

*Filed
April 8, 2011
mgt 0940*

ORIG

NO. 65,755

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| THE STATE OF TEXAS | * | IN THE DISTRICT COURT |
| VS. | * | OF BELL COUNTY, TEXAS |
| JOHN ANTHONY VALDEZ, JR. | | 264TH JUDICIAL DISTRICT |

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, JOHN ANTHONY VALDEZ, JR., stands charged by indictment with the offense of Capital Murder, alleged to have occurred on or about the 11TH day of October, 2008, in Bell County, Texas. To this indictment the Defendant has pleaded not guilty. You are instructed the law applicable to this case is as follows:

I.

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

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

A person commits the offense of capital murder if he commits murder, as defined above, for remuneration.

II.

A person acts intentionally, or with intent, with respect to the 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.

III.

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 by both.

Each party to an offense may be charged with commission of the offense.

All traditional distinctions between accomplices and principals are abolished and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

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, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense.

An agreement to act as a party to an offense may be inferred from the acts of the parties.

The word "conduct" means an act or omission and its accompanying mental state.

In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to its commission.

IV.

You are instructed that if there is any testimony before you in this case regarding the defendant's 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 the circumstances surrounding the arrest of the defendant, if any, in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

V.

In this case, the alleged statements of Kyle James Moesch and Kathryn Nellie Briggs, aka Katie Briggs, were admitted in evidence. You are instructed that such evidence was admitted solely for the purpose of serving as evidence in the cases of Kyle James Moesch and Kathryn Nellie Briggs, aka Katie Briggs, co-defendants of the defendant, JOHN ANTHONY VALDEZ, JR., herein, if it does serve as such evidence, and such statements cannot be considered as any evidence against the defendant, JOHN ANTHONY VALDEZ, JR., or in any way to connect the defendant with the alleged offense. You are instructed that you must not consider such alleged statements of Kyle James Moesch and Kathryn Nellie Briggs, aka Katie Briggs, if any, in any way as any evidence whatsoever against the defendant, JOHN ANTHONY VALDEZ, JR., and you will restrict your consideration of such statements, if any, to the determination of the guilt or innocence of Kyle James Moesch and Kathryn Nellie Briggs, aka Katie Briggs, if you do consider it, and not to JOHN ANTHONY VALDEZ, JR.

VI.

You are further instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, of Ryan Sullivan, and the previous relationship existing between the accused and Ryan Sullivan, 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 offense alleged in the indictment.

You are instructed that in order to convict the Defendant of the offense of capital murder you must find from the evidence beyond a reasonable doubt that the murder, if any, occurred and that it was for remuneration.

VII.

Now bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt that on or about the 11TH day of October, 2008, in the County of Bell, State of Texas, as alleged in the indictment, the Defendant, JOHN ANTHONY VALDEZ, JR., did then and there, while acting as a party with Kathryn Nellie Briggs AKA Katie Briggs AKA Airianna Benitez or Kyle James Moesch, as that term has been previously defined, for remuneration, to-wit: the proceeds of an insurance policy on the life of Ryan Sullivan, intentionally or knowingly caused the death of an individual, Ryan Sullivan, by stabbing and cutting him with a knife or an unknown sharp instrument, you will find the defendant guilty of Capital Murder and so say by your verdict. But if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Capital Murder and next consider the lesser offense of Murder.

VIII.

Now bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt that on or about the 11th day of October, 2008, in the County of Bell, State of Texas, as alleged in the indictment, the Defendant, JOHN ANTHONY VALDEZ, JR., did then and there intentionally and knowingly cause the death of an individual, to-wit: Ryan Sullivan, by stabbing and cutting him with a knife or an unknown sharp instrument, you will find the defendant guilty of Murder and so say by your verdict, but if you do not so believe, or if you have a reasonable doubt thereof, you will acquit the defendant of the offense of Murder and say by your verdict, "not guilty."

You have a right to consider all of the facts that are shown by the evidence, and to draw natural and reasonable inferences from such facts. You alone have the authority and the duty to determine what the facts are in this case. In evaluating the evidence, you must totally disregard what you believe is my opinion about any factual matter.

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, an offense gives rise to no inference of guilt at his trial. The law does not require a defendant to prove his 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 this case.

Our law provides that a defendant may testify in ^{his} ~~her~~ 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.

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.

You are further instructed as a part of the law in this case that the indictment against the defendant is not evidence in the case, and that the true and sole use of the indictment is to charge the offense, and to inform the defendant of the offense alleged against him. The reading of the indictment to the jury in the statement of the case of the State against the defendant cannot be considered as a fact or circumstance against the defendant in your deliberations.

You must not consider facts that have not been introduced into evidence or legal principles not contained in this charge. It is improper for a juror to discuss or consider anything which they know or have learned outside of the testimony presented to you, and the law contained in this charge. If a juror should discover that they have any outside information, they must not mention this information to any other juror, nor consider it themselves in arriving at a verdict.

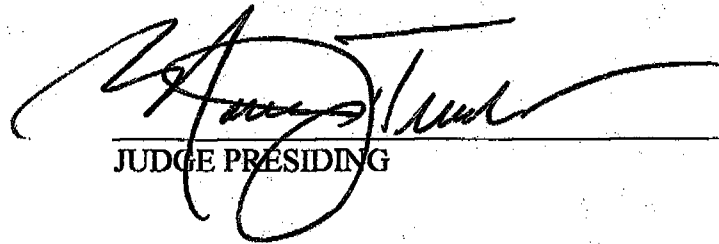
You shall not discuss or consider the punishment, if any, which may be assessed against the defendant in the event he is found guilty.

Questions and comments of the attorneys do not constitute testimony and must not be considered as evidence. You must also disregard any statement of the attorneys that is inconsistent with the law contained in this charge.

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 the law from the Court, which is herein given you, and be governed thereby.

After the reading of this Charge, you shall not be permitted to separate from each other, nor shall you talk with anyone not of your jury. After argument of counsel, you will retire and select one of your members as your foreman. It is his or her duty to preside at your deliberations and to vote with you in arriving at a unanimous verdict. After you have arrived at your verdict, you may use one of the blanks attached hereto by having your foreman sign his or her name to

the particular blank that conforms to your verdict, but in no event shall he or she sign more than one of such blanks.



JUDGE PRESIDING