

ORIGINAL

NO. 2005-408,839

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § OF LUBBOCK COUNTY, TEXAS
ALBERT MARTINEZ JR § 364TH JUDICIAL DISTRICT

FILED FOR RECORD
DISTRICT CLERK
LUBBOCK CO. TEXAS
2008 DEC 11 PM 2:48
by *W. B. ...*

COURT'S CHARGE

MEMBERS OF THE JURY:

The defendant, ALBERT MARTINEZ JR, stands charged by indictment with the offense of capital murder, alleged to have been committed in Lubbock County, Texas, on or about October 27, 1996. The defendant has entered a plea of not guilty to the indictment which was read to you.

You are instructed that you will consider only the guilt or innocence of the defendant from the evidence admitted before you and from the law as given to you in charge by the Court.

You are instructed that the law applicable to this case is as follows:

1.

Our law provides that a person commits murder when he intentionally causes the death of an individual.

A person commits capital murder if he commits murder as defined above and such person intentionally commits the murder in the course of committing or attempting to commit the offense of aggravated sexual assault.

2.

A person commits aggravated sexual assault if the person intentionally or knowingly causes the penetration of the female sexual organ of another person by any means, without that person's consent, and if the person causes seriously bodily injury or attempts to cause the death of the victim in the course of the same criminal episode.

3.

"Person" means an individual, corporation, or association.

"Individual" means a human being who is alive.

"Consent" means assent in fact, whether express or apparent.

"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.

4.

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.

5.

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about October 27, 1996, in Lubbock County, Texas, as alleged in the indictment, the defendant, ALBERT MARTINEZ JR, did then and there intentionally cause the death of an individual, Eva Garcia, by choking the said Eva Garcia, or by striking the said Eva Garcia with defendant's hand or an unknown object, the exact nature of which is unknown to the Grand Jurors, and the said ALBERT MARTINEZ JR was then and there in the course of committing or attempting to commit the offense of aggravated sexual assault of Eva Garcia, then you will find the defendant guilty of the offense of capital murder and so say by your verdict.

Unless you so find and believe beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder and next consider whether the defendant is guilty of the offense of murder.

6.

If you find from the evidence beyond a reasonable doubt that on or about October 27, 1996, in Lubbock County, Texas, the defendant, ALBERT MARTINEZ JR, did then and there intentionally cause the death of an individual, Eva Garcia, by choking the said Eva Garcia, or by striking the said Eva Garcia with defendant's hand

or an unknown object, the exact nature of which is unknown to the Grand Jurors, but you have a reasonable doubt as to whether the defendant was then and there engaged in the commission or attempted commission of aggravated sexual assault at the time of the murder, if any, then you will find the defendant guilty of the offense of murder.

Unless you so find and believe beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of murder and next consider whether the defendant is guilty of the offense of aggravated assault.

7.

A person commits the offense of aggravated assault when he intentionally or knowingly causes serious bodily injury to another.

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about October 27, 1996, in Lubbock County, Texas, the defendant, ALBERT MARTINEZ JR, did then and there intentionally or knowingly cause serious bodily injury to Eva Garcia, by choking the said Eva Garcia, or by striking the said Eva Garcia with defendant's hand or an unknown object, the exact nature of which is unknown to the Grand Jurors, then you will find the defendant guilty of the offense of aggravated assault and so say by your verdict.

8.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either the offense of capital murder, on the one hand, or the offense of murder, on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in defendant's favor and find him guilty of the lesser offense of murder, and so say by your verdict.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either the offense of murder, on the one hand, or the offense of aggravated assault, on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in defendant's favor and find him guilty of the lesser offense of aggravated assault, and so say by your verdict.

If you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge, then you will acquit the defendant and say by your verdict "Not Guilty."

9.

You are further charged that if there is any evidence before you in this case tending to show that the defendant herein committed offenses other than the offense alleged against him in the indictment, 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 if you find and believe beyond a reasonable doubt from such testimony that other offenses were committed, you may then consider the same in determining the motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, and for no other purpose.

10.

Voluntary intoxication does not constitute a defense to the commission of a crime. "Intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

11.

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.

12.

In your deliberations, you will consider this charge as a whole. You are instructed that the indictment in this case is of itself a mere accusation or charge

against this defendant, and is not any evidence of the defendant's guilt; no juror in this case should permit himself/herself to be to any extent influenced against this defendant because of, or on account of, said indictment.

13.

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/she may have heard regarding the case from any source other than the witness stand.

14.

In deliberating on the cause 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 of your jury; and after the reading of this Charge you shall not separate from each other until you have reached a verdict.

15.

Your verdict, if any, will be by unanimous vote.

16.

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 of 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 excludes 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 him and say by your verdict "Not Guilty."

17.

When the jury wishes to communicate with the Court, it shall so notify the Bailiff, who shall inform the Court thereof. Any communication relative to the cause must be written, signed by the Foreman, and shall be submitted to the Court through the Bailiff.

18.

You are the exclusive judges of the facts proven, of the credibility of the witnesses, and of the weight to be given to their testimony; but you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

19.

After argument of counsel, you will retire and select one of your members as your Foreman. It is his/her duty to preside at your deliberations and to vote with you in arriving at a verdict. Your verdict, if any, must be unanimous; and after you have arrived at your verdict, you may use one of the forms attached hereto by having your Foreman sign his/her name to the particular form that conforms to your verdict.

The above and foregoing is the Charge in this case, and the same is hereby signed and certified by the Court, this the 11th day of December, 2008.


Judge Presiding

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DISTRICT CLERK LUBBOCK CO.
BY *[Signature]*
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Deputy
Barbara Sucsy

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VERDICT

We, the jury, find from the evidence beyond a reasonable doubt the defendant is guilty of the offense of capital murder, as charged in the indictment.

[Signature]

Foreman of the Jury

 I, Barbara Sucsy, District Clerk, in and for Lubbock County, Texas, do hereby certify this to be a true and correct copy of a like instrument now on file in this office.
This 7 day of Jan 2009 *[Signature]* Deputy
Clerk of District Court, Lubbock County, Texas pg 10 of 10