

NO. F10-00056-RE

THE STATE OF TEXAS	§	IN THE CRIMINAL DISTRICT
V.	§	COURT NO. 5
DONALD ANDREW BESS, JR.	§	OF DALLAS COUNTY, TEXAS

CHARGE OF THE COURT FOR THE GUILT PHASE

Donald Andrew Bess, Jr. ("the Defendant") stands charged by indictment with the offense of capital murder, alleged to have been committed on or about October 13, 1984, in Dallas County, Texas. To this charge, the Defendant has pled not guilty.

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

Definition of Capital Murder

A person commits capital murder if he intentionally causes the death of an individual in the course of committing or attempting to commit aggravated sexual assault.

Definition of Aggravated Sexual Assault

A person commits the offense of aggravated sexual assault if:

(1) the person intentionally or knowingly causes the penetration, by any means, of the vagina of another person who is not the spouse of the actor, without that person's consent; and

(2) the person:

(a) causes serious bodily injury or attempts to cause the death of the victim in the course of the same criminal episode; or

(b) by acts or words, places the victim in fear that death or serious bodily injury will be imminently inflicted on any person; or

(c) by acts or words occurring in the presence of the victim, threatens to cause the death or serious bodily injury of any person; or

(d) uses or exhibits a deadly weapon in the course of the same criminal episode.

A sexual assault is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force or violence; or

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat.

Term Definitions

“Actor” means a person whose criminal responsibility is in issue in a criminal action.

“Attempt” means to commit an act with specific intent to commit an offense where the act committed amounts to more than mere preparation but fails to effect the commission of the offense intended.

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

“Consent” means assent in fact, whether express or implied.

“Deadly weapon” means a firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious bodily injury; or, anything that, in the manner of its use or intended use, is capable of causing death or serious bodily injury.

“Individual” means a human being who has been born and is alive.

“Person” means an individual.

"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.

"Spouse" means a person who is legally married to another.

Mental State Definitions

A person acts intentionally, or with intent, with respect to the nature of his conduct or 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, 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.

Capital Murder

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt, that on or about October 13, 1984, in Dallas County, Texas, the Defendant intentionally caused the death of Angela Samota, an individual, by stabbing and cutting her with a knife, a deadly weapon, or an unknown object, a deadly weapon, the exact nature and description of which is unknown to the grand jury, and the Defendant was then and there in the course of committing or attempting to commit the offense of aggravated sexual assault of Angela Samota, then you will find the Defendant guilty of capital murder as charged in the indictment.

If you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "not guilty."

Evidentiary Instructions

At times throughout the trial, the Court has been called upon to pass on the question of whether or not certain offered evidence might properly be admitted. Do not be concerned with the reasons for such rulings or draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court neither determines what weight should be given such evidence nor passes on the credibility of the witness. As to any offer of evidence that has been rejected by the Court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

The fact that the defendant has been arrested, confined, or indicted for, or otherwise charged with the offense gives rise to no inference of guilt at his trial.

You are instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship existing between the Defendant and the deceased, if any, together with all relevant facts and circumstances going to show the condition of the mind of the Defendant at the time of the offense alleged in the indictment.

You are instructed that the Defendant may testify in his own behalf if he chooses to do so, but if he elects not to do so, that fact cannot be taken by you as a circumstance against him or prejudice him in any way. The Defendant has elected not to testify, and you are instructed that you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever.

Presumptions and Burden of Proof

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 the Defendant to prove his innocence or produce any evidence at

all. The presumption of innocence alone is sufficient to acquit the Defendant, unless you are satisfied beyond a reasonable doubt of the Defendant's guilt after careful and impartial consideration of all the evidence in this case.

The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the Defendant. 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 fails to meet its burden, you must acquit the Defendant.

The prosecution need not prove guilt beyond all possible doubt. The prosecution's proof must exclude all reasonable doubt concerning the Defendant's guilt.

Concluding Instructions

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

In deliberating on this case, you are not to refer to or discuss any matter or issue not in evidence before you. Further, you shall not talk about this case to anyone not of your jury.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the testimony, but you are bound to receive and to follow the law from the Court.

Mere sentiment, conjecture, sympathy, passion, prejudice, public opinion, or public feeling is to play no part in your deliberations.

After you have retired to consider your verdict, no one has any authority to communicate with you except the bailiff who has you in his or her charge. You may communicate with this Court in writing, signed by your presiding juror, through the

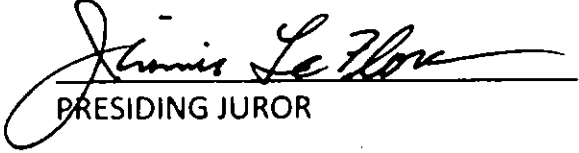
bailiff who has you in his or her charge. Do not attempt to talk to the bailiff, the attorneys, or the Court concerning any question you may have.

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


JUDGE

VERDICT SHEET

We, the jury, find the Defendant guilty of capital murder, as charged in the indictment.


PRESIDING JUROR

We, the jury, find the Defendant not guilty.

PRESIDING JUROR