

CAUSE NO. F45973

THE STATE OF TEXAS

§

IN THE 18TH DISTRICT COURT

VS.

§

OF

NICO ALLEN-ANTONIO COGDILL

§

JOHNSON COUNTY, TEXAS

CHARGE OF THE COURT

Ladies and Gentlemen of the Jury:

The Defendant stands charged by Indictment with the felony offense of Capital Murder, alleged to have been committed in Johnson County, Texas on or about September 21, 2011.

To this charge the Defendant has pled not guilty. You are instructed that the law applicable to this case is as follows:

I.

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

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

II.

Our law provides that a person commits the offense of robbery if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain and maintain control of property of another, he intentionally or knowingly or recklessly causes bodily injury to another or he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death

The term "in the course of committing theft" means conduct that occurs in an attempt to

commit, during the commission or in immediate flight after the attempt or commission of theft.

"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.

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

"Theft" as used herein is the unlawful appropriation of the corporeal personal property of another with the intent to deprive such person of said property.

"Appropriation" and "appropriate," as those terms are used herein, 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" as used herein means tangible or intangible personal property or documents, including money that represents or embodies anything of value.

"Deprive" as used herein means to withhold property from the owner permanently.

"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 or force or threats.

"Owner" mean 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.

"Possession" means actual care, custody, control or management of property.

III.

Our law provides that a person commits the offense of burglary if, without the effective consent of the owner, he enters a habitation or a building not then open to the public with intent to commit a felony, theft, or an assault.

"Enter," as used above, is meant to intrude any part of the body or any physical object connected with the body into the building or habitation.

"Building" means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament or use.

"Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes each separately secured or occupied portion of the structure or vehicle and each structure appurtenant to or connected with the structure or vehicle.

IV.

Our law provides 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.

Our law further provides that 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" is committed if, with intent that a felony be committed, a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and he or one or more of them performs an overt act in pursuance of the agreement.

An agreement constituting a conspiracy may be inferred from acts of the parties.

Each party to an offense may be charged with the commission of the offense.

Mere presence alone will not constitute one a party to an offense.

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, murder, aggravated robbery, aggravated assault, robbery, attempted robbery, burglary, and attempted burglary are felony offenses.

V.

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

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.

VI.

Now bearing in mind the foregoing instruction, if you believe from the evidence beyond a reasonable doubt that the Defendant, NICO ALLEN-ANTONIO COGDILL, on or about September 21, 2011, in the County of Johnson and State of Texas, did then and there intentionally cause the death of an individual, Rick Warren, by hitting him with a wrench, and the said Defendant was then and there in the course of committing or attempting to commit the offense of robbery of Rick Warren, OR did then and there intentionally cause the death of an individual, Rick Warren, by hitting him with a wrench, and the said defendant was then and there in the course of committing or

attempting to commit the offense of burglary of a habitation of Rick Warren, the owner of said habitation, then you will find the Defendant guilty of the offense of capital murder as charged;

OR

If you believe from the evidence beyond a reasonable doubt that on or about September 21, 2011 in the County of Johnson and the State of Texas, Isaac Milne or Jeremy Bukowski did intentionally cause the death of an individual, Rick Warren, by hitting him with a wrench, and the said Isaac Milne or Jeremy Bukowski was then and there in the course of committing or attempting to commit the offense of robbery of Rick Warren or the offense of burglary of a habitation of Rick Warren, the owner of said habitation, and if you further believe from the evidence beyond a reasonable doubt that on or about said date in said County and State, the Defendant NICO ALLEN-ANTONIO COGDILL, acting as a party, as that term is defined herein, did, with the intent to promote or assist the commission of the offense, then and there solicit, encourage, direct, aid or attempt to aid Isaac Milne or Jeremy Bukowski in intentionally causing the death of Rick Warren during the commission or attempted commission of the above described offense of robbery or of burglary, then you will find NICO ALLEN-ANTONIO COGDILL, guilty of capital murder;

