

NO. 07-F-0378-202

FILED FOR RECORD
May 1, 2009
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BILLY FOX
District Clerk, Bowie Co., Texas
[Signature]
DEPUTY

THE STATE OF TEXAS

*

IN THE DISTRICT COURT

VS.

*

BOWIE COUNTY, TEXAS

LATOYA SMITH

*

202ND JUDICIAL DISTRICT

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The Defendant, LATOYA SMITH, stands charged by Indictment with the offense of Capital Murder, alleged to have been committed on or about the 14th day of September, 2007, in Bowie County, Texas. To this charge, the Defendant has pleaded not guilty.

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

A person commits the offense of capital murder if she murders an individual under six (6) years of age.

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

A person acts knowingly, or with knowledge, with respect to the nature of her conduct or to circumstances surrounding her conduct when she is aware of the nature of her conduct or that the circumstances exist. 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.

A person is criminally responsible as a party to an offense if the offense is committed by her own conduct, by the conduct of another for which she 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, she 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.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 14th day of September, 2007, in Bowie County, State of Texas, the Defendant, LATOYA SMITH, did then and there, acting alone or as a party as that term has been previously defined, ~~intentionally~~ ^{Knowingly} L.P. cause the death of an individual, RIVER PHOENIX WILLIAMS, by striking the child with the hands of the defendant and the said RIVER PHOENIX WILLIAMS was then and there an individual under six (6) years of age, then you will find the Defendant guilty of Capital Murder as charged in the indictment.

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," and next consider whether she is guilty of Felony Murder.

A person commits the offense of Felony Murder if he or she 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, she 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 September 14, 2007, in Bowie County, Texas, the Defendant, LATOYA SMITH, did commit the offense of injury to a child, and that while in the commission of such offense, if any, the Defendant, LATOYA SMITH, did then and there intentionally or knowingly or recklessly strike RIVER

PHOENIX WILLIAMS with the hand of the Defendant, and that said act of so striking RIVER PHOENIX WILLIAMS, under the circumstances then and there existing, was clearly dangerous to human life and that it caused the death of RIVER PHOENIX WILLIAMS, then you will find the Defendant guilty of Felony Murder.

If you find from the evidence beyond a reasonable doubt that the Defendant is guilty of Capital Murder on the one hand, or of Felony Murder on the other hand, but you have a reasonable doubt as to which of the two offenses she is guilty, then you should resolve that doubt in the defendant's favor and find her guilty of the lesser offense of Felony Murder.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the Defendant not guilty of Felony Murder, and next consider whether she is guilty of Manslaughter.

Our law provides that a person commits Manslaughter if he or she recklessly causes the death of an individual.

A person acts recklessly, or is reckless, with respect to circumstances surrounding his or her conduct or the result of his or her conduct when he or she 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 September 14, 2007, in Bowie County, Texas, the Defendant, LATOYA SMITH, did recklessly cause the death of an individual, namely RIVER PHOENIX WILLIAMS, by striking the child with the hand of the Defendant, then you will find the Defendant guilty of Manslaughter.

If you find from the evidence beyond a reasonable doubt that the Defendant is guilty of Felony Murder on the one hand, or of Manslaughter on the other hand, but you have a reasonable doubt as to which of the two offenses she is guilty, then you should resolve that doubt in the defendant's favor and find her guilty of the lesser offense of Manslaughter.

Unless you find that the Defendant is guilty of Manslaughter beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of Manslaughter and next consider whether she is guilty of Criminally Negligent Homicide.

Our law provides that a person commits Criminally Negligent Homicide if he or she causes the death of an individual by criminal negligence.

A person acts with criminal negligence, or is criminally negligent, with respect to his or her conduct when he or she ought to be aware of a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the standpoint of the person so acting.

For a person to be deemed criminally negligent, there must actually be both a substantial and an unjustifiable risk that the person acting should, under all the circumstances as viewed from his or her standpoint, have perceived the risk, and if you have a reasonable doubt as to whether such matters have been established, then you would be bound to acquit the Defendant.

Now if you find from the evidence beyond a reasonable doubt that on or about September 14, 2007, in Bowie County, Texas, the Defendant, LATOYA SMITH, did with criminal negligence, as that term has been herein defined, cause the death of RIVER PHOENIX WILLIAMS by striking the child with the hand of the Defendant, then you will find the Defendant guilty of Criminally Negligent Homicide.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of Criminally Negligent Homicide.

If you find from the evidence beyond a reasonable doubt that the Defendant is guilty of Manslaughter on the one hand, or of Criminally Negligent Homicide on the other hand, but you have a reasonable doubt as to which of the two offenses she is guilty, then you should resolve that doubt in the defendant's favor and find her guilty of the lesser offense of Criminally Negligent Homicide.

