

NO. D-20-1511-CR
COUNTS ONE, TWO AND THREE

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ASHLEY SCHWARZ

358TH JUDICIAL DISTRICT

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The Defendant, ASHLEY SCHWARZ, stands charged by Indictment with the offense of CAPITAL MURDER – COUNT ONE, INJURY TO A CHILD – COUNT TWO, and INJURY TO A CHILD BY OMISSION – COUNT THREE, alleged to have been committed in Ector County, Texas, on or about the 29TH DAY OF AUGUST, 2020. The Defendant has pled not guilty.

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 so, I will give you the instructions you must follow in deciding whether the Defendant has been proven guilty or not.

You will have these instructions to take with you and to use during your deliberations.

First, I will tell you about some general principles of law that must govern your decision on 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.

GENERAL PRINCIPLES

The Indictment

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. Do not consider the fact that the Defendant has been arrested, indicted or otherwise charged. The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant.

Presumption of Innocence

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 her trial. The law does not require a defendant to prove her 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.

Burden of Proof

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. . 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 prosecution prove guilt beyond all possible doubt; it is

required that the prosecution's proof excludes all "reasonable doubt" concerning the defendant's guilt.

Jury as Fact Finder

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and the weight to be given their testimony, but the law you must be governed by, you shall receive in these written 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 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 attorneys are not evidence. Evidence consists of the testimony of the witnesses and materials admitted into evidence. You may, if you wish, examine exhibits. If you wish to examine the exhibits, the foreperson will inform the court in writing. Only exhibits that were admitted into evidence may be given to you for examination.

Nothing the judge has 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 meaning provided in the 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.

The Verdict

The law requires that you render a verdict of either “guilty” or “not guilty.” The verdict of “guilty” means the State’s evidence proved each element beyond a reasonable doubt. The verdict of “not guilty” simply means that the State’s evidence does not prove the Defendant guilty beyond a reasonable doubt.

The verdict must be unanimous. In other words, 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.

RELEVANT STATUTES

A person commits the offense of Murder if she intentionally or knowingly causes the death of an individual. A person commits Capital Murder when such person murders an individual under 10 years of age.

A person commits the offense of Injury to a Child if she intentionally or knowingly causes, by act, serious bodily injury to a child.

A person commits the offense of Injury to Child by Omission if she intentionally or

knowingly causes, by omission, serious bodily injury to a child. An omission that causes serious bodily injury is conduct constituting an offense if the actor has a legal or statutory duty to act.

DEFINITIONS AND INSTRUCTIONS

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

"Child" means a person 14 years of age or younger.

"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 person acts "intentionally", or with intent, with respect to the result of her conduct when it is her conscious objective or desire to cause the result. With respect to murder, a person acts "intentionally", or with intent when a person intentionally causes the death of an individual if the person has the conscious objective or desire to cause that death.

A person acts "knowingly", or with knowledge, with respect to a result of her conduct when she is aware that her conduct is reasonably certain to cause the result. With respect to murder, a person acts "knowingly", or with knowledge, when a person knowingly causes the death of an individual if the person is aware that her conduct is reasonably certain to cause that death.

EXTRANEOUS OFFENSES OR CONDUCT

The State has introduced evidence of extraneous crimes or bad acts other than

the one charged in the indictment in this case. This evidence was admitted only for the purpose of assisting you, if it does, for the purpose of showing the defendant's motive, opportunity, intent, preparation, plan, knowledge, identify, absence of mistake or accident, or consciousness of guilt, if any. You cannot consider the testimony unless you find and believe beyond a reasonable doubt that these acts, if any, were committed by the defendant.

APPLICATION OF LAW TO THE FACTS

Now, if you believe from the evidence beyond a reasonable doubt that on or about the 29th day of August, 2020, in Ector County, Texas, the Defendant, ASHLEY SCHWARZ, did then and there intentionally or knowingly cause the death of an individual, namely, JAYLIN SCHWARZ, an individual younger than 10 years of age, by forcing Jaylin Schwarz to be exposed to extreme heat, while forcing Jaylin Schwarz to engage in strenuous exercise, and/ or preventing Jaylin Schwarz from receiving adequate food and/or water; then you will find the Defendant guilty of Capital Murder, as charged in Count One of the Indictment, and sign VERDICT FORM 1A.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant and say by your verdict "Not Guilty" of Count One of the Indictment, and sign VERDICT FORM 1B.

