

THE STATE OF TEXAS  
v. JOHN DAVID URBINA,  
DEFENDANT

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IN THE 275TH JUDICIAL  
DISTRICT COURT OF  
HIDALGO COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, JOHN DAVID URBINA, stands charged by indictment with the offense of CAPITAL MURDER alleged to have been committed in Hidalgo County, Texas, on or about APRIL 22, 2007, 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.

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 Robbery if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain and maintain control of property of another, the person intentionally or knowingly causes bodily injury to another, or the person intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

The offense is Aggravated Robbery if the person committing robbery uses or exhibits a deadly weapon.

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, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.**

**"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.**

**"Deprive" as used herein means to withhold property from the owner permanently.**

**"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 property.**

**"Deadly Weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of causing death or serious bodily injury, or anything that in the manner of its use is capable of causing death or serious bodily injury.**

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 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. Each party to an offense may be charged with the commission of the offense.

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 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.

5.

Now, if you find from the evidence beyond a reasonable doubt that on or about APRIL 22, 2007, in Hidalgo County, Texas, the Defendant, JOHN DAVID URBINA, did then and there intentionally cause the death of an individual, namely MIGUEL AGUILAR, by shooting him with a firearm, and the Defendant was then and there in the course of committing or attempting to commit the felony offense of

robbery of MIGUEL AGUILAR, then you will find the Defendant guilty of the offense of Capital Murder.

Unless you find 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 consider the lesser included offense of Murder.

6.

If you believe from the evidence beyond a reasonable doubt that on or about APRIL 22, 2007, in Hidalgo County, Texas, GILBERTO TAMAYO VILLARREAL, acting alone or as a party as that term has been previously defined, did then and there commit the offense of ROBBERY, and the Defendant, JOHN DAVID URBINA acted with intent to promote or assist the commission of the offense by GILBERTO TAMAYO VILLARREAL, by encouraging, directing, aiding or attempting to aid GILBERTO TAMAYO VILLARREAL to commit the offenses of ROBBERY and causing the death of MIGUEL AGUILAR by shooting MIGUEL AGUILAR, then you will find the Defendant, JOHN DAVID URBINA, guilty of the offense of Capital Murder as alleged in the indictment.

Unless you find 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 consider the lesser included offense of Murder.

7.

If you find from the evidence beyond a reasonable doubt that on or about APRIL 22, 2007, in Hidalgo County, Texas, the Defendant, JOHN DAVID URBINA, did intentionally or knowingly cause the death of MIGUEL AGUILAR by shooting MIGUEL AGUILAR with a gun, but you have a reasonable doubt as to whether the Defendant was then and there engaged in the commission of robbery or attempted robbery of MIGUEL AGUILAR at the time of the said shooting, then you will find the

**Defendant guilty of Murder, but not Capital Murder.**

**Unless you find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Murder and next consider the lesser included offense of Aggravated Robbery.**

**8.**

**If you believe from the evidence beyond a reasonable doubt that on or about APRIL 22, 2007, in Hidalgo County, Texas, GILBERTO TAMAYO VILLARREAL, acting alone or as a party as that term has been previously defined, did then and there intentionally or knowingly cause the death of the victim, MIGUEL AGUILAR by shooting MIGUEL AGUILAR with a gun, and the defendant JOHN DAVID URBINA, acted with intent to promote or assist the commission of the offense by GILBERTO TAMAYO VILLARREAL, by encouraging, directing, aiding, or attempting to aid GILBERTO TAMAYO VILLARREAL in causing the death of MIGUEL AGUILAR by shooting MIGUEL AGUILAR with a gun, but you have a reasonable doubt as to whether the Defendant was then and there engaged in the commission of robbery or attempted robbery of MIGUEL AGUILAR at the time of the said shooting then you will find the Defendant guilty of Murder, but not Capital Murder.**

**Unless you find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Murder and next consider the lesser included offense of Aggravated Robbery.**

**9.**

**If you find from the evidence beyond a reasonable doubt that on or about APRIL 22, 2007, in Hidalgo County, Texas, the Defendant, JOHN DAVID URBINA, did intentionally or knowingly, in the course of committing theft and with intent to obtain and maintain control over property of another, cause serious bodily injury to MIGUEL AGUILAR, and in the course of committing robbery, did then and**

**there use or exhibit a deadly weapon, to wit: a gun, then you will find the Defendant guilty of Aggravated Robbery.**

**Unless you find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Aggravated Robbery.**

**10.**

**If you find from the evidence beyond a reasonable doubt that on or about APRIL 22, 2007, in Hidalgo County, Texas, GILBERTO TAMAYO VILLARREAL, acting alone or as a party as that term has been previously defined, did then and there commit the offense of AGGRAVATED ROBBERY, and the Defendant, JOHN DAVID URBINA, acted with intent to promote or assist the commission of the offense by GILBERTO TAMAYO VILLARREAL, by encouraging, directing, aiding or attempting to aid GILBERTO TAMAYO VILLARREAL to commit the offense of AGGRAVATED ROBBERY, then you will find the Defendant guilty of Aggravated Robbery.**

**Unless you so find, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Aggravated Robbery.**

**11.**

**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.**

**12.**

**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 that Defendant is not guilty of Capital Murder, Murder, or Aggravated Robbery, or if you have a reasonable doubt thereof, you will find the Defendant not guilty.

13.

You are instructed that you may consider all relevant facts and circumstances surrounding the death of MIGUEL AGUILAR 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.

14.

You are instructed 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.

15.

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.**

**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 15th day of September, 2008, at 9:52 o'clock a.m.

  
JUAN R. PARTIDA  
JUDGE PRESIDING  
25TH DISTRICT COURT  
HIDALGO COUNTY, TEXAS