

FILED
NORMAL FAVELA
DISTRICT CLERK

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
41ST JUDICIAL DISTRICT

2016 JUL -1 PM 7:22

THE STATE OF TEXAS

*

EL PASO COUNTY, TEXAS

VS.

*

No. 20150D00824

[Signature]
DEPUTY

*

JORGE PACHECO

*

*

JURY CHARGE

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, **JORGE PACHECO**, stands charged by indictment with CAPITAL MURDER (Count I) and MURDER (Count II), alleged to have been committed on or about November 30, 2014, in El Paso County, Texas. The Defendant has pleaded not guilty.

After the attorneys have presented their summations, you will go to the jury room. You will then select one of your members as your presiding juror. It shall be your presiding juror's duty to preside over your discussions and deliberations upon the case, vote with you and, when you have unanimously agreed upon a verdict, to certify your verdict by signing the same as your presiding juror.

You will have this charge with you in the jury room, and you shall refer to it for guidance during your deliberations. Suitable forms for your verdict are attached hereto; your verdict must be in writing and signed by your presiding juror.

You are instructed as follows:

I.

General Principles of Evidence

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 as it is given to you in this charge, and you are bound to be governed by it.

The evidence consists of testimony and exhibits admitted in the trial. You must consider only evidence to reach your decision. You must not consider, discuss, or mention anything that is not evidence in the trial. You must not consider or mention any personal knowledge or information you may have about any fact or person connected with this case that is not evidence in the trial.

Statements made by the attorneys are not evidence. The questions asked by the attorneys are not evidence. Evidence consists of the testimony of the witnesses and materials admitted into evidence.

Nothing the judge has said or done in this case should be considered by you as an opinion about the facts of this case or influence you to vote one way or the other.

You should give terms their common meanings, unless you have been told in these instructions that the terms are given special meanings. In that case, of course, you should give those terms the meanings provided in these instructions.

While you should consider only the evidence, you are permitted to draw reasonable inferences from the testimony and exhibits that are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence.

You may, if you wish, examine exhibits. If you wish to examine an exhibit, the foreperson will inform the court in writing and specifically identify the exhibit you wish to examine. Only exhibits that were admitted into evidence may be given to you for examination.

Certain testimony will be read back to you by the court reporter if you request. To request that testimony be read back to you, you must follow these rules. The court will allow testimony to be read back to the jury only if the jury, in a writing signed by the foreperson, 1) states that it is requesting that specific testimony be read back, 2) states that it has a disagreement about a specific statement of a witness or a particular point in dispute, and (3) identifies the name of the witness who made the statement. The court will then have the court reporter read back only that part of the statement that is in disagreement.

II. Presumption of Innocence

The defendant is presumed innocent of the charge. All persons are presumed to be innocent, and no person may be convicted of any offense unless each element of the offense is proven 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 trial. The law does not require a defendant to prove his innocence or produce any evidence at all. 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 presumption of innocence alone is sufficient to acquit the defendant.

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

III.
Defendant's Right to Remain Silent

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. 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 him.

IV.
Definitions ~~or~~ *or knowingly*

In Count I of the indictment, the State accuses the defendant of **Capital Murder**. A person commits the offense of murder if he intentionally causes the death of an individual. A person commits **Capital Murder** when such person commits the murder, if any, to an individual under ten years of age.

In Count II of the indictment, the State accuses the defendant of having committed the offense of **Murder**. A person commits the offense of **Murder** if he commits or attempts to commit a **felony**, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

A person commits the felony offense of **Injury to a Child** if he intentionally, knowingly, or recklessly, by an act, causes bodily injury to a child fourteen years old or younger.

Felony means an offense so designated by law or punishable by confinement in a penitentiary or by death.

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

Serious bodily injury means **bodily injury** that causes a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss of impairment of the function or any bodily member or organ.

V.
Culpable Mental States

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.

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 a 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 standpoint of the person charged.

VI.
Burden of Proof

The State must prove the accusations against the defendant beyond a reasonable doubt.

The prosecution has the burden of proving the defendant's guilt 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 exclude all reasonable doubt concerning the defendant's guilt.

In the event that 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".

VII.
Voluntary Intoxication Not a Defense

Voluntary intoxication does not constitute a defense to the commission of a crime.

"Intoxication means disturbance of mental or physical capacity resulting from the introduction of any substance into the body."

VIII.
Application – Count I - Capital Murder

Now, if you find from the evidence beyond a reasonable doubt that on or about November 30, 2014, in El Paso County, Texas, the defendant, JORGE PACHECO, did intentionally or knowingly cause the death of Brianna Olvera, an individual under ten years of age:

PARAGRAPH A - by shaking Brianna Olvera's body,

OR

PARAGRAPH B - by shaking and striking Brianna Olvera's head against an unknown object,

OR

PARAGRAPH C - by shaking and striking Brianna Olvera's head with an unknown object,

OR

PARAGRAPH D - by striking Brianna Olvera's head with an unknown object

OR

PARAGRAPH E - by striking Brianna Olvera's head against an unknown object, .

then you will find the Defendant, JORGE PACHECO, guilty of Capital Murder as charged in Count I of the Indictment. **VERDICT FORM A**

Unless you find from the evidence beyond a reasonable doubt that the defendant is guilty of Capital Murder, then you are instructed to consider whether the defendant is guilty of Murder beyond a reasonable doubt. If you find the defendant guilty beyond a reasonable doubt of Capital Murder, then you are instructed not to complete any other verdict forms.

