

NO. 2005-CR-7171B

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
VS.	§	399TH JUDICIAL DISTRICT
JACOB MONTEZ	§	BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, Jacob Montez, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 22nd Day of July, 2005, in Bexar County, Texas. The defendant has pleaded not guilty.

I.

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

A person commits capital murder when such person intentionally commits the murder in the course of committing or attempting to commit the offense of robbery.

II.

"Individual" means a human being who has been born and is alive.

"In the course of committing" an offense means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of the offense.

"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.

"Deadly weapon" means a firearm.

"Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

III.

For the offenses of murder and capital murder, 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.

IV.

A person commits a robbery if, in the course of committing theft, as defined hereinafter, and with intent to obtain or maintain control of the property, he intentionally or knowingly causes bodily injury to another, or intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

A person commits aggravated robbery if the person commits a robbery, and uses or exhibits a deadly weapon.

V.

"In the course of committing" as defined in paragraph II applies and has the same meaning here.

"Attempt" as defined in paragraph II applies and has the same meaning here.

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

VI.

A person commits the offense of theft if he unlawfully appropriates property with intent to deprive the owner of property.

VII.

"Appropriation" and "appropriate" 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" means tangible or intangible personal property or documents, including money, that represents or embodies anything of value.

"Deprive" means to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner.

"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.

VIII.

For the offenses of robbery and theft, 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.

For the offenses of robbery and theft, 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. For the offenses of robbery and theft, 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.

You are instructed that under our law, voluntary intoxication does not constitute a defense to the commission of a crime. For the purpose of this law intoxication means a disturbance of mental or physical capacity resulting from the voluntary introduction of any substance into the body.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed acts of misconduct other than the offense alleged against him in the indictment in this case, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such acts of misconduct, if any were committed, and even then you may only consider the same in determining the context of the relationship between Michael Montez and Jacob Montez, if any, and for no other purpose.

Our law provides a person is criminally responsible as a party to an offense if the offense is committed by his own conduct, or by the conduct of another for which he is criminally responsible, or by both. Each party to an offense may be charged with commission of the offense.

Mere presence alone will not make a person a party to an 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.

You are further instructed 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.

Capital murder, aggravated robbery, and robbery are felony offenses.

IX.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 22nd Day of July, 2005, in Bexar County, Texas, Michael Montez did intentionally cause the death of an individual, namely: Fernando Monjares-Almaguer, by shooting Fernando Monjares-Almaguer with a deadly weapon, namely: a firearm, and that Michael Montez was in the course of committing or attempting to commit the offense of robbery of Fernando Monjares-Almaguer and Andres Torres-Trujillo, and that the defendant, Jacob Montez, acting with the intent to promote or assist in the commission of the offense of capital murder, did solicit, encourage, direct, aid or attempt to aid Michael Montez in the commission of the offense of capital murder;

Or, if you find from the evidence beyond a reasonable doubt that Jacob Montez entered into a conspiracy with Michael Montez or Shannon Elizabeth Kalka, or both, to commit the felony offense of aggravated robbery and that on or about the 22nd Day of July, 2005, in Bexar County, Texas, in an attempt to carry out this conspiracy, Michael Montez did intentionally cause the death of an individual, namely: Fernando Monjares-Almaguer, by shooting Fernando Monjares-Almaguer with a deadly weapon, namely: a firearm, and that Michael Montez or Shannon Elizabeth Kalka, or both, were in the course of committing or attempting to commit the offense of robbery of Fernando Monjares-Almaguer and Andres Torres-Trujillo, and that the offense of capital

murder was committed by Michael Montez in furtherance of the unlawful purpose to commit aggravated robbery, and that capital murder was an offense that should have been anticipated by Jacob Montez as a result of the carrying out of the conspiracy to commit aggravated robbery, then you will find the defendant guilty of capital murder as charged in the indictment.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty of capital murder and next consider whether he is guilty of aggravated robbery.

X.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 22nd Day of July, 2005, in Bexar County, Texas, Jacob Montez, did intentionally or knowingly threaten or place Fernando Monjares-Almaguer and Andres Torres-Trujillo in fear of imminent bodily injury or death, by using or exhibiting a deadly weapon, namely: a wrench, that in the manner of its use or intended use was capable of causing death or serious bodily injury, while Jacob Montez was in the course of committing theft of property, namely: United States currency from Fernando Monjares-Almaguer and Andres Torres-Trujillo, the owner of said property, without the effective consent of Fernando Monjares-Almaguer and Andres Torres-Trujillo, and said acts were committed by Jacob Montez with the intent to obtain or maintain control of the said property;

Or, if you find from the evidence beyond a reasonable doubt that on or about the 22nd Day of July, 2005, in Bexar County, Texas, Michael Montez did intentionally or knowingly threaten or place Fernando Monjares-Almaguer and Andres Torres-Trujillo in fear of imminent bodily injury or death, by using or exhibiting a deadly weapon, namely: a firearm, that in the manner of its use or intended use was capable of causing death or serious bodily injury, while Michael Montez or Shannon Elizabeth Kalka, or both, were in the course of committing theft of property, namely: United States currency from Fernando Monjares-Almaguer

and Andres Torres-Trujillo, the owner of said property, without the effective consent of Fernando Monjares-Almaguer and Andres Torres-Trujillo, and said acts were committed by Michael Montez or Shannon Elizabeth Kalka, or both, with the intent to obtain or maintain control of the said property, and that the defendant, Jacob Montez, acting with the intent to promote or assist in the commission of the offense of aggravated robbery, did solicit, encourage, direct, aid or attempt to aid Michael Montez or Shannon Elizabeth Kalka, or both, in the commission of the offense of aggravated robbery;