OR

If you find from the evidence beyond a reasonable doubt that the Defendant, NICO ALLEN-ANTONIO ^{COGDILL} entered into a conspiracy with Isaac Milne or Jeremy Bukowski to commit the felony offense of robbery or burglary and that on or about September 21, 2011 in Johnson County, Texas, in the attempt to carry out this agreement, if any, Isaac Milne or Jeremy Bukowski did intentionally cause the death of Rick Warren by hitting him with a wrench, if he did, and if you further find that intentionally causing the death of Rick Warren was committed in furtherance of the unlawful

purpose to commit the offense of robbery or burglary, and that intentionally causing the death of Rick Warren was an offense that should have been anticipated as a result of carrying out the conspiracy to commit robbery or burglary, though the Defendant, NICO ALLEN-ANTONIO COGDILL, may have had no specific intent to commit the offense of capital murder, then you will find the Defendant, NICO ALLEN-ANTONIO COGDILL, guilty of capital murder;

But if you do not so believe, or if you have a reasonable doubt thereof, you will next consider whether he is guilty of the lesser-included offense of murder.

VII.

A person commits the offense of murder if he commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in the immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 21st day of September 2011, in Johnson County, Texas, the Defendant, NICO ALLEN-ANTONIO COGDILL, either acting alone or as a party thereto as hereinbefore defined, did then and there commit or attempt to commit a felony, to wit: robbery or burglary, and in the course of and in furtherance of the commission or attempted commission, or in immediate flight from the commission or attempted commission of said felony, he committed or attempted to commit an act clearly dangerous to human life, to wit: hitting Rick Warren with a wrench that caused the death of Rick Warren, then you will find the defendant guilty of murder.

Unless you so find from the evidence beyond a reasonable doubt or if you have a reasonable doubt thereof, you will next consider whether he is guilty of the lesser-included offense of aggravated robbery.

VIII.

A person commits the offense of aggravated robbery if he commits robbery and he causes serious bodily injury to another or uses or exhibits a deadly weapon.

"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 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 the 21st day of September 2011, in Johnson County, Texas, the defendant, NICO ALLEN-ANTONIO COGDILL, either acting alone or as a party, as that term has been hereinbefore defined, did then and there intentionally or knowingly, while in the course of committing theft of property and with intent to obtain or maintain control of said property, threaten or place Rick Warren in fear of imminent bodily injury or death, and the defendant did then and there use or exhibit a deadly weapon or did then and there cause serious bodily injury to Rick Warren by hitting Rick Warren with a wrench, then you will find him guilty of the lesser-included offense of aggravated robbery.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will next consider the lesser-included offense of Aggravated Assault with a Deadly Weapon.

IX.

A person commits the offense of assault if the person intentionally or knowingly causes bodily injury to another, including the person's spouse.

A person commits the offense of aggravated assault if the person commits assault and the person uses or exhibits a deadly weapon during the commission of the assault.

X.

Now if you find from the evidence beyond a reasonable doubt that on or about the 21st day of September, 2011, in Johnson County, Texas, the Defendant NICO ALLEN-ANTONIO COGDILL, either acting alone or as a party as that term has been defined herein, did then and there intentionally or knowingly cause bodily injury to Rick Warren by hitting him with a wrench and the defendant did then and there use or exhibit a deadly weapon, to-wit: a wrench that in the manner of its use or intended use was capable of causing death or serious bodily injury, then you will find him guilty of the lesser included offense of Aggravated Assault with a Deadly Weapon.

XI.

If you all agree the state has proved, beyond a reasonable doubt, each of the elements within any of the offenses listed above, you must next consider whether the defense of duress applies.

You have heard evidence that, when the defendant entered the residence and struck Rick Warren with a wrench, he did so because he was compelled by a threat of imminent death or serious bodily injury to himself or another.

A person's conduct that would otherwise constitute the crime of Capital Murder is not a criminal offense if the person was compelled to engage in that conduct by a threat of imminent death or serious bodily injury to himself or another.

Duress is an affirmative defense. Therefore the defendant must prove, by a preponderance of the evidence three elements:

1. He was compelled to engage in the conduct by a threat of imminent death or serious bodily injury to himself or another person if he did not engage in that conduct; and
2. The threat would render a person of reasonable firmness incapable of resisting the pressure; and
3. He did not intentionally, knowingly, or recklessly place himself in a situation in which it was probable that he would be subject to compulsion.

The burden is on the defendant to prove, by a preponderance of the evidence that he comes within the affirmative defense of duress.

"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.

"Preponderance of the evidence" means the greater weight and degree of the credible evidence.

A person intentionally placed himself in a situation in which it was probable that he would be subject to compulsion when a person had the conscious objective or desire to be in a situation in which it was probable he would be subject to compulsion.

