

ORIGINAL

Filed by Court
@ 8:30 AM. 5/18/12
Cecil G. Puryear
Sitting By Assignment

NO. 2012-434,617

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § OF LUBBOCK COUNTY, TEXAS
ALLEN BOLING § 364TH JUDICIAL DISTRICT

COURT'S CHARGE

MEMBERS OF THE JURY:

The defendant, ALLEN BOLING, is accused of capital murder. The defendant has entered a plea of "not guilty," and you have heard all of the evidence that will be produced on whether the defendant has been proven guilty.

Both sides will soon present final arguments. Before they do, I must now give you instructions you must follow in deciding whether the defendant has been proven guilty or not.

You may take your copy of these instructions into the jury room with you to use during your deliberations.

First, I will tell you about some general principles of law that must govern your decision of the case. Then I will tell you about the specific law applicable to this case. Finally, I will instruct you on the rules that must control your deliberations.

The Indictment

The indictment is not evidence of guilt. The indictment is only a document required to bring the case before you. The indictment cannot be considered in any

way by the jury. Do not consider the fact that the defendant has been arrested, confined, or indicted or otherwise charged. You may not draw any inference of guilt from any of these circumstances.

Presumption of Innocence

The defendant is presumed innocent of the charge. 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 law does not require a defendant to prove his innocence or produce any evidence at all. 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 presumption of innocence alone is sufficient to acquit the defendant.

Burden of Proof

The burden of proof throughout the trial is always on the state. The defendant does not have the burden to prove anything. The state must prove every element of the offense beyond a reasonable doubt to establish guilt for the offense. If the state proves every element of the offense beyond a reasonable doubt, then you must find the defendant guilty. If the state does not prove every element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.

It is not required that the state prove guilt beyond all possible doubt; it is required that the state's proof excludes all "reasonable doubt" concerning the defendant's guilt.

If 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."

Jury as Fact Finder

As jurors, you review the evidence and determine the facts and what they prove. You judge the believability of the witnesses and what weight to give their testimony.

In judging the facts and the believability of the witnesses, you must apply the law provided in these instructions.

Evidence

The evidence consists of the testimony and exhibits admitted in the trial. You must consider only evidence to reach your decision. You must not consider, discuss, or mention anything that is not evidence in the trial. You must not consider or mention any personal knowledge or information you may have about any fact or person connected with this case that is not evidence in the trial.

Statements made by the lawyers are not evidence. The questions asked by the lawyers are not evidence. Evidence consists of the testimony of the witnesses and exhibits admitted into evidence.

Nothing I have said or done in this case should be considered by you as an opinion about the facts of this case or influence you to vote one way or the other.

You should give terms their common meanings, unless you have been told in these instructions that the terms are given special meanings. In that case, of course, you should give those terms the meanings provided in these instructions.

While you should consider only the evidence, you are permitted to draw reasonable inferences from the testimony and exhibits that are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence.

You are to render a fair and impartial verdict based on the evidence admitted in the case under the law that is in these instructions. Do not allow your verdict to be determined by bias or prejudice.

Admitted Exhibits

You may, if you wish, examine exhibits. If you wish to examine an exhibit, the foreperson will inform the court and specifically identify the exhibit you wish to

examine. Only exhibits that were admitted into evidence may be given to you for examination.

Testimony

Certain testimony will be read back to you by the court reporter if you request. To request that testimony be read back to you, you must follow these rules. The court will allow testimony to be read back to the jury only if the jury, in a writing signed by the foreperson, (1) states that it is requesting that testimony be read back, (2) states that it has a disagreement about a specific statement of a witness or a particular point in dispute, and (3) identifies the name of the witness who made the statement. The court will then have the court reporter read back only that part of the statement that is in disagreement.

The Verdict

The law requires that you render a verdict of either "guilty" or "not guilty." A verdict of "not guilty" simply means that the state's evidence does not prove the defendant guilty beyond a reasonable doubt.

You may return a verdict only if all twelve of you agree on this verdict.

When you reach a verdict, the foreperson should notify the court.

