

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
168TH JUDICIAL DISTRICT

10-11-8 10:52

THE STATE OF TEXAS

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§
§

Vs.

CAUSE NO. 20070005611

FRANCISCO CASTANEDA

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

After the attorneys have presented their summations, you will go to the jury room. You will then select one of your members as your presiding juror. It shall be your presiding juror's duty to preside over your discussions of and deliberations upon the case, vote with you and, when you have unanimously agreed upon a verdict by signing the same as your presiding juror.

You will have this Charge with you in the jury room, and shall refer to it for guidance during your deliberations. Suitable forms for your verdict are attached hereto; your verdict must be in writing and signed by your presiding juror. Your sole duty at this time is to determine the guilt or innocence of the Defendant under the Indictment in this case; and restrict your deliberations solely to the issue of whether the Defendant is guilty or not guilty.

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 as it is given to you in this Charge, and you are bound to be governed thereby.

You shall consider only the evidence and exhibits presented here in the courtroom through the witnesses who have testified. If you want to have the exhibits with you in the jury room for your deliberations, advise the bailiff. In deliberating on this case, you shall not talk to anyone except the members of the jury about it until you have been finally discharged from service on this jury.

If you want to communicate with the Court, explain what you want in writing and deliver your message, signed by your presiding juror, to the bailiff, who will deliver it to the Court. Do not orally explain to the bailiff what you want.

You are instructed that the Grand Jury Indictment is not evidence of guilt, it is a means whereby the Defendant is brought to trial in a felony prosecution. It is not evidence, nor can it be considered by you in passing upon the innocence or guilt of the Defendant.

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 does not give rise to any inference of guilt at the 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.

Texas law provides that a defendant may testify in his own behalf if he elects so to do. 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 him.

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 doubt; it is required that the prosecution's proof excludes all reasonable doubt concerning the Defendant's guilt.

Boldface lettering of words or phrases in this Charge indicate that such words or phrases are defined in this charge and nothing else. Words or phrases not defined herein have their ordinary meaning.

The defendant, FRANCISCO CASTANEDA, stands charged by indictment with the offense of Capital Murder alleged to have been committed on or about November 19, 2007 in El Paso County, Texas. The defendant has pleaded not guilty.

1.

MENTAL STATES

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.

A person acts recklessly, or is reckless, with respect to the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that 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.

2.

AS TO THE LAW OF MURDER AND MURDER CAPITAL

Our law provides that a person commits murder when he intentionally or knowingly causes the death of an individual. A person commits capital murder when such person commits murder and the person murdered is an individual under the age of six.

AS TO THE LAW OF PARTIES

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

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

3.

You are instructed that you may consider all relevant facts and circumstances surrounding the incident in question, if any, and the previous relationship existing between the accused and the deceased, if any, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the incident in question, if any.

4.

Now, if you find from the evidence beyond a reasonable doubt that on or about November 19, 2007, in El Paso County, Texas, the defendant, FRANCISCO CASTANEDA, did intentionally or knowingly cause the death of an individual, JACQUELINE GONZALEZ by striking JACQUELINE GONZALEZ about the body with an unknown object or by striking JACQUELINE GONZALEZ' body against an unknown object, and the said JACQUELINE GONZALEZ, was then and there an individual younger than six years of age, then you will find the Defendant guilty of capital murder (Verdict Form G-1) and cease your deliberations.

Unless you so find beyond a reasonable doubt or you have a reasonable doubt thereof, you will next consider if the defendant is guilty of injury to a child.

5.

AS TO THE LAW OF INJURY TO A CHILD

Our law provides that a person commits an offense if he intentionally, knowingly, or recklessly, causes serious bodily injury to a child.

6.

By the term "bodily injury" is meant physical pain, illness, or any impairment of physical condition.

The term "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.

"A child" means a person 14 years of age or younger.

7.

If you find from the evidence beyond a reasonable doubt that on or about November 19, 2007, in EL PASO County, Texas, the defendant, FRANCISCO CASTANEDA, intentionally or knowingly by act, caused serious bodily injury to JACQUELINE GONZALEZ a child younger than 14 years of age, by striking JACQUELINE GONZALEZ about the body with an unknown object or by striking JACQUELINE GONZALEZ' body against an unknown object, then you will find the defendant guilty of INJURY TO A CHILD (Verdict Form G-2) and cease your deliberations.