Unless you so find beyond a reasonable doubt or if you have a reasonable doubt thereof, you will acquit the Defendant of Criminally Negligent Homicide and next consider whether she is guilty of Injury to a Child.

Our law provides that a person commits an offense if he or she intentionally or knowingly, by act or omission, causes serious bodily injury to a child who is fourteen (14) years of age or younger.

By the term "bodily injury" is meant 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.

"Conduct" means an act or omission and its accompanying mental state.

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

A person acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to the circumstances surrounding his or her conduct when he or she is aware of the

nature of his or her conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he or she is aware that his or her conduct is reasonably certain to cause the result.

Now if you find from the evidence beyond a reasonable doubt that on or about September 14, 2007, in Bowie County, Texas, that the Defendant, LATOYA SMITH, did then and there intentionally or knowingly cause serious bodily injury to RIVER PHOENIX WILLIAMS, by striking the child with the hand of the Defendant, and that RIVER PHOENIX WILLIAMS was then and there a child fourteen (14) years of age or younger, then you will find the Defendant guilty of intentionally or knowingly causing serious bodily injury to a child fourteen (14) years of age or younger.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of intentionally or knowingly causing serious bodily injury to RIVER PHOENIX WILLIAMS and next consider whether she is guilty of intentionally or knowingly causing bodily injury to a child fourteen (14) years of age or younger.

If you find from the evidence beyond a reasonable doubt that the Defendant is guilty of Criminally Negligent Homicide on the one hand, or of Injury to a Child With Serious Bodily Injury on the other hand, but you have a reasonable doubt as to which of the two offenses she is guilty, then you should resolve that doubt in the defendant's favor and find her guilty of the lesser offense of Injury to a Child With Serious Bodily Injury.

Our law provides that a person commits an offense if he or she intentionally or knowingly causes bodily injury to a child fourteen (14) years of age or younger.

Now if you find from the evidence beyond a reasonable doubt that on or about September 14, 2007, in Bowie County, Texas, the Defendant, LATOYA SMITH, did then and there

intentionally or knowingly cause bodily injury to RIVER PHOENIX WILLIAMS, a child fourteen (14) years or younger, by striking the child with the hand of the Defendant, then you will find the Defendant guilty of intentionally or knowingly causing bodily injury to a child fourteen (14) years of age or younger.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of intentionally or knowingly causing bodily injury to RIVER PHOENIX WILLIAMS.

If you find from the evidence beyond a reasonable doubt that the Defendant is either guilty of intentionally or knowingly causing serious bodily injury to a child fourteen (14) years of age or younger, on the one hand, or is guilty of intentionally or knowingly causing bodily injury to such child, on the other hand, but you have a reasonable doubt as to which of the two she is guilty, then you should resolve that doubt in the Defendant's favor and find her guilty of the lesser offense of intentionally or knowingly causing bodily injury to a child fourteen (14) years of age or younger.

You are instructed that if there is any testimony before you in this case regarding the Defendant's having committed the offenses other than the offense alleged against her in the indictment in this case, you cannot consider said testimony for any purposes unless you find and believe beyond a reasonable doubt that the Defendant committed such other offenses, if any were committed, and even then you may only consider the same in determining intent, absence of mistake or accident, or knowledge of the Defendant, if any, in connection with the offense, if any, alleged against her in the indictment in this case, and for no other purposes.

The Defendant is on trial solely for the charge contained in the indictment. With reference to those other acts, you are instructed that said evidence was admitted only for the

purpose of showing, if it does, the state of mind of the Defendant and the child in the previous and subsequent relationship between the Defendant and the child. You cannot consider said testimony for any purpose unless you find beyond a reasonable doubt that the Defendant committed such other act or acts, if any were committed. If you so find beyond a reasonable doubt, you can consider the evidence only for the purpose allowed. The evidence may not be considered to prove the character of the Defendant in order to show that she acted in conformity therewith on the occasion in question.

An accomplice, as the term is here used, means any person connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime, as such parties, by unlawful act or omission on their part transpiring either before or during the time of the commission of the offense. A person is criminally responsible as a party to an offense if the offense is committed by his or her own conduct, by the conduct of another for which he is criminally responsible or both. Mere presence alone will not constitute one a party to an offense.

Under our law a conviction cannot be had upon the testimony of an accomplice unless the jury first believes that the accomplice's testimony is true and that it shows the Defendant is guilty of the offense charged against him or her, and even then you cannot convict unless the accomplice's testimony is corroborated by other evidence tending to connect the Defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the Defendant with its commission.