Defendant's Right to Remain Silent

The defendant has a constitutional right to remain silent. The defendant may

testify on his own behalf. The defendant may also choose not to testify. The defendant's decision not to testify cannot be held against him, and it is not evidence of guilt. You must not speculate, guess, or even talk about what the defendant might have said if he had taken the witness stand or why he did not. The foreperson of the jury must immediately stop any juror from mentioning the defendant's decision not to testify.

Accusation

The state has accused the defendant of capital murder.

Relevant Statutes

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

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

Our law also provides a person commits murder when with the intent to cause serious bodily injury to an individual the person commits an act clearly dangerous to human life that causes the death of the individual.

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

A person commits an assault if he intentionally or knowingly or recklessly causes bodily injury to another. An assault is aggravated assault when it is committed with a deadly weapon.

A person commits the offense of burglary if, without the effective consent of the owner, he enters a habitation and commits or attempts 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.

“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.

“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.

“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.

A "deadly weapon" means anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

"Theft," as used herein, is the unlawful appropriation of the corporeal personal property of another, with the intent to deprive such other 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 represent or embody anything of value.

"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.

"Owner" means 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 the property.

A person acts intentionally, or with intent, with respect to the nature of his conduct when it is his conscious objective or desire to engage in the conduct or to cause the result.

A person acts knowingly, or with knowledge, when he is aware that his conduct is reasonably certain to cause the result.

Parties

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 the commission of the offense.

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.

Definitions

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, when he is aware that his conduct is reasonably certain to cause the result.

Intoxication

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.

Application of Law to Facts

Now, if you find from the evidence beyond a reasonable doubt that on or about January 20, 2011, in Lubbock County, Texas, the defendant, ALLEN BOLING, acting alone, or acting with intent to promote or assist the commission of the offense by John Ellis Giddings, by encouraging, directing, aiding or attempting to aid John Ellis Giddings, did intentionally cause the death of Russell McKinney by striking the said Russell McKinney with a pipe and by striking with a foot, and the said defendant, ALLEN BOLING, was then and there in the course of committing or attempting to commit the offense of burglary of a habitation, then you will find the defendant guilty of capital murder.

Unless you find 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, ALLEN BOLING, is guilty of the offense of murder.

If you find from the evidence beyond a reasonable doubt that on or about January 20, 2011, in Lubbock County, Texas, the defendant, ALLEN BOLING, acting alone, or acting with intent to promote or assist the commission of the offense by John Ellis Giddings, by encouraging, directing, aiding or attempting to aid John Ellis Giddings, did intentionally or knowingly cause the death of Russell McKinney by striking the said Russell McKinney with a pipe and by striking with a foot, but you have a reasonable doubt as to whether the defendant was then and there engaged in the commission of burglary of a habitation, at the time of the striking the said Russell McKinney, if any, then you will find the defendant guilty of murder.

If you find from the evidence beyond a reasonable doubt that on or about January 20, 2011, in Lubbock County, Texas, the defendant, ALLEN BOLING, acting alone, or acting with intent to promote or assist the commission of the offense by John Ellis Giddings, by encouraging, directing, aiding or attempting to aid John Ellis Giddings, did then and there, with intent to cause serious bodily injury to an individual, commits an act clearly dangerous to human life that caused the death of Russell McKinney, by striking the said Russell McKinney with a pipe and by striking with a foot, then you will find the defendant guilty of murder.

Unless you find 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, ALLEN BOLING, is guilty of the offense of manslaughter.

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.

Now, if you find from the evidence beyond a reasonable doubt that on or about January 20, 2011, in Lubbock County, Texas, the defendant, ALLEN BOLING, acting alone, or acting with intent to promote or assist the commission of the offense by John Ellis Giddings, by encouraging, directing, aiding or attempting to aid John Ellis Giddings, did then and there recklessly cause the death of an individual, Russell McKinney by striking the said Russell McKinney with a pipe and by striking with a foot, then you will find the defendant guilty of manslaughter.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit defendant of the offense of manslaughter and next

consider whether the defendant, ALLEN BOLING, is guilty of the offense of aggravated assault.

