ALEXANDER GONZALEZ, by striking him with an object unknown the Grand Jury;

OR

Now, if you find from the evidence beyond a reasonable doubt that on or about JANAUARY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there by criminal negligence cause the death of an individual, namely JACOB ALEXANDER GONZALEZ, by manner and means unknown to the Grand Jury;

OR

Now, if you find from the evidence beyond a reasonable doubt that on or about JANAUARY 1, 2006, in Hidalgo County, Texas, the Defendant, MISAEL GONZALEZ, did then and there by criminal negligence cause the death of an individual, namely JACOB ALEXANDER GONZALEZ, by shaking him; then you will find the Defendant, MISAEL GONZALEZ, guilty of the lesser included offense of Criminally Negligent Homicide.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the lesser included offense of Criminally Negligent Homicide, and say by your verdict not guilty.

10.

Your are instructed that you may consider all relevant facts and circumstances surrounding the death of JACOB ALEXANDER GONZALEZ, if any, and the previous relationship existing between MISAEL GONZALEZ and JACOB ALEXANDER GONZALEZ, if any, together with all relevant facts and circumstances going to show the condition of the mind of MISAEL GONZALEZ at the time of the offense in question, if any.

11.

You are instructed that unless you believe beyond a reasonable doubt that the alleged confession or statement introduced into evidence was voluntarily made by the Defendant, or if you have a reasonable doubt thereof, you shall not consider such alleged statement or confession for any purpose.

12.

**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.**

**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.**

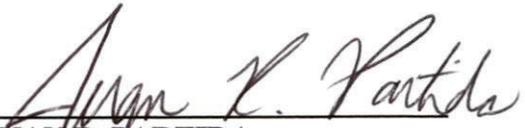
**While you are deliberating, no one has authority to communicate with you except the officer who has you in charge being the Bailiff. However, after you have retired, you may communicate with the Court as to any questions you may have, but that communication must be in writing through the officer of 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 24<sup>th</sup> day of May, 20 07, at 10:27 o'clock A.m.

  
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JUAN R. PARTIDA  
JUDGE PRESIDING  
275<sup>TH</sup> DISTRICT COURT  
HIDALGO COUNTY, TEXAS