

RECEIVED

MAY 12 2008

ORIGINAL

OFFICE OF COURT ADMINISTRATION NO. 2005-410,654

FILED

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

TIME 9 AM .M.

VS.

§ OF LUBBOCK COUNTY, TEXAS

DATE ~~FEB 28~~ MARCH 28, 2008

ROSENDO RODRIGUEZ III

§ 140TH JUDICIAL DISTRICT

JIM BOE DARNELL JUDGE

COURT'S CHARGE AS TO COUNT 1 PARAGRAPH 1

MEMBERS OF THE JURY:

The defendant, ROSENDO RODRIGUEZ III, stands charged by indictment with the offense of capital murder, alleged to have been committed in Lubbock County, Texas, on or about September 13, 2005. The defendant has entered a plea of not guilty to the indictment which was read to you.

You are instructed that you will consider only the guilt or innocence of the defendant from the evidence admitted before you and from the law as given to you in charge by the Court.

You are instructed that the law applicable to this case is as follows:

1.

Our law provides that a person commits murder when he intentionally or knowingly causes the death of an individual.

A person commits capital murder if he commits murder as defined above and such person intentionally commits the murder in the course of committing or attempting to commit the offense of aggravated sexual assault.

A person commits aggravated sexual assault if the person intentionally or knowingly:

(i) causes the penetration of the anus or female sexual organ of another person by any means, without that persons consent; or

(ii) causes the penetration of the mouth, of another person by the sexual organ of the actor, without that persons consent; or

(iii) causes the sexual organ of another person, without that persons consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

and if the person:

(i) causes seriously bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode; or

(ii) by acts or words places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person; or

(iii) by acts or words occurring in the presence of the victim threatens to cause the death, serious bodily injury, or kidnapping of any person; or

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode.

3.

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

"Consent" means assent in fact, whether express or apparent.

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

4.

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.

5.

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about September 13, 2005, as alleged in the indictment, the defendant, ROSENDO RODRIGUEZ III, did then and there intentionally cause the death of an individual, Summer Baldwin, by

RECEIVED

MAY 12 2008

OFFICE OF
COURT ADMINISTRATION

4

striking the said Summer Baldwin with or against a hard object, the exact nature of which is unknown to the Grand Jurors, or by choking the said Summer Baldwin, or by causing the asphyxiation of the said Summer Baldwin, and the said ROSENDO RODRIGUEZ III was then and there in the course of committing or attempting to commit the offense of aggravated sexual assault of Summer Baldwin, then you will find the defendant guilty of the offense of capital murder and so say by your verdict.

Unless you find and believe beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder and next consider whether the defendant is guilty of the offense of murder.

6.

If you find from the evidence beyond a reasonable doubt that on or about September 13, 2005, the defendant, ROSENDO RODRIGUEZ III, did then and there intentionally cause the death of an individual, Summer Baldwin, by striking the said Summer Baldwin with or against a hard object, the exact nature of which is unknown to the Grand Jurors, or by choking the said Summer Baldwin, or by causing the asphyxiation of the said Summer Baldwin, but you have a reasonable doubt as to whether the defendant was then and there engaged in the commission or attempted commission of aggravated

sexual assault at the time of the murder, if any, then you will find the defendant guilty of the offense of murder.

7.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either the offense of capital murder, on the one hand, or the offense of murder, on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in defendant's favor and find him guilty of the lesser offense of murder, and so say by your verdict.

You are not to consider the law of self-defense as to capital murder. The law of self-defense applies only to the offense of murder as to this charge.

If you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge, then you will acquit the defendant and say by your verdict "Not Guilty."

8.

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, together with all relevant

facts and circumstances going to show the condition of the mind of the accused at the time of the offense, if any.

9.

Upon the law of self-defense, you are instructed that a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other person's use or attempted use of unlawful force.