If you find from the evidence beyond a reasonable doubt that on or about January 20, 2011, in Lubbock County, Texas the defendant, ALLEN BOLING, acting alone, or acting with intent to promote or assist the commission of the offense by John Ellis Giddings, by encouraging, directing, aiding or attempting to aid John Ellis Giddings, did intentionally or knowingly or recklessly cause serious bodily injury to an individual, namely, Russell McKinney, by striking the said Russell McKinney with a pipe and by striking with a foot, then you will find the defendant guilty of the offense of aggravated assault.

If you should find from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder, murder, or manslaughter, but you have a reasonable doubt as to which offense he is guilty, then you should resolve that doubt in defendant's favor and find him guilty of the lesser offense of aggravated assault.

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

You are instructed that you may consider all relevant facts and circumstances surrounding the killing, 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 striking of Russell McKinney, in question, if any.

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.

Rules That Control Jury Deliberations

You must follow these rules while you are in deliberation and until you reach a verdict. After the closing arguments by the attorneys, you will go into the jury room.

Your first task will be to pick your foreperson. The foreperson should conduct the deliberations in an orderly way. Each juror has one vote, including the foreperson.

The foreperson must supervise the voting, vote with other members on the verdict, and sign the verdict form.

While deliberating and until excused by the trial court, all jurors must follow these rules:

1. You must not discuss this case with any court officer, or the attorneys, or anyone not on the jury;
2. You must not discuss this case unless all of you are present in the jury room;
3. You must communicate with the judge only in writing, signed by the foreperson and given to the judge through the bailiff;
4. You must not conduct any independent investigations, research, or experiment;
5. You must tell the judge if anyone attempts to contact you about the case before you reach your verdict; and
6. You must not use your cell phones for any purpose.

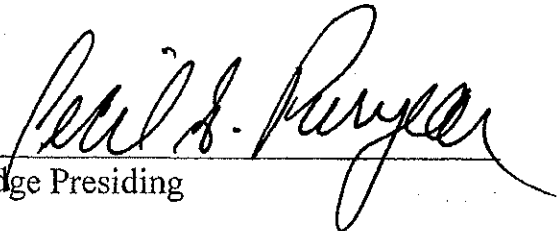
Your sole duty at this point is to determine whether the defendant has been proven guilty. You must restrict your deliberations to this matter.

After you have arrived at your verdict, you are to use one of the forms attached to these instructions. The foreperson must sign his or her name to the particular form

that conforms to your verdict.

After the closing arguments by the attorneys, you will begin your deliberations to decide 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 18th day of May, 2012.



Judge Presiding

Cecil G. Puryear Senior Judge
Sitting By Assignment

NO. 2012-434,617

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

ALLEN BOLING

§ 364TH JUDICIAL DISTRICT

VERDICT

We, the jury, find the defendant not guilty.

Foreperson of the Jury

Printed Name of Foreperson

NO. 2012-434,617

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

ALLEN BOLING

§ 364TH JUDICIAL DISTRICT

FILED
TIME _____
DATE _____
BY Barbara
DISTRICT CLERK 3/18/12
LUBBOCK COUNTY
DEPUTY

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

Leia Brooker

Foreperson of the Jury

Leia Brooker

Printed Name of Foreperson

NO. 2012-434,617

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

ALLEN BOLING

§ 364TH JUDICIAL DISTRICT

VERDICT

We, the jury, find from the evidence beyond a reasonable doubt the defendant is guilty of the offense of murder.

Foreperson of the Jury

Printed Name of Foreperson

NO. 2012-434,617

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

ALLEN BOLING

§ 364TH JUDICIAL DISTRICT

VERDICT

We, the jury, find from the evidence beyond a reasonable doubt the defendant is guilty of the offense of manslaughter.

Foreperson of the Jury

Printed Name of Foreperson

NO. 2012-434,617

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

ALLEN BOLING

§ 364TH JUDICIAL DISTRICT

VERDICT

We, the jury, find from the evidence beyond a reasonable doubt the defendant is guilty of the offense of aggravated assault.

Foreperson of the Jury

Printed Name of Foreperson