

ORIGINAL

NO. 380-80933-06

THE STATE OF TEXAS	§	IN THE 380TH JUDICIAL
VS.	§	DISTRICT COURT OF
ADA BETTY CUADROS- FERNANDEZ	§	COLLIN COUNTY, TEXAS

CHARGE OF THE COURT**MEMBERS OF THE JURY:**

The defendant, **ADA BETTY CUADROS-FERNANDEZ**, stands charged by indictment with the offense of Capital Murder, alleged to have been committed on or about the 13th day of October, 2005, in Collin County, Texas. To this charge the defendant has pleaded not guilty.

Our law provides that an actor commits murder if she intentionally or knowingly causes the death of an individual or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.

The word "actor" as used herein, means a person whose criminal responsibility is an issue in a criminal action.

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

"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.

A person commits Capital Murder when such actor commits murder as defined above, and murders an individual under six years of age.

“Deadly weapon” means anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

A person acts knowingly, or with knowledge, with respect to circumstances surrounding her conduct when she is aware 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 commits the offense of Manslaughter if she recklessly causes the death of an individual.

A person acts recklessly, or is reckless, with respect to circumstances surrounding her conduct or the result of her conduct when 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.

A person commits Criminally Negligent Homicide if she causes the death of an individual by criminal negligence.

A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding her conduct or the result of her conduct when she ought to be aware of 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 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 actor’s standpoint.

You are instructed that while the indictment alleges that the offense was committed on or about the 13<sup>th</sup> day of October, 2005 in Collin County, Texas, you are not bound to find that the offense, if any, took place on this specific date, it being sufficient if such time is approximately

accurate, and occurring prior to May 2, 2006, the date of the return of the indictment for said offense in this case, and is not barred by the statute of limitations.

There is no statute of limitation for the offense of Capital Murder and Manslaughter. The statute of limitations for Criminally Negligent Homicide is three years from the date of the commission of the offense.

### **CAPITAL MURDER**

Now, if you find from the evidence beyond a reasonable doubt that on or about the 13th day of October, 2005, in Collin County, Texas, the defendant, ADA BETTY CUADROS-FERNANDEZ, did then and there knowingly cause the death of Kyle Lazarchik, an individual, hereinafter called deceased, by inflicting blunt force trauma on deceased by striking deceased's head against a cabinet door, a deadly weapon, or by means which are unknown to the Grand Jurors, and the deceased was then and there a child younger than six (6) years of age, then you will find the defendant guilty of the offense of Capital Murder as charged in the indictment.

If you do not so find, or if you have a reasonable doubt, or if you are unable to agree, then you will next consider whether the defendant is guilty of the lesser included offense of Manslaughter. If you unanimously agree that the defendant is guilty of Capital Murder, you need not consider Manslaughter.

### **MANSLAUGHTER**

So, if you find from the evidence beyond a reasonable doubt that on or about the 13th day of October, 2005, in Collin County, Texas, the defendant, ADA BETTY CUADROS-FERNANDEZ, did then and there recklessly cause the death of Kyle Lazarchik, an individual, hereinafter called deceased, by inflicting blunt force trauma on deceased by striking deceased's head against a cabinet door, a deadly weapon, or by means which are unknown to the Grand Jurors, and the deceased was then and there a child younger than six (6) years of age, then you will find the defendant guilty of the offense of Manslaughter, a lesser included offense.

If you do not so find, or if you have a reasonable doubt, or if you are unable to agree, then you will next consider whether the defendant is guilty of the lesser included offense of Criminally Negligent Homicide. If you unanimously agree that the defendant is guilty of Manslaughter, you need not consider Criminally Negligent Homicide.

### **CRIMINALLY NEGLIGENT HOMICIDE**

So, if you find from the evidence beyond a reasonable doubt that on or about the 13th day of October, 2005, in Collin County, Texas, the defendant, ADA BETTY CUADROS-FERNANDEZ, did then and there, with criminal negligence, cause the death of Kyle Lazarchik, an individual, hereinafter called deceased, by inflicting blunt force trauma on deceased by striking deceased's head against a cabinet door, a deadly weapon, or by means which are unknown to the Grand Jurors, and the deceased was then and there a child younger than six (6) years of age, then you will find the defendant guilty of the offense of Criminally Negligent Homicide, a lesser included offense.

