

CAUSE NO. F06-68354

THE STATE OF TEXAS

-vs.-

VICTOR GABRIEL NUNEZ

§ IN THE 204<sup>th</sup> JUDICIAL  
§ DISTRICT COURT  
§ DALLAS COUNTY, TEXAS

FILED  
2008 JULY 15 AM 10:45  
CLERK OF DISTRICT COURT  
M. B. ...

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COURT'S CHARGE TO THE JURY

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MEMBERS OF THE JURY:

The defendant, Victor Gabriel Nunez, stands charged by indictment with the offense of capital murder, alleged to have been committed in Dallas County, Texas, on or about July 17<sup>th</sup>, 2006. To this charge, the defendant has pleaded not guilty.

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

A person commits capital murder when such person commits the murder, if any, of an individual under six years of age.

A person commits the offense of manslaughter if he recklessly causes the death of an individual.

A person commits the offense of criminally negligent homicide if he causes the death of an individual by criminal negligence.

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.

A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances, as viewed from the actor's standpoint.

A person acts with criminal negligence or is criminally negligent, with respect to the result of his conduct, when he ought to be aware of a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances, as viewed from the standpoint of the person so acting.

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

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

"Serious bodily injury" as used herein 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 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.

Now, if you find from the evidence beyond a reasonable doubt that on or about July 17<sup>th</sup>, 2006, in Dallas County, Texas, the defendant, Victor Gabriel Nunez, did intentionally or knowingly cause the death of Lizeth Castro, an individual, hereinafter called deceased, by STRIKING DECEASED WITH DEFENDANT'S HAND, A DEADLY WEAPON, AND BY STRIKING DECEASED WITH DEFENDANT'S FOOT, A DEADLY WEAPON, and the deceased at the time of the offense was under six years of age, then you will find the defendant, Victor Gabriel Nunez, guilty of capital murder as charged in the indictment.

Unless you so find and believe from the evidence 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 included offense of manslaughter.

Now, if you find from the evidence beyond a reasonable doubt that on or about July 17<sup>th</sup>, 2006, in Dallas County, Texas, the defendant, Victor Gabriel Nunez, did recklessly cause the death of an individual, namely Lizeth Castro, by STRIKING DECEASED WITH DEFENDANT'S HAND, A DEADLY WEAPON, AND BY STRIKING DECEASED WITH DEFENDANT'S FOOT, A DEADLY WEAPON, then you will find the defendant guilty of manslaughter, as included in the indictment.

Unless you so find and believe from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of manslaughter and next consider the included offense of criminal negligence.

Now if you find from the evidence beyond a reasonable doubt that on or about the July 17<sup>th</sup>, 2006, in Dallas County, State of Texas, the defendant, Victor Gabriel Nunez, did with criminal negligence cause the death of Lizeth Castro by STRIKING DECEASED WITH DEFENDANT'S HAND, A DEADLY WEAPON, AND BY STRIKING DECEASED WITH DEFENDANT'S FOOT, A DEADLY WEAPON, then you will find the defendant guilty of the offense of criminally negligent homicide, as included in the indictment.

If you should find from the evidence that the defendant is not guilty of either of the offenses defined in this charge, or if you have a reasonable doubt thereof, you shall find the defendant not guilty.

You are instructed that our law provides that you should not consider as evidence any statement made by a defendant, or any evidence obtained as a result of such statement, unless the evidence convinces you beyond a reasonable doubt that the statement was made voluntarily by the defendant. Therefore, unless you find from the evidence beyond a reasonable doubt that the alleged statement of the defendant was made voluntarily, or if you entertain a reasonable doubt as to whether it was made voluntarily, you shall not consider such statement for any purpose whatsoever, nor shall you consider any evidence obtained from such statement.

You are further instructed in this regard that any statement made by a defendant in custody that is the result of compulsion or improper persuasion is not considered to be a voluntary statement. Therefore, if you find from the evidence, or have a reasonable doubt based upon the evidence, that at the time the defendant gave his statement on July 17<sup>th</sup>, 2006, the defendant had been subjected to improper duress, compulsion, or persuasion due

to the defendant being in a condition of physical or mental impairment, then such statement would not be considered to have been freely and voluntarily made, and you should disregard such statement and any evidence that was obtained as a result of the statement.

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.

All persons are presumed 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 does not give rise to an inference of guilt at this 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 element as charged beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. However, it is not required that the prosecution prove guilt beyond all possible doubt; it is only required that the prosecution's proof exclude all reasonable doubt concerning the defendant's guilt.

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.

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.

During your deliberation in this case, you must not consider, discuss, or relate any matters not in evidence before you. You should not consider or 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, nor shall you in deciding your verdict discuss the punishment which may be assessed in the event that the defendant is found guilty.

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 inference 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 instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may 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 upon 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.

Your verdict must be unanimous and shall be arrived at by due deliberation and not by majority vote or by any method of chance.

You are the exclusive judges of the facts proved, the credibility of the witnesses, and the weight to be given to the testimony. However, you must receive and follow the law provided to you by the court.

After argument of counsel, you will retire to consider your verdict in this case. You should begin by selecting one of your members as foreperson. It is the duty of the foreperson to preside at your deliberations, to vote equally as any other juror in arriving at a verdict, and to sign the verdict on behalf of the jury.

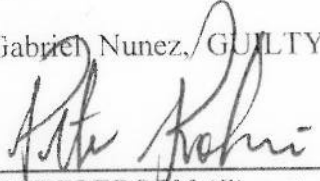
Any communications with the court must be in writing, signed by the foreperson. You may deliberate as long as you need. There is no time limit. If you have a verdict, turn on the red light and the sheriff will quickly respond.



Judge Lena Levario  
204<sup>th</sup> Judicial District Court

VERDICT FORM

We, the jury, find the defendant, Victor Gabriel Nunez, GUILTY of capital murder, as charged in the indictment.

  
\_\_\_\_\_  
FOREPERSON (Signature)

PETER ROBINSON  
(Printed name)

OR

We, the jury, find the defendant, Victor Gabriel Nunez, GUILTY of manslaughter, as included in the indictment.

\_\_\_\_\_  
FOREPERSON (Signature)

\_\_\_\_\_  
(Printed name)

OR

We, the jury, find the defendant, Victor Gabriel Nunez, GUILTY of criminally negligent homicide, as included in the indictment.

\_\_\_\_\_  
FOREPERSON (Signature)

\_\_\_\_\_  
(Printed name)

OR

We, the jury, find the defendant, Victor Gabriel Nunez, NOT GUILTY.

\_\_\_\_\_  
FOREPERSON (Signature)

\_\_\_\_\_  
(Printed name)