If you find from the evidence beyond a reasonable doubt that on or about November 19, 2007, in EL PASO County, Texas, the defendant, FRANCISCO CASTANEDA, recklessly caused serious bodily injury to JACQUELINE GONZALEZ a child younger than 14 years of age, by striking JACQUELINE GONZALEZ about the body with an unknown object or by striking JACQUELINE GONZALEZ' body against an unknown object, then you will find the

defendant guilty of INJURY TO A CHILD (Verdict Form G-3) and cease your deliberations.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will next consider if the Defendant is guilty of Manslaughter.

8.

AS TO THE LAW OF MANSLAUGHTER

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

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

Now, if you believe from the evidence beyond a reasonable doubt that the defendant, FRANCISCO CASTANEDA, in El Paso County, Texas, on or about November 19, 2007, did then and there recklessly cause the death of an individual, namely, JACQUELINE GONZALEZ, by striking JACQUELINE GONZALEZ about the body with an unknown object or by striking JACQUELINE GONZALEZ’ body against an unknown object, and did thereby cause the death of JACQUELINE GONZALEZ then you will find the defendant guilty of MANSLAUGHTER (Verdict Form G-4) and cease your deliberation.

9.

If you should find from the evidence beyond a reasonable doubt that the Defendant is guilty of either CAPITAL MURDER, INJURY TO A CHILD or MANSLAUGHTER, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in the Defendant’s favor and find him guilty of the lesser offense of MANSLAUGHTER.

If you should find from the evidence, beyond a reasonable doubt, that the Defendant is not guilty of CAPITAL MURDER, INJURY TO A CHILD or MANSLAUGHTER, or if you have a reasonable doubt as to whether the Defendant is guilty thereof, then you will acquit the Defendant and say by your verdict not guilty. (Verdict Form NG).

After the attorneys have presented their summations, you will go to the jury room. You will then select one of your members, either male or female, Presiding Juror. It shall be your Presiding Juror's duty to preside over your discussions of and deliberations upon your case, vote with you and, when you unanimously agree upon a verdict, to certify to your verdict by signing the same as Presiding Juror.

~~You will have this charge with you in the jury room, and you shall refer to it for guidance during your deliberations.~~

~~GA~~

Suitable forms for your verdict are hereunto attached. Your verdict must be unanimous, in writing and signed by your Presiding Juror. Your sole duty at this time is to determine the guilt or non-guilt of the defendant under the indictment in this cause and restrict your deliberations solely to the issue of guilt or non-guilt.

~~If you want to communicate with the Court, explain what you want in writing and deliver your message, signed by your Presiding Juror, to the bailiff. The bailiff will deliver it to the Court. Do not orally explain to the bailiff.~~

~~GA~~

~~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. You are bound to receive the law from the Court as it~~

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~~is given you in these instructions, or any other the Court may give you, and to be governed by the law as so given by the Court.~~

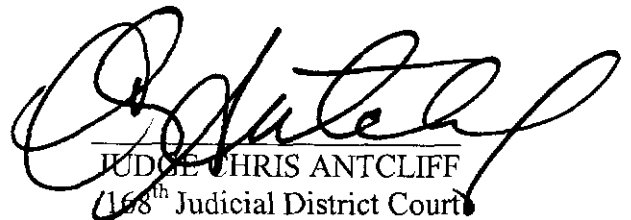
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Concerning manner of deliberation:

- (a) in order to return a verdict, each juror must agree thereto;
- (b) jurors have a duty to consult with one another to deliberate with a view of reaching an agreement, if it can be done without violence to individual judgment;
- (c) each juror must decide the case for himself or herself, but only after an impartial consideration of evidence with their fellow jurors;
- (d) in the course of deliberations, jurors should not hesitate to reexamine their own views and change their opinion if convinced it is erroneous;
- (e) no juror should surrender his or her honest conviction as to the weight or effect of the evidence solely because of the opinion of their fellow jurors, or for the mere purpose of returning a verdict.

The Presiding Juror or any other juror who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

In arriving at your verdict, it will not be proper to fix the same by lot, chance, or any other method than by a full, fair and free exercise of the opinion of the individual jurors under the evidence admitted before you.


JUDGE CHRIS ANTCLIFF
168th Judicial District Court