

FILED

NO. F07- 00813- P

THE STATE OF TEXAS

§ IN THE 203<sup>RD</sup> JUDICIAL

v.

SEP 10 AM 9:18  
GARY FITZSIMMONS  
DISTRICT CLERK  
DALLAS CO., TEXAS  
DIANE BALDWIN DEPUTY

§ DISTRICT COURT OF

§ DALLAS COUNTY, TEXAS

JOSE ALBERTO FELIX

§ JULY TERM, A.D., 2007

**JURY CHARGE**

The defendant, JOSE ALBERTO FELIX, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 18<sup>th</sup> day of January, 2005, in Dallas County, Texas. The defendant has pleaded not guilty.

Our law provides that I submit the following charge to you in this case. This charge contains all the law necessary to enable you to reach a verdict. If any evidence was presented to raise an issue, the law on that issue must be provided.

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

A person commits the offense of capital murder if the person commits murder, as defined above, and the person intentionally commits the murder in the course of committing or attempting to commit kidnapping. Kidnapping is a felony offense.

The following definitions of intentionally and knowingly apply to 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.

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.

“Individual” means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

A person commits the offense of kidnapping if he intentionally or knowingly abducts another person.

The following definitions of intentionally and knowingly apply only to the offense of kidnapping:

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 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.

“Abduct” means to restrain a person with intent to prevent his liberation by:

- a) secreting or holding him in a place where he is not likely to be found; or
- b) using or threatening to use deadly force.

“Restrain” means to restrict a person’s movements without consent, so as to interfere substantially with the person’s liberty, by moving the person from one place to another or by confining the person.

“Deadly force” means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

“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.

“Deadly weapon” means:

- a) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or
- b) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

“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.

## **CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER**

All persons are parties to an offense who are guilty of acting together in the commission of the 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.

“Conspiracy” means 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.

If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, then 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 and kidnapping are felony offenses.

## DURESS

It is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another.

Compulsion exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure.

The defense of duress is unavailable if the actor intentionally, knowingly, or recklessly placed himself in a situation in which it was probable that he would be subjected to compulsion.

The burden of proof on the affirmative defense of duress is upon the defendant to prove the defense by a preponderance of the evidence. The term "preponderance of the evidence" means the greater weight of the credible evidence in the case.

Now, therefore, if you believe from the evidence beyond a reasonable doubt that the defendant, JOSE ALBERTO FELIX, is guilty of capital murder as alleged the indictment, or murder or aggravated kidnapping as included in the indictment, but you further find by a preponderance of the evidence that Edgar "Richie" Acevedo, or an unknown third person in a ski mask, or Juan Sanchez, hereinafter referred to as "the others," threatened the

defendant or his family with imminent death or serious bodily injury if he did not participate in said offense, and that the threats were such threats of force that would render a person of reasonable firmness incapable of resisting the pressure, and that the defendant was in fear of imminent loss of his life or the lives of his family members or serious bodily injury to himself or to his family members at the hands of Edgar "Richie" Acevedo or a person or persons at the direction of Edgar "Richie" Acevedo, or an unknown third person in a ski mask, or Juan Sanchez, or any one or combination of "the others," if he did not participate in the offense, and that so believing, he did participate therein, then you will acquit the defendant, and say by your verdict "not guilty."

You are further instructed in this case that the state is not required to prove the exact date alleged in the indictment, but may prove the offense, if any, to have been committed at any time prior to the presentment of the indictment.

An indictment is considered as "presented" when it has been duly acted upon by the Grand Jury and received by the court. The indictment in this case was presented on June 25, 2007.

The indictment is the charging instrument. An indictment is no evidence of guilt, and in this case you shall not consider the indictment herein as any evidence of guilt, if any.

In all criminal cases, the burden of proof is on the State. 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, indicted for or otherwise charged with an offense gives rise to no inference of guilt at his trial.



You are instructed that the defendant may testify in his own behalf if he chooses to do so, but if he elects not to do so, that fact cannot be taken by you as a circumstance against him or prejudice him in any way. The defendant has elected not to testify, and you are instructed that you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever.