Now, if you believe from the evidence beyond a reasonable doubt that on or about the 29th day of August, 2020, in Ector County, Texas, the Defendant, ASHLEY SCHWARZ, did then and there intentionally or knowingly cause serious bodily injury to Jaylin Schwarz, a child 14 years of age or younger, by forcing Jaylin Schwarz to be exposed to extreme heat, while forcing Jaylin Schwarz to engage in strenuous exercise,

and/or preventing Jaylin Schwarz from receiving adequate food and/or water; then you will find the Defendant guilty of Injury to a Child, as charged in Count Two of the Indictment, and sign VERDICT FORM 2A.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant and say by your verdict "Not Guilty" of Count Two in the Indictment, and sign VERDICT FORM 2B.

Now, if you believe from the evidence beyond a reasonable doubt that on or about the 29th day of August, 2020, in Ector County, Texas, the Defendant, ASHLEY SCHWARZ, did then and there intentionally or knowingly cause serious bodily injury to Jaylin Schwarz, a child 14 years of age or younger, by failing to provide adequate supervision, shelter, medical care, and/ or food and water, and the defendant had a legal duty to act, to-wit: the child's mother or legal guardian; then you will find the Defendant guilty of Injury to a Child by Omission, as charged in Count Three of the Indictment, and sign VERDICT FORM 3A.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant and say by your verdict "Not Guilty" of Count Three of the Indictment, and sign VERDICT FORM 3B.

INSTRUCTIONS REGARDING DELIBERATIONS

After you retire to the jury room, you should select one of your members as your Foreperson. 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 Foreperson.

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.

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 Foreperson will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as Foreperson.


JUDGE PRESIDING

NO. D-20-1511-CR
COUNT ONE

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ASHLEY SCHWARZ

358TH JUDICIAL DISTRICT

VERDICT 1A

We, the Jury, find the Defendant, ASHLEY SCHWARZ, "**Guilty**", beyond a reasonable doubt, of the offense of CAPITAL MURDER, as charged in COUNT ONE of the Indictment.



FOREPERSON

NO. D-20-1511-CR
COUNT ONE

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ASHLEY SCHWARZ

358TH JUDICIAL DISTRICT

VERDICT 1B

We, the Jury, find the Defendant, ASHLEY SCHWARZ, "**Not Guilty**" of the offense of CAPITAL MURDER, as charged in COUNT ONE of the Indictment.

FOREPERSON

NO. D-20-1511-CR
COUNT TWO

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ASHLEY SCHWARZ

358TH JUDICIAL DISTRICT

VERDICT 2A

We, the Jury, find the Defendant, ASHLEY SCHWARZ, "**GUILTY**" of the offense of INJURY TO A CHILD, as charged in COUNT TWO of the Indictment.


FOREPERSON

NO. D-20-1511-CR
COUNT TWO

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ASHLEY SCHWARZ

358TH JUDICIAL DISTRICT

VERDICT 2B

We, the Jury, find the Defendant, ASHLEY SCHWARZ, "**NOT GUILTY**" of the offense of INJURY TO A CHILD, as charged in COUNT TWO of the Indictment.

FOREPERSON

NO. D-20-1511-CR
COUNT THREE

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ASHLEY SCHWARZ

358TH JUDICIAL DISTRICT

VERDICT 3A

We, the Jury, find the Defendant, ASHLEY SCHWARZ, "GUILTY" of the offense of INJURY TO A CHILD BY OMISSION, as charged in COUNT THREE of the Indictment.


FOREPERSON

NO. D-20-1511-CR
COUNT THREE

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF ECTOR COUNTY, TEXAS

ASHLEY SCHWARZ

358TH JUDICIAL DISTRICT

VERDICT 3B

We, the Jury, find the Defendant, ASHLEY SCHWARZ, "**NOT GUILTY**" of the offense of INJURY TO A CHILD BY OMISSION, as charged in COUNT THREE of the Indictment.

FOREPERSON