Or, if you find from the evidence beyond a reasonable doubt that Jacob Montez entered into a conspiracy with Michael Montez or Shannon Elizabeth Kalka, or both, to commit the felony offense of robbery and that on or about the 22nd Day of July, 2005, in Bexar County, Texas, in an attempt to carry out this conspiracy, Michael Montez did intentionally or knowingly threaten or place Fernando Monjares-Almaguer and Andres Torres-Trujillo in fear of imminent bodily injury or death, by using or exhibiting a deadly weapon, namely: a firearm, that in the manner of its use or intended use was capable of causing death or serious bodily injury, while Michael Montez or Shannon Elizabeth Kalka, or both were in the course of committing theft of property, namely: United States currency from Fernando Monjares-Almaguer and Andres Torres-Trujillo, the owners of said property, without the effective consent of Fernando Monjares-

Almaguer and Andres Torres-Trujillo, and said acts were committed by Michael Montez or Shannon Elizabeth Kalka, or both, with the intent to obtain or maintain control of the said property, and that the offense of aggravated robbery was committed in furtherance of the unlawful purpose to commit robbery, and that aggravated robbery was an offense that should have been anticipated by Jacob Montez as a result of the carrying out of the conspiracy to commit robbery, then you will find the defendant guilty of aggravated robbery.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty.

Our law provides a defendant may testify in his own behalf if he elects to do so. This, however, is a right 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 him.

Written statements made by a witness to investigators or other officers or police reports made by officers and tendered by the prosecution to the defense for purposes of cross-examination are not part of the evidence unless introduced in evidence. Many times statements and reports may be marked with an exhibit number but are neither offered nor received in evidence. I can send only statements and reports received in evidence to the jury room.

You are instructed that the statements of counsel made during the course of the trial or during the argument, if not supported by evidence, or statements of law made by counsel, if not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

You must disregard any comment or statement made by the Court during the trial or in these instructions which may seem to indicate an opinion with respect to any fact, item of evidence or verdict to be reached in this case. No such indication is intended.

You are instructed that the Grand Jury indictment is not evidence of guilt. It is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence, nor can it be considered by you in passing upon whether this defendant is guilty or not guilty.

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 are instructed that you are not to let bias, prejudice, or sympathy play any part in reaching a verdict in this case.

After argument of counsel, you will retire to the jury room, select your own presiding juror and proceed with your deliberations. After you have reached a unanimous verdict the

presiding juror will certify thereto by filling in the appropriate forms attached to this charge and signing his or her name as presiding juror.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given to the testimony, but you are bound to receive the law from the Court which is herein given to you and be governed by that law.

In order to return a verdict, each juror must agree to that verdict, but jurors have a duty to consult each other and to deliberate with a view to reaching unanimous agreement, if that can be done without violence to individual judgment.

Each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors.

In the course of deliberations, a juror should not hesitate to re-examine his own views and change his opinion if convinced it is erroneous. However, no juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.

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.

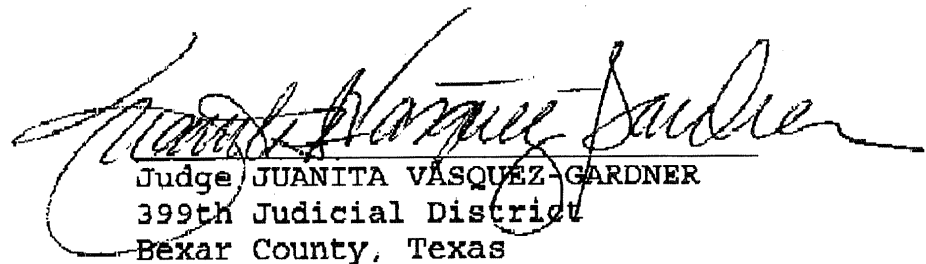
The prosecution has the burden of proving the defendant guilty and it must do so by proving each and every element of the offense charged beyond a reasonable doubt and if it fails to do so, you must acquit the defendant.

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 him and say by your verdict "Not Guilty."

Suitable forms for your verdict are attached to the charge for your convenience if you care to use them, but they are not intended to suggest to you in any way what your verdict should be, and you may or may not, as you see fit, make use of them. At any rate, your verdict must be in writing and signed by your presiding juror. Your only duty at this time is to determine whether the defendant is guilty under the indictment in this cause, and you must restrict your deliberations to the issue of whether the defendant is guilty or not guilty, and nothing else. After you have retired to the jury room, no one has any authority to communicate with you except the officer who has you in charge. Do not attempt to talk to the officer, or anyone else concerning any question you may have; instead address your question to the Court in writing. If you want to communicate with the Court, notify the bailiff. Any communication relative to the case must be written, prepared by the presiding juror, and submitted to the Court through the bailiff.

Respectfully submitted,



Judge JUANITA VÁSQUEZ-GARDNER
399th Judicial District
Bexar County, Texas

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VERDICT FORM

We, the Jury, find the defendant, Jacob Montez, not guilty.

PRESIDING JUROR

VERDICT FORM

We, the Jury, find the defendant, Jacob Montez, guilty of capital murder as charged in the indictment.

J. Lawrence Matthews

 PRESIDING JUROR

VERDICT FORM

We, the Jury, find the defendant, Jacob Montez, guilty of aggravated robbery.

PRESIDING JUROR

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