## **APPLICATION OF LAW AND FACTS**

### **CAPITAL MURDER**

Now bearing in mind the foregoing instructions,

1) if you believe from the evidence beyond a reasonable doubt, that on or about the 18<sup>th</sup> day of January A.D., 2005, in Dallas County, Texas, the defendant, JOSE ALBERTO FELIX, intentionally caused the death of Oscar Sanchez, Jr., an individual, by shooting Oscar Sanchez, Jr. with a firearm, a deadly weapon, or by striking Oscar Sanchez, Jr. with or against a statuette, a deadly weapon, or with or against an unknown object, a deadly weapon, the exact nature and description of which is unknown to the Grand Jury, and the defendant was then and there in the course of committing or attempting to commit the offense of kidnapping of Oscar Sanchez, Jr., then you will find the defendant, JOSE ALBERTO FELIX, guilty of the offense of capital murder as charged in the indictment;

**OR**

2) if you believe from the evidence beyond a reasonable doubt, that on or about the 18<sup>th</sup> day of January A.D., 2005, in Dallas County, Texas, the defendant, JOSE ALBERTO FELIX, entered into a conspiracy with one or more of the following persons: Edgar "Richie" Acevedo, or an unknown third person in a ski mask, or Juan Sanchez, hereinafter referred to as "the others," or one or any combination of "the others," to commit the offense of kidnapping of Oscar Sanchez, Jr., and that in the attempt to carry out this conspiracy, if any, one or more of "the others," did intentionally cause the death of Oscar Sanchez, Jr., an individual, by shooting him with a firearm, a deadly weapon, or by striking him with or against a statuette, a deadly weapon, or with or against an unknown object, a deadly weapon, the exact nature and description of which is unknown to the Grand Jury, and if you further find beyond a reasonable doubt that intentionally causing the death of Oscar Sanchez, Jr. was in furtherance of the unlawful purpose to commit kidnapping of Oscar Sanchez, Jr. and should have been anticipated as a result of carrying out the conspiracy to commit kidnapping of Oscar Sanchez, Jr., whether or not the defendant, JOSE ALBERTO FELIX, had the intent to cause the death of Oscar Sanchez, Jr., you will find the defendant, JOSE ALBERTO FELIX, guilty of the offense of capital murder as charged in the indictment;

**OR**

3) if you believe from the evidence beyond a reasonable doubt, that on or about the 18<sup>th</sup> day of January A.D., 2005, in Dallas County, Texas, Edgar "Richie" Acevedo, or an unknown third person in a ski mask, or Juan Sanchez, hereinafter referred to as "the others," or one or any combination of "the others," did intentionally cause the death of Oscar Sanchez, Jr., an individual, by shooting him with a firearm, a deadly weapon, or by striking him with or against a statuette, a deadly weapon, or with or against an unknown object, a deadly weapon, the exact nature and description of which is unknown to the Grand Jury, while in the course of committing or attempting to commit the offense of kidnapping of Oscar Sanchez, Jr., and if you further find beyond a reasonable doubt that the defendant, JOSE ALBERTO FELIX, acting as a party thereto, as that term is hereinbefore defined, did, with the intent to promote or assist the commission of the offense, solicit, encourage, direct, aid, or attempt to aid "the others," or any one or combination of "the others," in intentionally causing the death of Oscar Sanchez, Jr., in the course of committing or attempting to commit the offense of kidnapping of Oscar Sanchez, Jr., then you will find the defendant, JOSE ALBERTO FELIX, guilty of the offense of capital murder as charged in the indictment;

If you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of capital murder and proceed to consider whether the defendant is guilty of the lesser included offense of murder as included in the indictment.

### **MURDER**

Now bearing in mind the foregoing instructions, the following definitions apply only to the lesser included offense of murder:

A person commits the offense of murder if he knowingly or intentionally causes the death of an individual.

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.

“Individual” means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

Now bearing in mind the foregoing instructions,

1) if you believe from the evidence beyond a reasonable doubt, that on or about the 18<sup>th</sup> day of January A.D., 2005, in Dallas County, Texas, the defendant, JOSE ALBERTO FELIX, did intentionally or knowingly cause the death of Oscar Sanchez, Jr., an individual, by shooting him with a firearm, a deadly weapon, or by striking him with or against a statuette, a deadly weapon, or with or against an unknown object, a deadly weapon, the exact nature and description of which is unknown to the Grand Jury, you will find the defendant, JOSE ALBERTO FELIX, guilty of the lesser included offense of murder as included in the indictment;

