

**ORIGINAL**

**NO. 04-9000606**

**THE STATE OF TEXAS**

**IN THE 167TH DISTRICT**

**VS.**

**COURT OF**

**ALBERTO GARCIA**

**TRAVIS COUNTY, TEXAS**

**CHARGE OF THE COURT**

LADIES AND GENTLEMEN OF THE JURY:

The defendant, Alberto Garcia, stands charged by indictment with the offense of Capital Murder, alleged to have been committed in Travis County, Texas, on or about the 15<sup>th</sup> and 17<sup>th</sup> days of December 1990. To this charge the defendant has pleaded not guilty. You are instructed that the law applicable to this case is as follows:

**I.**

A person commits the offense of Capital Murder if he murders more than one person during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct.

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

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

"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.

"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.

**II.**

A person acts intentionally, or with intent, with respect 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 a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

Filed in The District Court  
of Travis County, Texas

AUG 28 2006

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at 12:00 M.  
Amalia Rodriguez-Mendoza, Clerk

### **III. CAPITAL MURDER**

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant Alberto Garcia, as alleged in the indictment, did then and there murder more than one person during different criminal transactions but pursuant to the same scheme or course of conduct, to-wit: the said Alberto Garcia on or about the 17<sup>th</sup> day of December, 1990 in Travis County, Texas did then and there intentionally or knowingly cause the death of an individual, Eleazar Hinojosa, by shooting him with a firearm, a deadly weapon; and the said Alberto Garcia, on or about the 15<sup>th</sup> day of December, 1990, in Travis County, Texas, did then and there intentionally or knowingly cause the death of an individual, John Parish, by shooting him with a firearm, a deadly weapon, you will find the defendant guilty of Capital Murder and so say by your verdict; but 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 say by your verdict "not guilty" and proceed to consider the charges of Murder as set forth in the following paragraphs.

### **IV. MURDER**

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant Alberto Garcia on or about the 17<sup>th</sup> day of December, 1990 in Travis County, Texas did then and there intentionally or knowingly cause the death of an individual, Eleazar Hinojosa, by shooting him with a firearm, a deadly weapon, you will find the defendant guilty of Murder of Eleazar Hinojosa and so say by your verdict; but if you do not so believe or if you have a reasonable doubt thereof, you will acquit the defendant of the Murder of Eleazar Hinojosa and say by your verdict "not guilty." Regardless of your verdict in this paragraph proceed to consider the next paragraph.

### **V. MURDER**

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant Alberto Garcia on or about the 15<sup>th</sup> day of December, 1990 in Travis County, Texas did then and there intentionally or knowingly cause the death of an individual, John Parish, by shooting him with a firearm, a deadly weapon, you will find the defendant guilty of the Murder of John Parish and so say by your verdict; but if you do not so believe or if you have a reasonable doubt thereof, you will acquit the defendant of the Murder of John Parish and say by your verdict "not guilty."

### **VI.**

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, 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.

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 the defendant and say by your verdict "Not Guilty."

#### VII.

In a criminal case the law permits a defendant to testify in his own behalf but, he is not compelled to do so and the same law provides that the fact that a defendant does not testify shall not be considered as a circumstance against him. You will, therefore, not consider that the defendant did not testify as a circumstance against him; and you will not during your deliberations allude to, comment on, or in any manner refer to the fact that the defendant has not testified.

#### VIII.

You are further instructed as a part of the law in this case that the indictment against the defendant is not evidence in the case, and that the true and sole use of the indictment is to charge the offense, and to inform the defendant of the offense alleged against him. The reading of the indictment to the jury in the statement of the case of the State against the defendant cannot be considered as a fact or circumstance against the defendant in your deliberations.

#### IX.

In deliberating on this case you are not to consider or discuss the punishment that may be assessed against this defendant in the event you find him guilty.

#### X.

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

#### XI.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of

a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts they are personal memory aids. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial. Occasionally, during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the Court.

