

FILED
DENTON COUNTY, TEXAS
2015 JAN 13 AM 8:39
SHERI ADERSTEIN
DISTRICT CLERK
BY _____ DEPUTY

CAUSE NO. F-2014-2257-D

THE STATE OF TEXAS § IN THE 362nd DISTRICT COURT
V. § OF
JERRY JOE GARZA § DENTON COUNTY, TEXAS

Charge of the Court

Members of the Jury:

The defendant Jerry Joe Garza is charged with the felony offense of Capital Murder, alleged to have been committed in Wichita County, Texas, on or about the 8th day of February, 2012. To this charge, the defendant has pleaded not guilty.

I now give you the law that applies to this case.

1.

The indictment which formally charges the defendant with the offense is not evidence in the case. 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 State's case against the defendant cannot be considered as a fact or circumstance against the defendant in your deliberations.

2.

Element of an offense means: (a) the forbidden conduct; (b) the required culpability (if any); (c) the required result (if any); and (d) the negation of exceptions to the offense (if any).

"Conduct" means an act or omission and its accompanying mental state.

"Required culpability" means the mental state required by law such as intent, knowledge, recklessness or criminal negligence.

3.

All persons are presumed to be innocent. 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 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 a careful and impartial consideration of all of the evidence in the case.

The State 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. 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, then you will acquit the defendant and say by your verdict "not guilty."

4.

You are the exclusive judges of the facts proven, of the credibility of the witnesses and of the weight to be given to the testimony, but you are bound to receive and be governed by the law from the Court as contained in this charge.

5.

You can only consider facts and circumstances in evidence. You must not consider or receive, from any source, facts or circumstances that have not been introduced by testimony before

you. It is only from the witness stand that the jury is permitted to receive evidence regarding the case. It is not proper for any juror to discuss or to mention to any other juror anything which the juror may have heard or read on the outside about the case. If any juror, after being chosen on the jury, should discover that he or she has any outside information or has heard anything concerning the case, then the juror should not impart that information to any other juror, nor should the juror consider that information in arriving at a verdict.

6.

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, have them signed by your presiding juror, and present them to the Court.

7.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as telephone, cell phone, smart phone, iPhone, Blackberry, or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate with anyone any information about this case or to conduct any research about this case until I accept your verdict.

8.

You are instructed that note taking has been determined to be beneficial for you in understanding this case in light of the factual and legal issues that have been presented at trial. You should regard the notes you have taken, if any, as merely memory aids, as they may help you. You may take your notes into the jury room and consult them during deliberations, but keep in

mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and you should not be influenced by the fact that another juror has or has not taken notes. Your notes are for your own personal use. Do not show or read your notes to anyone, including other jurors.

9.

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 act to indicate any opinion respecting any matter of fact in this case. If you have observed anything which you may have interpreted as the Court's opinion upon any matter of fact in this case, then you must wholly disregard it.

10.

The opening statements and closing arguments of the lawyers are not evidence. Any statements of counsel made during the course of the trial or during argument that are not supported by the evidence, or statements of law made by counsel that are not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

11.

You are instructed that you may, but are not required to, accept as conclusive any fact judicially noticed.

12.

At times during this trial this Court instructed you to disregard certain words or actions or evidence that appeared before you. Those instructions carry forward with you as you retire to deliberate and you are instructed that you cannot consider anything in your deliberations which

you have previously been instructed to disregard.

13.

You are instructed that some exhibits in this case were admitted but portions of the exhibits were redacted from your consideration. You are instructed that you shall not discuss or speculate what portions were redacted, or the reasons, if any, why these portions were redacted and you may not consider the fact that portions of the exhibits were redacted as evidence whatever of the guilt of the defendant.

14.

Do not let bias, prejudice, sympathy, resentment, or any such emotion play any part in your deliberations.

15.

Our law provides that a defendant may testify in his own behalf, if he elects to do so. This is a right given to a defendant, and, in the event that he elects not to testify, then 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 to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever.

16.

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 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.

17.

A person commits the offense of Capital Murder if he intentionally commits murder while in the course of committing or attempting to commit Burglary.

18.

A person commits Murder if he:

- (1) intentionally or knowingly causes the death of an individual, or
- (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.

19.

A person commits the offense of Burglary if he intentionally or knowingly, without the effective consent of the owner, enters a habitation with intent to commit an assault or commits or attempts to commit an assault.

“Effective Consent” includes consent by a person legally authorized to act for the owner.

Consent is not effective if:

- (1) induced by force, threat, or fraud;
- (2) given by a person the actor knows is not legally authorized to act for the other;
- (3) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or
- (4) given solely to detect the commission of an offense.

“Habitation” means a structure that is adapted for the overnight accommodation of persons.

“Owner” means a person who has title to the property, possession of the property whether lawful or not, or a greater right to possession of the property than the actor.

A person commits Assault if the person:

- (1) intentionally, knowingly, or recklessly cause bodily injury to another, including the person’s spouse;
- (2) intentionally or knowingly threatens another with imminent bodily injury, including the person’s spouse; or
- (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

20.

"Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

"Bodily Injury" means physical pain, illness, or any impairment of physical condition, including death.

"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.

21.

You are instructed that a witness may be impeached by showing that he or she has made other and different statements out of court from those made before you on the trial. Such impeachment evidence may be considered by you to aid you in determining if it does so, the weight, if any, to be given the testimony of the witness at trial and his or her credibility; but such impeaching evidence, if any, is not to be considered as tending to establish the alleged guilt of the defendant and you cannot consider said impeachment testimony as any evidence whatever of the guilt of the defendant.