A person knowingly placed himself in a situation in which it was probable that he would be subject to compulsion when a person was reasonably certain his actions would result in his being in a situation in which it was probable he would be subject to compulsion.

A person recklessly placed himself in a situation in which it was probable that he would be subject to compulsion when he was aware of but consciously disregarded a substantial and unjustifiable risk that his actions would result in his being in a situation in which it was probable he would be subject to the compulsion. 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.

If you have found that the state has proved the offense beyond a reasonable doubt, you must next decide whether the defendant has proved, by a preponderance of the evidence all of the following elements:

1. He was compelled to engage in the conduct by a threat of imminent death or serious bodily injury to himself or another person if he did not engage in the conduct; and
2. The threat would make a person of reasonable firmness incapable of resisting the pressure; and
3. He did not intentionally, knowingly, or recklessly place himself in a situation in which it was probable that he would be subject to compulsion.

You must all agree on whether the defendant has proved all of the elements listed above. If you do not all agree that the defendant has proved all of these elements, however, you need not all agree on which one or more of these elements the defendant failed to prove.

If you find that the defendant has proved, by a preponderance of the evidence, all of the elements listed above, you must find the defendant “not guilty.”

If you all agree that the state has proved, beyond a reasonable doubt, each of the elements of the offense, and you all agree the defendant has not proved, by a preponderance of the evidence, all of the elements listed above, you must find the defendant “guilty.”

XII.

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 charge 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.

XIII.

You are instructed that if there is testimony before you regarding the defendant having committed offenses, wrongs, or acts other than the offense charged in the indictment in this case, now on trial before you, you cannot consider said testimony for any purpose unless you find and

believe beyond a reasonable doubt that the defendant committed such conduct, if any were committed, and even then you may only consider the same in determining the motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident of this defendant now on trial before you, or rebuttal of a defensive theory, and for no other purpose.

XIV.

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 into consideration for any purpose whatsoever as a circumstance against the defendant.

XV.

You are instructed that unless you believe from the evidence beyond a reasonable doubt that any statements to law enforcement introduced into evidence were freely and voluntarily made by the defendant without compulsion or persuasion, or if you have a reasonable doubt thereof, you shall not consider such statements for any purpose nor any evidence obtained as a result thereof.

XVI.

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. The true and sole use of the Indictment is to charge the offense and to inform the Defendant of the offense alleged. 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.

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. No juror is permitted to communicate to any other juror anything he or she may have heard regarding the case or any witness therein from any source other than the witness stand.

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 thereby.

After you retire to the jury room, you should select one of your members as your Presiding Juror. It is his or her duty to preside at your deliberations, vote with you, 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.

No one has any authority to communicate with you except the officer who has you in charge. 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 to restrict your deliberations solely to the issue of guilt or innocence of the Defendant. Do not let bias, prejudice, or sympathy play any part in your decision.

After you have retired, you may communicate with this court in writing through the officer who has you in charge. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the court, or anyone else concerning any question you may have. After you have reached a unanimous verdict, the Presiding Juror will certify thereto by filling in the appropriate form attached

to this charge and signing his or her name as Presiding Juror. You may now retire to consider your verdict.

SIGNED this 21st day of June, 2013.

7:50 Am
TIME



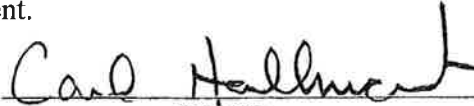
PRESIDING JUDGE
18TH DISTRICT COURT

CAUSE NO. F45973

THE STATE OF TEXAS § IN THE 18TH DISTRICT COURT
VS. § OF
NICO ALLEN-ANTONIO COGDILL § JOHNSON COUNTY, TEXAS

VERDICT OF THE JURY

We, the Jury, find the Defendant, NICO ALLEN-ANTONIO COGDILL, guilty of the offense of Capital Murder, as alleged in the Indictment.



PRESIDING JUROR

OR

We, the Jury, find the Defendant, NICO ALLEN-ANTONIO COGDILL, guilty of the lesser-included offense of Murder.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, NICO ALLEN-ANTONIO COGDILL, guilty of the lesser-included offense of Aggravated Robbery.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, NICO ALLEN-ANTONIO COGDILL, guilty of the lesser-included offense of Aggravated Assault-Deadly Weapon.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, NICO ALLEN-ANTONIO COGDILL, not guilty.

PRESIDING JUROR