**XII.**

The defendant is on trial solely on the charge contained in the indictment. In reference to evidence, if any, that the defendant has previously participated in transactions or acts, other than but similar to that which is charged in the indictment in this case, you are instructed that you can not consider such other transactions or acts, if any, for any purpose unless you find and believe beyond a reasonable doubt that the defendant participated in such transactions or committed such acts, if any; and even then you may only consider the same for the purpose of determining identity or opportunity if it does, and for no other purpose.

**XIII.**

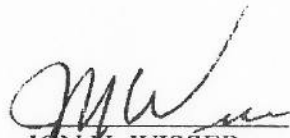
In deliberating on this case you are not to refer to or discuss any matter or issue not in evidence before you, nor talk about this case to anyone not on your jury; and after the reading of this charge you shall not separate from each other until you have reached a verdict.

**XIV.**

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.

**XV.**

After the arguments of counsel, you will retire and select one of your members as your foreperson. It is his or her duty to preside at your deliberations and to vote with you in arriving at your verdict. Your verdict must be unanimous, and after you have arrived at your verdict, you may use the forms attached hereto by having your foreperson complete and sign his or her name to the particular form(s) that conforms to your verdict.

  
JON N. WISSNER  
JUDGE PRESIDING

**NO. 04-9000606**

**THE STATE OF TEXAS**

**IN THE 167TH DISTRICT**

**VS.**

**COURT OF**

**ALBERTO GARCIA**

**TRAVIS COUNTY, TEXAS**

**VERDICT OF THE JURY**  
**CAPITAL MURDER**

We, the jury, find the defendant, Alberto Garcia, Guilty of the offense of  
(guilty or not guilty)  
Capital Murder, as alleged in the indictment.

  
FOREPERSON

If you found the defendant guilty of the offense alleged above answer the following question.  
otherwise, do not.

Do you find from the evidence beyond a reasonable doubt that the defendant used or exhibited a  
deadly weapon, to-wit: a firearm, in the commission of the offense.

Answer "Yes" or "No"

Answer: Yes

  
FOREPERSON

**If you have found the defendant guilty of Capital Murder do not consider the lesser  
offenses of Murder and do not utilize the two remaining verdict forms.**

By \_\_\_\_\_ of the Court  
10:09a

AUG 29 2008

10:09a  
Clerk

NO. 04-9000606

THE STATE OF TEXAS

IN THE 167TH DISTRICT

VS.

COURT OF

ALBERTO GARCIA

TRAVIS COUNTY, TEXAS

**VERDICT OF THE JURY**  
**MURDER**

We, the jury, find the defendant, Alberto Garcia, \_\_\_\_\_ of the offense  
(guilty or not guilty)  
of the Murder of Eleazar Hinojosa.

\_\_\_\_\_  
FOREPERSON

If you found the defendant guilty of the offense alleged above answer the following question, otherwise, do not.

Do you find from the evidence beyond a reasonable doubt that the defendant used or exhibited a deadly weapon, to-wit: a firearm in the commission of the offense.

Answer "Yes" or "No"

Answer: \_\_\_\_\_

\_\_\_\_\_  
FOREPERSON

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**ALBERTO GARCIA**

**TRAVIS COUNTY, TEXAS**

**VERDICT OF THE JURY**

We, the jury, find the defendant, Alberto Garcia, \_\_\_\_\_ of the offense of  
(guilty or not guilty)  
the Murder of John Parrish.

\_\_\_\_\_  
FOREPERSON

If you found the defendant guilty of the offense alleged above answer the following question.  
otherwise, do not.

Do you find from the evidence beyond a reasonable doubt that the defendant used or exhibited a  
deadly weapon, to-wit: a firearm in the commission of the offense.

Answer "Yes" or "No"

Answer: \_\_\_\_\_

\_\_\_\_\_  
FOREPERSON