

NO. 416-82415-07

THE STATE OF TEXAS

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IN THE 416<sup>th</sup> JUDICIAL

V.

DISTRICT COURT OF

RAUL CORTEZ

COLLIN COUNTY, TEXAS

**CHARGE OF THE COURT**

MEMBERS OF THE JURY:

The defendant, Raul Cortez, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about March 12, 2004, in Collin County, Texas. To this charge the defendant has pleaded not guilty.

1.

A person commits capital murder when he intentionally causes the death of an individual in the course of committing or attempting to commit the offense of robbery or burglary.

2.

Our law provides that a person commits burglary if, without the effective consent of the owner, the person enters a habitation with intent to commit a felony or assault, or the person enters a habitation and commits or attempts to commit a felony or assault.

Our law provides that a person commits robbery if, in the course of committing theft and with intent to obtain or maintain control of the property, he intentionally or knowingly causes bodily injury to another.



3.

A person commits theft if he unlawfully appropriates property with intent to deprive the owner of property. Appropriation of property is unlawful if it is without the owner's effective consent.

4.

A person commits assault if he intentionally or knowingly causes bodily injury to another.

5.

"Appropriate" means to acquire or otherwise exercise control over property other than real property.

"Consent" means assent in fact, whether express or apparent. Consent is not effective if induced by deception or coercion.

"Effective consent" includes consent by a person legally authorized to act for the owner.

"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.

"Owner" means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor.

"Another" means a person other than the actor.

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

"Enter" means to intrude any part of the body.

"Felony" means an offense so designated by law or punishable by death or confinement in the penitentiary.

"Habitation" means a structure that is adapted for the overnight accommodation of persons.

“Deadly weapon” means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

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

An “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.

“Individual” means a human being who is alive.

6.

With respect to the offense of 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.

With respect to the offenses of robbery and burglary:

A person acts intentionally, or with intent, with respect to the nature of his conduct or 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 the result of his

conduct when he is aware that his conduct is reasonably certain to cause the result.

7.

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 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.

8.

You are instructed that an “accomplice” as that term is hereinafter used, means any person connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime, as such parties, by unlawful act or omission on their part transpiring either before or during the commission of the crime.

A conviction cannot be had upon the testimony of an accomplice unless the jury first believe that the accomplice’s evidence is true and that it shows the defendant is guilty of the offense charged against him, and even then you cannot convict unless the accomplice’s testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

The witness Eddie Williams is an accomplice, if an offense was committed, and you cannot convict the defendant upon his testimony unless you first believe that his testimony is true and shows that the defendant is guilty as charged, and then you cannot convict the defendant upon said

testimony unless you further believe that there is other evidence in this case, outside of the testimony of Eddie Williams, tending to connect the defendant with the offense committed, if you find that an offense was committed, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must also tend to connect the defendant with its commission, and then from all of the evidence you must believe beyond a reasonable doubt that the defendant is guilty of the offense charged against him.

9.

You are instructed that if there is any testimony before you in this case regarding the defendant having committed offenses 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 other offenses, if any were committed, and even then you may only consider the same in determining the defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, and for no other purpose.

10.

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 he has been arrested, confined or indicted or otherwise charged with the offense gives no rise to an 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, 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 exclude 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 and say by your verdict "Not Guilty".

The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant.

11.

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that on or about March 12, 2004, the defendant, Raul Cortez, did intentionally cause the death of Austin York, an individual, hereinafter called deceased, by shooting deceased with a firearm, and the defendant intentionally did cause the death of deceased while the defendant was in the course of committing or attempting to commit the offense of robbery or burglary, you will find the defendant guilty of capital murder as charged in the indictment.

or

If you believe from the evidence beyond a reasonable doubt that on or about March 12, 2004, Javier Cortez or Eddie Williams did intentionally cause the death of Austin York, an individual, hereinafter called deceased, by shooting deceased with a firearm, and Javier Cortez or Eddie Williams intentionally did cause the death of deceased while Javier Cortez or Eddie Williams were in the course of committing or attempting to commit the offense of robbery or burglary, and if you further believe from the evidence beyond a reasonable doubt that the defendant, Raul Cortez, acting

with intent to promote or assist the commission of the offense, solicited, encouraged, directed, aided or attempted to aid Javier Cortez or Eddie Williams in the commission of the offense, you will find Raul Cortez guilty 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 and say by your verdict “Not Guilty.”

12.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion respecting any matter of fact in this case, and if you have observed anything which you have or may interpret as the Court’s opinion upon any matter of fact in this case, you must wholly disregard it.

13.

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. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them.

14.

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

15.

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 might have heard regarding the case from any source other than the witness stand.

16.

After argument of Counsel, you will retire and select one of your members as your presiding juror. It is the duty of your presiding juror to preside at your deliberations and to vote with you in arriving at a verdict, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form attached hereto, and signing the same as presiding juror.

In deliberating on this case you are not to refer to any matter or issue not in evidence before you, nor talk about this case to anyone not of your jury.

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

If you as jurors disagree as to the testimony of any witnesses, you may, upon applying to the Court through your presiding juror, request to have read the Court Reporter's notes on that portion of the witness's testimony in dispute. If you desire to hear any portion of the testimony of any witness, you must certify through your presiding juror that you are in disagreement as to the testimony of the witness, and you should request that part of the testimony on the point in dispute, and only that point which is in dispute.

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 you, and be governed thereby.

A handwritten signature in black ink, appearing to read 'Webb Biard', written over a horizontal line.

Webb Biard, Judge  
416<sup>th</sup> Judicial District Court  
Collin County, Texas

VERDICT FORMS

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

Warren Kassel  
Presiding Juror  
Printed Name: Warren Kassel

-OR-

We, the jury, find the defendant, Raul Cortez, not guilty.

\_\_\_\_\_  
Presiding Juror  
Printed Name: \_\_\_\_\_