IX.

Application - Count II - Murder

Now if you find from the evidence beyond a reasonable doubt that on or about November 30, 2014, in El Paso County, Texas, the Defendant, JORGE PACHECO, did then and there, intentionally or knowingly commit or attempt to commit an act clearly dangerous to human life, to wit,

PARAGRAPH A - shaking Brianna Olvera's body that caused the death of an individual, namely, Brianna Olvera

OR

PARAGRAPH B - shaking and striking Brianna Olvera's head against an unknown object that caused the death of an individual, namely, Brianna Olvera

OR

PARAGRAPH C - shaking and striking Brianna Olvera's head with an unknown object that caused the death of an individual, namely, Brianna Olvera

OR

PARAGRAPH D - striking Brianna Olvera's head with an unknown object that caused the death of an individual, namely, Brianna Olvera

OR

PARAGRAPH E - striking Brianna Olvera's head against an unknown object that caused the death of an individual, namely, Brianna Olvera

and that JORGE PACHECO was then and there in the course of, or in furtherance of, or in immediate flight from, the commission and attempted commission of a felony, to wit: Injury to a Child, then you will find the Defendant, JORGE PACHECO, Guilty as charged in Count II of the Indictment. **VERDICT FORM B**

Unless you find from the evidence beyond a reasonable doubt that the defendant is guilty of Murder, then you are instructed to consider whether the defendant is guilty of the lesser included offense of Injury to a Child, Reckless, beyond a reasonable doubt. If you find the defendant guilty beyond a reasonable doubt ~~guilty~~ of Murder, then you are instructed not to complete any other verdict forms.

X.

Application – Lesser Included Offense - Injury to a Child, Reckless

Now if you find from the evidence beyond a reasonable doubt that on or about November 30, 2014, in El Paso County, Texas, the Defendant, JORGE PACHECO, did then and there by act recklessly cause serious bodily injury to an individual, namely, Brianna Olvera, who was then and there an individual younger than fourteen years of age,

by shaking Brianna Olvera's body,

OR

by shaking and striking Brianna Olvera's head against an unknown object,

OR

by shaking and striking Brianna Olvera's head with an unknown object,

OR

by striking Brianna Olvera's head with an unknown object,

OR

by striking Brianna Olvera's head against an unknown, *object*,

then you will find the Defendant, JORGE PACHECO, guilty of the lesser included offense of Injury to a Child, Reckless. **VERDICT FORM C**

Unless you find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, then you will find the Defendant not guilty. **VERDICT FORM D**

XI.

The State has introduced evidence of extraneous crimes or bad acts other than the one charged in the indictment in this case. You cannot consider the testimony unless you find and believe beyond a reasonable doubt that the defendant committed these acts, if any, were committed. You are further instructed that you can not consider these acts, if any, as proof of the Defendant's guilt in this matter.

XII.

Manner of Deliberations

Suitable forms for your verdict are hereto attached. Your verdict must be unanimous in writing and signed by your Presiding Juror. Your sole duty at this time is to determine the guilt or non-guilt of the defendant under the indictment in this cause and restrict your deliberations solely to the issue of whether the defendant is guilty or not guilty.

1. In order to return a verdict, each juror must agree thereto.
2. Jurors have a duty to consult with one another to deliberate with a view of reaching an agreement, if it can be done without abrogating individual judgment.
3. Each juror must decide the case for themselves, but only after an impartial consideration of the evidence with their fellow jurors.
4. In the course of deliberations, a juror should not hesitate to re-examine their own views and change their opinion if convinced it is erroneous.
5. No juror should surrender their honest conviction as to the weight or effect of the evidence solely because of the opinion of their fellow jurors, or for the mere purpose of returning a verdict.

6. Do not let bias, prejudice or sympathy play any part in your deliberations.

In arriving at your verdict, it will not be proper to fix the same by lot, chance, or any other method than by a full, fair and free exercise of the opinion of the individual jurors under the evidence admitted before you.

The presiding juror or any other juror who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

If you want to have the exhibits with you in the jury room for your deliberations, advise the bailiff. If you want to communicate with the Court, explain what you want in writing and deliver your message, signed by your presiding juror, to the bailiff. He will then deliver your message to the Court. Do not orally explain to the bailiff.

These instructions are given to you because your conduct is subject to review, the same as that of the witnesses, parties, attorneys and the Judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.



ANNABELL PEREZ
JUDGE, 41ST DISTRICT COURT