You are instructed that the witness, Neil Dewitt, is an accomplice, if an offense was committed, and you cannot convict the Defendant, LATOYA SMITH, upon his testimony unless you first believe that his testimony is true and shows that the Defendant, LATOYA SMITH, is guilty as charged, and then you cannot convict the Defendant upon said testimony unless you

further believe that there is other testimony in the case, outside of the evidence of said Neil Dewitt, tending to connect the Defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of an offense, but it must tend to connect the Defendant with its commission, and then from all the evidence you must believe beyond a reasonable doubt that the Defendant is guilty of the offense charged against her.

Our law provides that a Defendant may testify in her own behalf if she elects to do so. This, however, is a privilege accorded a defendant, and in the event she elects not to testify, that cannot be taken as a circumstance against her.

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.

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. The burden of proof in all criminal cases rests upon the State throughout the trial, and never shifts to 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, 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.

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 her and say by your verdict "Not Guilty".

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 shall receive in these written instructions, and you must be governed thereby.

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.

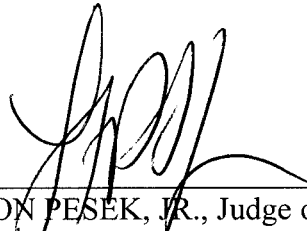
After argument of counsel, you will retire to the jury room, select one of your members as your Presiding Juror and consider your verdict. It is the duty of the Presiding Juror to preside at your deliberations, vote with you and when you have unanimously agreed upon a verdict, to certify your verdict by using the appropriate form attached hereto and signing the same as Presiding Juror.

After you have retired to the jury room, if the jury desires that it be furnished with the exhibits, if any, admitted as evidence in this case, you may request same in writing signed by your Presiding Juror.

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 any one else concerning any question you may have.

Your sole duty at this time is to determine the guilt or innocence of the Defendant under the Indictment in this cause and restrict your deliberations solely to the issue of guilt or innocence of the Defendant.

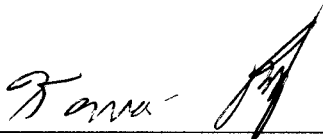
After you have reached a unanimous verdict and the Presiding Juror has certified thereto by filling in the appropriate form attached to this charge and signing his or her name as Presiding Juror, you will advise the Court, in writing signed by your Presiding Juror and given to the bailiff, that you have reached a verdict and are ready to return into Court with your verdict. You may now retire to consider your verdict.



LEON PESEK, JR., Judge of the
202nd Judicial District Court
Bowie County, Texas

VERDICT FORM 1

We, the jury, find the Defendant, LATOYA SMITH “Guilty” of Capital Murder as charged in the Indictment.



PRESIDING JUROR

We, the jury, find the Defendant, LATOYA SMITH, “Not Guilty.”

PRESIDING JUROR

If you find the Defendant guilty of Capital Murder you will not answer any other questions. If you find her not guilty of Capital Murder next consider Felony Murder.

VERDICT FORM 2

We, the jury, find the Defendant, LATOYA SMITH “Guilty” of Felony Murder.

PRESIDING JUROR

We, the jury, find the Defendant, LATOYA SMITH, “Not Guilty.”

PRESIDING JUROR

If you find the Defendant guilty of Felony Murder you will not answer any other questions. If you find her not guilty of Felony Murder next consider Manslaughter.

VERDICT FORM 3

We, the jury, find the Defendant, LATOYA SMITH “Guilty” of Manslaughter.

PRESIDING JUROR

We, the jury, find the Defendant, LATOYA SMITH, “Not Guilty.”

PRESIDING JUROR

If you find the Defendant guilty of Manslaughter you will not answer any other questions. If you find her not guilty of Manslaughter next consider Criminally Negligent Homicide.

VERDICT FORM 4

We, the jury, find the Defendant, LATOYA SMITH “Guilty” of Criminally Negligent Homicide.

PRESIDING JUROR

We, the jury, find the Defendant, LATOYA SMITH, “Not Guilty.”

PRESIDING JUROR

If you find the Defendant guilty of Criminally Negligent Homicide you will not answer any other questions. If you find her not guilty of Criminally Negligent Homicide and next consider Injury to a Child with Serious Bodily Injury.

VERDICT FORM 5

We, the jury, find the Defendant, LATOYA SMITH “Guilty” of intentionally or knowingly causing serious bodily injury to a child under fourteen (14) years of age or younger.

PRESIDING JUROR

We, the jury, find the Defendant, LATOYA SMITH, “Not Guilty.”

PRESIDING JUROR

If you find the Defendant guilty of Injury to a Child with Serious Bodily Injury you will not answer any other questions. If you find her not guilty of Injury to a Child with Serious Bodily Injury and next consider Injury to a Child with Bodily Injury.

VERDICT FORM 6

We, the jury, find the Defendant, LATOYA SMITH “Guilty” of intentionally or knowingly causing bodily injury to a child fourteen (14) years of age or younger.

PRESIDING JUROR

We, the jury, find the Defendant, LATOYA SMITH, “Not Guilty.”

PRESIDING JUROR