

ORIGINAL

NO. 2005-0000044C-CR

THE STATE OF TEXAS

FILED

At 11:00
O'clock A

IN THE 97TH DISTRICT COURT

VS.

07

JUN 1 9 2008

OF

JASON KIRK PAVELA

§
§
§

[Signature]

CLAY COUNTY, TEXAS

Dan Slagle, District Clerk, Clay County, Texas

BY CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, Jason Kirk Pavela, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 24th day of May, 2005, in Clay County, Texas. The defendant has pleaded not guilty.

1.

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 intentionally commits the murder in the course of committing or attempting to commit the offense of robbery.

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

2.

A person commits a robbery if, in the course of committing theft, as defined hereinafter, and with intent to obtain or maintain control of the property, he intentionally, knowingly, or recklessly causes bodily injury to another or intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

3.

A person commits the offense of kidnapping if he intentionally or knowingly abducts another person.

4.

"In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.

"An attempt" to commit an offense occurs if, with specific intent to commit an offense, a person

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Vol. 40 Page 824 W

ORIGINAL

does an act amounting to more than mere preparation that tends, but fails, to effect the commission of the offense intended.

"Bodily injury" means physical pain, illness, or any impairment of physical condition, including death.

"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.

The term "abduct" means to restrain a person with intent to prevent his liberation by (A) secreting or holding him in a place where he is not likely to be found or (B) using or threatening to use deadly force.

The term "restrain" means to restrict a person's movements without consent, so as to interfere substantially with his liberty, by moving him from one place to another or by confining him.

Restraint is "without consent" if it is accomplished by force, intimidation, or deception or any means, including acquiescence of the victim, if he is a child less than 14 years of age or an incompetent person and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement or confinement.

"Deadly force" means force that is intended or known by the person acting to cause, or in the manner of its use or intended use is capable of causing death or serious bodily injury.

"Serious bodily injury" means bodily injury that creates 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.

5.

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 the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. 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 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.

6.

To warrant a conviction of the defendant of capital murder, (1) you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant was engaged in the commission or attempted commission of the robbery, if any, the defendant stabbed Alan Capers with the intention of thereby killing him, or (2) you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant was engaged in the commission or attempted commission of the kidnapping, if any, the defendant stabbed Alan Capers with the intention of thereby killing him. Unless you find from the evidence beyond a reasonable doubt that the defendant, on said occasion, specifically intended to kill the said Alan Capers when he stabbed him, if he did stab him, you cannot convict him of the offense of capital murder.

7.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 24th day of May, 2005, in Clay County, Texas, the defendant, Jason Kirk Pavela, did intentionally cause the death of Alan Capers by stabbing him with a knife while said defendant was then and there in the course of committing or attempting to commit either the offense of robbery or the offense of kidnapping, 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.

8.

If you find from the evidence beyond a reasonable doubt that on or about the 24th day of May, 2005, in Clay County, Texas, the defendant, Jason Kirk Pavela, did intentionally or knowingly cause the death of Alan Capers by stabbing him with a knife, but you have a reasonable doubt as to whether the defendant was then and there engaged in the commission of robbery or attempted robbery at the time of the said stabbing, if any, and you further have a reasonable doubt as to whether

the defendant was then and there engaged in the commission of kidnapping or attempted kidnapping at the time of the said stabbing, if any, then you will find the defendant guilty of murder, but not capital murder,

or

If you find from the evidence beyond a reasonable doubt that on or about the 24th day of May, 2005, in Clay County, Texas, the defendant, Jason Kirk Pavela, did knowingly cause the death of Alan Capers by stabbing him with a knife, but you have a reasonable doubt as to whether the defendant intentionally killed Alan Capers, as the term "intentionally" has been defined herein, then you will find the defendant guilty of murder, but not capital murder, regardless of whether you find from the evidence beyond a reasonable doubt that defendant was then and there in the course of committing or attempting to commit the offense of robbery and regardless of whether you find from the evidence beyond a reasonable doubt that defendant was then and there in the course of committing or attempting to commit the offense of kidnapping.

Unless you find from the evidence beyond a reasonable doubt that the defendant is guilty of murder, as defined herein, or if you have a reasonable doubt thereof, you will acquit the defendant of murder and find him not guilty.

9.

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

If you should find from the evidence that defendant is guilty of neither capital murder or murder, or if you have a reasonable doubt thereof, you will find the defendant not guilty.