22.

You are instructed that some evidence has been admitted before you which was objected to as hearsay, but allowed by the Court as an exception to hearsay. You are not to consider the truth of the matter asserted in the hearsay, but may consider it only for the purpose for which it was admitted.

23.

You are instructed that under our law, in order to be considered valid, a chemical test must be performed according to the rules and regulations governing such test by the Department of Public Safety concerning proper techniques and methodology.

If you have found beyond a reasonable doubt that each of these regulations were complied with, you may consider such test and give it whatever weight you choose.

If you do not so find or if you have a reasonable doubt as to whether these regulations were complied with you may not consider said test for any purpose and shall not refer to it further in your deliberations.

24.

You are instructed that a defendant may not be convicted on the testimony of a person to whom the defendant made a statement against the defendant's interest during a time when the person was imprisoned or confined in the same correctional facility as the defendant unless the testimony is corroborated by other evidence tending to connect the defendant with the offense committed.

"Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

- (A) a municipal or county jail;
- (B) a confinement facility operated by the Texas Department of Criminal Justice;
- (C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and,
- (D) a community corrections facility operated by a community supervisions and

corrections department.

Now, if you find from the evidence that David Shipman was a person to whom the defendant made a statement, if any, against the defendant's interest during a time when David Shipman was imprisoned or confined in the same correctional facility as the defendant, if he was so imprisoned or confined, then you are further instructed that you cannot convict the defendant upon David Shipman's testimony, unless you first believe that his testimony is true and shows the guilt of the defendant as charged in the indictment, and then you cannot convict the defendant unless David Shipman's testimony is corroborated by other evidence tending to connect the defendant with the offense charged. The corroboration is not sufficient if it merely shows the commission of an offense, but it must tend to connect the defendant with its commission, and then from all the evidence, you must believe beyond a reasonable doubt that the defendant is guilty of the offense charged against him, or if you have a reasonable doubt thereof, you will acquit the defendant.

25.

The State has introduced evidence of extraneous crimes or bad acts other than the one charged in the indictment in this case. This evidence was admitted only for the purpose of assisting you, if it does, for the purpose of showing the defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, if any. You cannot consider the testimony unless you find and believe beyond a reasonable doubt that the defendant committed these acts, if any, were committed.

26.

You are instructed that you may consider all relevant facts and circumstances surrounding the killing, if any, and the previous relationship existing between the accused and the deceased individual, 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.

27.

Now, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about the 8th day of February, 2012, in Wichita County, Texas, the defendant Jerry Joe Garza did then and there intentionally cause the death of an individual, namely, Monica Partida, by stabbing or cutting the said Monica Partida with a deadly weapon, to-wit: a knife, a bladed object, or, an object unknown to the Grand Jury which in the manner of its use and intended use is capable of causing death or serious bodily injury, and/or, by the asphyxiation of the said Monica Partida by smothering, to-wit: by the covering of the nose and mouth of the said Monica Partida with the hand(s) of the defendant or by an object unknown to the Grand Jury, and/or by a means unknown to the Grand Jury, and the defendant was then and there in the course of committing or attempting to commit the offense of burglary of a habitation of the said Monica Partida, then you will find the defendant guilty of Capital Murder as alleged in the indictment.

But if you do not so believe, or if you have a reasonable doubt thereof that the defendant committed the offense of Capital Murder, then you will acquit the defendant of Capital Murder and proceed to consider whether the defendant is guilty of the offense of Murder as included in the indictment.

28.

You do not have to unanimously agree on how the death of Monica Partida was caused. Rather, you are required to unanimously agree that the defendant intentionally caused the death of Monica Partida in any way alleged in the indictment.

29.

Now, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about the 8th day of February, 2012, in Wichita County, Texas, the defendant Jerry Joe Garza did then and there intentionally or knowingly cause the death of an individual, namely, Monica Partida, by stabbing or cutting the said Monica Partida with a deadly weapon, to-wit: a knife, a bladed object, or, an object unknown to the Grand Jury which in the manner of its use and intended use is capable of causing death or serious bodily injury, and/or, by the asphyxiation of the said Monica Partida by smothering, to-wit: by the covering of the nose and mouth of the said Monica Partida with the hand(s) of the defendant or by an object unknown to the Grand Jury, and/or by a means unknown to the Grand Jury, then you will find the defendant guilty of Murder as included in the indictment.

But if you do not so believe, or if you have a reasonable doubt thereof that the defendant committed the offense of Murder then you will acquit the defendant of Murder and say by your verdict, "Not Guilty."

30.

You are instructed not to consider punishment, if any, at this stage of the trial. If that later becomes applicable, then you will receive further instructions from the Court as appropriate.

31.

After the argument of counsel, you will retire and select one of your members as your presiding juror. It is his or her duty to preside at your deliberations and to vote with you in arriving at your verdict. Your verdict must be unanimous. After you have arrived at your verdict, you may use one of the forms attached hereto by having your presiding juror sign his or her name to the particular form that conforms to your verdict. Your sole duty at this time is to determine guilt or innocence of the defendant under the indictment in this cause. You shall restrict your deliberations solely to the issue of the guilt or innocence of the defendant.

Signed on the 13 day of January, 2015.



Judge Presiding

