

NO. F07-00899-Y

THE STATE OF TEXAS

VS.

GERALD PABST

IN THE CRIMINAL

DISTRICT COURT 7

DALLAS COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, GERALD PABST, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 29th day of April, 1986, in Dallas County, Texas. The defendant has pleaded not guilty.

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 a person intentionally commits the murder in the course of committing or attempting to commit aggravated sexual assault.

"Individual" means a human being who is alive.

A "firearm" is a deadly weapon.

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

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.

You are instructed that if there is any testimony before you in this case regarding the defendant having committed offenses other than the offense alleged against him in the indictment in this case, 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 even then you may only consider the same in determining proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident of the defendant, in connection with the offense alleged against him in the indictment and for no other purpose.

All persons are parties to an offense who are guilty of acting together in the commission of the offense. 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 both.

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 crime, 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.

It is an affirmative defense to prosecution for any offense that the person charged engaged in the proscribed conduct because he was compelled to do so by the threat of imminent death or serious bodily injury to himself or another. Such compulsion exists only if the threat of force is such as would render a person of reasonable firmness incapable of resisting the pressure.

The burden of proof of the affirmative defense of duress rests upon the defendant, and to establish such defense, the defendant must prove it by a preponderance of the evidence. By the term "preponderance of the evidence" is meant the greater weight and degree of the credible evidence in the case.

Now, therefore, if you find from the evidence beyond a reasonable doubt that the defendant did commit the offense of capital murder, as alleged in the indictment and hereinbefore defined in this charge, but you further find by a preponderance of the evidence that CLAY CHABOT had threatened to kill the defendant if he did not participate in said capital murder, and that his threats were such threats of force as would render a person of reasonable firmness incapable of resisting the pressure, and that defendant was in fear of imminent loss of his life or serious bodily injury at the hands of CLAY CHABOT if he did not participate in the capital murder and that so believing, he did participate therein, then you will acquit the defendant and say by your verdict "not guilty."

If, however, after viewing the facts from the defendant's standpoint at the time, you do not find by a preponderance of the evidence that defendant's participation in the offense, if any, was compelled by such threat of imminent death or serious bodily injury at the hands of CLAY CHABOT as would render a person of reasonable firmness incapable of resisting the pressure thereof, then you will find against the defendant on his defense of duress.

Now if you find from the evidence beyond a reasonable doubt that on or about the 29th day of April, 1986, in Dallas County, Texas, the defendant, GERALD PABST, acting alone or as a party, did intentionally or knowingly cause the death of GAULA SELF CROSBY, an individual, hereinafter called deceased, by shooting GAULA SELF CROSBY with a firearm, a deadly weapon, and the defendant, acting alone or as a party, was then and there in the course of committing and attempting to commit the offense of aggravated sexual assault of said deceased, then you will find the defendant guilty of capital murder.

Unless you so find beyond a reasonable doubt or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder.

In all criminal cases, the burden of proof is on the State. 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 their trial.

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 him 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 you are bound to receive the law from the Court, which has been given to you in these instructions.

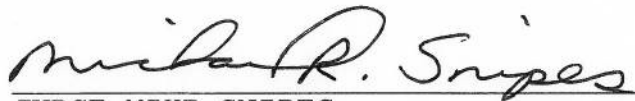
After you retire to the jury room, you should select one of your members as your Presiding Juror. It is his or her duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify your verdict by using the appropriate form attached to these instructions and signing the same as Presiding Juror.

No one has any authority to communicate with you except the bailiff 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 bailiff who has you in charge. Do not attempt to talk to the bailiff, or the attorneys, or the Court, or anyone else concerning any question you may have.

Your verdict must be by a unanimous vote of all members of the jury.

After you have reached a unanimous verdict, the Presiding Juror will certify the verdict by filling in the appropriate form attached to this charge and signing his or her name as Presiding Juror. After arguments, you will retire to consider your verdict.

A handwritten signature in cursive script that reads "Mike Snipes". The signature is written in dark ink and is positioned above a horizontal line.

JUDGE MIKE SNIPES
CRIMINAL DISTRICT COURT 7
DALLAS COUNTY, TEXAS

VERDICT FORMS

We, the jury, unanimously find the defendant guilty as charged in the indictment.

~~STEPHEN ADAMS~~ *Stephen P. Adams*
PRESIDING JUROR

STEPHEN P. ADAMS
(Printed Name of Presiding Juror)

-OR-

We, the jury, unanimously find the defendant not guilty.

PRESIDING JUROR

(Printed Name of Presiding Juror)