10.

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 stabbing in question, if any.

11.

Upon the law of self-defense, you are instructed that a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other person's use or attempted use of unlawful force.

12.

A person is justified in using deadly force against another if he would be justified in using

force against the other in the first place, as above set out, and when he reasonably believes that such force is immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force, and if a reasonable person in defendant's situation would not have retreated.

13.

By the term "deadly force" is meant force that is intended or known by the person using it to cause, or in the manner of its intended use is capable of causing, death or serious bodily injury.

By the term "reasonable belief" as herein used is meant a belief that would be held by an ordinary and prudent person in the same circumstances as defendant.

14.

When a person is attacked with unlawful deadly force, or he reasonably believes he is under attack or attempted attack with unlawful deadly force, and there is created in the mind of such person a reasonable expectation of fear of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes to be immediately necessary, viewed from his standpoint at the time, to protect himself from such attack or attempted attack. It is not necessary that there be an actual attack or attempted attack, as a person has a right to defend his life and person from apparent danger as fully and to the same extent as he would had the danger been real, provided that he acted upon a reasonable apprehension of danger, as it appeared to him from his standpoint at the time, and that he reasonably believed such force was immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

15.

You are instructed that in determining the existence of real or apparent danger, it is your duty to consider all of the facts and circumstances in the case in evidence before you and consider the words, acts, and conduct, if any, of Alan Capers at the time of and prior to the time of the alleged assault and consider whatever threats, if any, the said Alan Capers may have made to the defendant and consider any difficulty or difficulties which the said Alan Capers had had with the defendant, and in considering such circumstances, you should place yourselves in defendant's position at the time and view them from his standpoint alone.

16.

Now, if you find from the evidence beyond a reasonable doubt that the defendant did then and there intentionally or knowingly cause the death of Alan Capers by stabbing him with a knife, as alleged, but you further find from the evidence that, viewed from the standpoint of the defendant at the time, from the words or conduct, or both, of Alan Capers it reasonably appeared to defendant that his own life or person was in danger of serious bodily injury from the use of unlawful deadly force at the hands of Alan Capers and that acting under such apprehension and reasonable belief that the use of deadly force on his part was immediately necessary to protect himself against Alan Capers's use or attempted use of unlawful deadly force, he stabbed the said Alan Capers, and that

a reasonable person in defendant's situation would not have retreated, then you should acquit the defendant on the grounds of self-defense, or, if you have a reasonable doubt as to whether or not the defendant was acting in self-defense on said occasion and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict "Not Guilty."

17.

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.

18.

For your further guidance in arriving at a verdict in this case you are instructed as follows:

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 such person's trial. The law does not require a defendant to prove said defendant's 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.

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 the defendant 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 of the case you shall receive in these written instructions, and you must be governed thereby.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or act to indicate any opinion respecting any matter of fact in this case, and if you have observed anything which you may interpret as the Court's opinion upon any matter of fact in this

case, you must wholly disregard it.

You are instructed that any statements of counsel made during the course of the trial or during arguments not supported by the evidence or statements of law made by counsel, not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

After you retire to the jury room, you should select one of your members as Presiding Juror. It is the Presiding Juror's 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 Presiding Juror.

You are instructed that it is the purpose of the law to try a case solely on the law and the evidence. 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.

Should you desire to have any or all of the admitted exhibits delivered to you for your deliberations, your presiding juror shall so notify the Court in writing and the requested exhibits will be delivered.

No one has any authority to communicate with you except the officer who has you in charge. After you have retired you may communicate with the Court in writing. The communication must be signed by the Presiding Juror and delivered to 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 Presiding Juror will certify thereto by filling in the appropriate form attached to this charge and signing as Presiding Juror.

A handwritten signature in cursive script, appearing to read "Roger T. ...", is written above a horizontal line. Below the line, the words "JUDGE PRESIDING" are printed in a bold, sans-serif font. A long, thin vertical line extends downwards from the right end of the horizontal line.

JUDGE PRESIDING

VERDICT FORMS

We, the jury find the defendant, Jason Kirk Pavela, guilty of the offense of capital murder as charged in the indictment.

Presiding Juror

We, the jury find the defendant, Jason Kirk Pavela, guilty of the included offense of murder.

Mickey D. Canell

Presiding Juror

We, the jury find the defendant not guilty and acquit the defendant.

Presiding Juror