**OR**

2) if you believe from the evidence beyond a reasonable doubt, that on or about the 18<sup>th</sup> day of January A.D., 2005, in Dallas County, Texas, the defendant, JOSE ALBERTO FELIX, acting as a party thereto, as that term is hereinbefore defined, did with intent to promote or assist the commission of the offense, solicit, encourage, direct, aid, or attempt to aid Edgar "Richie" Acevedo, or an unknown third person in a ski mask, or Juan Sanchez, hereinafter referred to as "the others," or any one or combination of "the others," in intentionally or knowingly causing the death of Oscar Sanchez, Jr., an individual, by shooting him with a firearm, a deadly weapon, or by striking him with or against a statuette, a deadly weapon, or with or

against an unknown object, a deadly weapon, the exact nature and description of which is unknown to the Grand Jury, you will find the defendant guilty of the lesser included offense of murder as included in the indictment;

If you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of murder and proceed to consider whether the defendant is guilty of the lesser included offense of aggravated kidnapping.

### **AGGRAVATED KIDNAPPING**

Now bearing in mind the foregoing instructions, the following definitions apply only to the lesser included offense of aggravated kidnapping:

A person commits the offense of aggravated kidnapping if he intentionally or knowingly abducts another person with the intent to hold him for ransom or reward.

The following definitions of intentionally and knowingly apply only to the offense of aggravated kidnapping:

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 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.

“Abduct” means to restrain a person with intent to prevent his liberation by:

- a) secreting or holding him in a place where he is not likely to be found; or
- b) using or threatening to use deadly force.

“Restrain” means to restrict a person’s movements without consent, so as to interfere substantially with the person’s liberty, by moving the person from one place to another or by confining the person.

“Deadly force” means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

“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.

Now bearing in mind the foregoing instructions,

1) if you believe from the evidence beyond a reasonable doubt, that on or about the 18<sup>th</sup> day of January A.D., 2005, in Dallas County, Texas, the defendant, JOSE ALBERTO FELIX, did intentionally or knowingly abduct Oscar Sanchez, Jr. with the intent to hold him for ransom or reward, you will find the Defendant, JOSE ALBERTO FELIX, guilty of the lesser included offense of aggravated kidnapping;

**OR**

2) if you find from the evidence beyond a reasonable doubt, that on or about the 18<sup>th</sup> day of January, 2005, in Dallas County, Texas, the defendant, JOSE ALBERTO FELIX, acting as a party thereto, as that term is hereinbefore defined, did, with intent to promote or assist the commission of the offense, solicit, encourage, direct, aid, or attempt to aid Edgar “Richie” Acevedo, or an unknown third person in a ski mask, or Juan Sanchez, hereinafter referred to as “the others,” or any one or combination of “the others,” in intentionally or knowingly abducting Oscar Sanchez, Jr. with the intent to hold him for ransom or reward, you will find the defendant,



At times throughout the trial, the Court has been called upon to pass on the question of whether or not certain offered evidence might properly be admitted. Do not be concerned with the reasons for such rulings and draw no inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the Court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, and no juror is permitted to communicate to any other juror anything he may have heard regarding the case from any source other than the witness stand.

In deliberating on this case, you are not to refer to or discuss any matter or issue not in evidence before you, and you are not to talk about this case to anyone not of your jury.

Mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling is to play no part in your deliberations.

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 must receive the law from the Court as set out in this charge, and be governed by it.

After you have retired to consider the verdict, no one has any authority to communicate with you except the officer who has you in charge. You may communicate with this Court in writing, signed by your presiding juror, through the officer who has you in charge. Do not attempt to talk to the officer, the attorneys, or the Court concerning any question you may have.

After argument of counsel, you will retire and select one of your members as your presiding juror. As the title suggests, it is the presiding juror's duty to preside at your deliberations and to vote with you in reaching a verdict. Your verdict must be unanimous. After you have reached your verdict, your presiding juror will sign the appropriate form attached to this charge.



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Lana Myers  
Judge, 203<sup>rd</sup> Judicial District Court

**VERDICT FORMS**

We, the jury, find the defendant guilty of the offense of capital murder as charged in the indictment.

*B. F. Teub*  
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PRESIDING JUROR

We, the jury, find the defendant guilty of the lesser included offense of murder as included in the indictment.

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PRESIDING JUROR

We, the jury, find the defendant guilty of the lesser included offense of aggravated kidnapping as included in the indictment.

\_\_\_\_\_  
PRESIDING JUROR

We, the jury, find the defendant not guilty.

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PRESIDING JUROR