Unless you so find from the evidence beyond a reasonable doubt or if you have a reasonable doubt thereof that the defendant is guilty of any offense defined in this charge, you should acquit the defendant and say by your verdict "not guilty".

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 fact 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.

You are instructed that the Grand Jury indictment is not evidence of guilt. It is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence, nor can it be considered by you in passing upon whether the defendant is guilty or not guilty.

In all criminal cases, the burden of proof is on the State throughout the trial and never shifts to the accused person. 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.

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.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed offenses against the alleged victim 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 the state of mind of the defendant and the child, including motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident, and the previous and subsequent relationship between the defendant and the child.

It is not required that the prosecution proves guilt beyond all possible doubt; it is required that the prosecution's proof excludes all "reasonable doubt" concerning the defendant's guilt.

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 any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion respecting any matter of fact in this case, and if you have observed

anything which you have or 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 argument not supported by the evidence, or statements of laws made by counsel not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

When words are used in this charge in a sense which vary from the meaning commonly understood, you will be given a proper legal definition, which you are bound to follow and accept in place of any other meaning.

After you have retired to your jury room, you should elect one of your members as your presiding juror. It is his or her duty to preside at your deliberations, vote with you, see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge, write out and hand to the bailiff any communications concerning the case which you desire to have delivered to the Court, and, when you have unanimously agreed upon a verdict, to certify your verdict by signing the same as presiding juror.

After you have retired to consider your verdict, no one has any authority to communicate with you except the bailiff of this Court. You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please so inform the judge.

You are the exclusive judges of the facts proved, of the credibility of the witness, 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 to you and be governed thereby.

During your deliberations in this case, you must not consider, discuss, or relate any matters not in evidence before you. You should not consider or 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.

You are charged that 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.

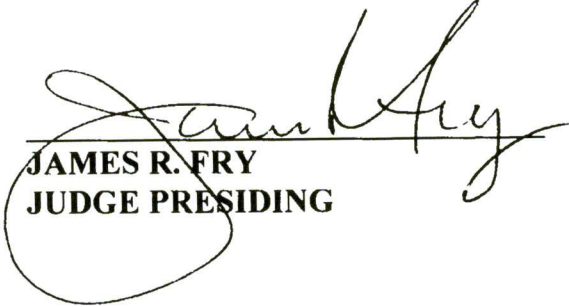
You are further instructed that you should not question the Bailiff concerning the testimony or the law of the case, nor should you discuss the case in his presence. If you have any questions, you should reduce them to writing, to be signed by your presiding juror, and present them to the Court.

If the jurors disagree as to the statement of any witnesses, they may, upon applying to the Court, have read to them from the Court Reporter's notes that part of such witness' testimony on the point in dispute. A request to have the Court Reporter's notes read cannot be complied with unless the jury disagrees as to the statement of the witness. Therefore, it will be necessary, if you desire to hear any portion of the testimony of any witness, for you to certify that you are in disagreement as to the statement of a witness, and you should request that part of the testimony on the point in dispute, and only on that point which is in dispute.

Suitable forms for your verdict are attached hereto. Your verdict must be in writing and signed by your presiding juror. Your sole duty at this time is to determine whether the defendant is guilty or not guilty under the indictment in this cause and you are to restrict your deliberations solely to that issue. When you have made that determination, you will advise the

bailiff at the door of the jury room that you have reached a verdict, and then return into the Court with your verdict.

**SIGNED** this the 13<sup>th</sup> day of July, 2012.

  
**JAMES R. FRY**  
**JUDGE PRESIDING**



**VERDICT FORM**

We, the Jury, find the defendant guilty of the offense of Capital Murder as charged in the indictment.

  
\_\_\_\_\_  
**PRESIDING JUROR**

  
\_\_\_\_\_  
**PRESIDING JUROR (Printed Name)**

**OR,**

We, the Jury, find the defendant guilty of the offense of Manslaughter, a lesser included offense.

\_\_\_\_\_  
**PRESIDING JUROR**

\_\_\_\_\_  
**PRESIDING JUROR (Printed Name)**

**OR,**

We, the Jury, find the defendant guilty of the offense of Criminally Negligent Homicide, a lesser included offense.

\_\_\_\_\_  
**PRESIDING JUROR**

\_\_\_\_\_  
**PRESIDING JUROR (Printed Name)**

**OR,**

We, the Jury, find the defendant not guilty.

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**PRESIDING JUROR**

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**PRESIDING JUROR (Printed Name)**