A person is justified in using deadly force against another if he would be justified in using force against the other in the first place, as above set out, and when he reasonably believes that such force is immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force, and if a reasonable person in defendant's situation would not have retreated.

By the term "deadly force" is meant force that is intended or known by the person using it to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

"Bodily injury" and "serious bodily injury" have been defined for you above in numbered Paragraph 3, and each term has the same meaning here.

By the term "reasonable belief," as used herein, is meant a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

10.

When a person is attacked with unlawful deadly force, or he reasonably believes he is under attack or attempted attack with unlawful deadly force, and there is created in the mind of such person a reasonable expectation or fear of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, viewed from his standpoint at the time, to protect himself from such attack or attempted attack, and it is not necessary that there be an actual attack or attempted attack, as a person has a right to defend his life and person from apparent danger as fully and to the same extent as he would had the danger been real, provided that he acted upon a reasonable apprehension of danger, as it appeared to him from his standpoint at the time, and that he reasonably believed such force was immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

11.

You are further instructed that in determining the existence of real or apparent danger, it is your duty to consider all of the facts and circumstances in evidence in the case before you and consider the words, acts, and conduct, if any, of Summer Baldwin at the time of and prior to the time of the alleged killing, if any, and in considering such circumstances, you should place yourselves in defendant's position at that time and view them from his standpoint alone.

12.

Now, if you find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, ROSENDO RODRIGUEZ III, did strike the said Summer Baldwin with or against a hard object or choked the said Summer Baldwin or caused the asphyxiation of the said Summer Baldwin, as alleged, but you further find from the evidence that, viewed from the standpoint of the defendant at the time, from words or conduct, or both, of Summer Baldwin, it reasonably appeared to the defendant that his life or person was in danger and there was created in his mind a reasonable expectation or fear of death or serious bodily injury from the use of unlawful deadly force at the hands of Summer Baldwin, and that acting under such apprehension, he

reasonably believed that the use of deadly force on his part was immediately necessary to protect himself against Summer Baldwin's use or attempted use of unlawful deadly force, and he struck the said Summer Baldwin with or against a hard object or choked the said Summer Baldwin or caused the asphyxiation of the said Summer Baldwin, and that a reasonable person in the defendant's situation at that time would not have retreated, then you should acquit the defendant on the grounds of self-defense ; or if you have reasonable doubt as to whether or not the defendant was acting in self-defense on the occasion and under the circumstances, then you should give the benefit of that doubt to the defendant and find him not guilty.

13.

If you find from the evidence beyond a reasonable doubt (1) that at the time and place in question the defendant did not reasonably believe that he was in danger of death or serious bodily injury; or (2) that a reasonable person in the defendant's situation, at such time and place, would have retreated before using deadly force against Summer Baldwin; or (3) that the defendant, under the circumstances, did not reasonably believe that the degree of force actually used by him was immediately necessary to protect himself against Summer Baldwin's use or attempted use of unlawful deadly force, if any, as

viewed from the defendant's standpoint at the time, then you must find against the defendant on the issue of self-defense.

14.

You are further instructed as part of the law of this case, and as a qualification of the law on self-defense, that the use of force by a defendant against another is not justified if the defendant provoked the other's use or attempted use of unlawful force, unless the defendant abandons the encounter, or clearly communicates to the other person his intent to do so reasonably believing he cannot safely abandon the encounter and the other person, nevertheless, continues or attempts to use unlawful force against the defendant. The use of force is not justified in response to verbal provocation alone.

So, in this case, if you find and believe from the evidence beyond a reasonable doubt that the defendant, ROSENDO RODRIGUEZ III, immediately before the difficulty, if any, then and there did some act, or used some language, or did both, as the case may be, with the intent on his, the defendant's, part to produce the occasion for killing the deceased, Summer Baldwin, and to bring on the difficulty with said deceased, and that such words and conduct on the defendant's part, if there was such, were reasonably

calculated to, and did, provoke a difficulty, and that on such occasion the deceased attacked defendant with deadly force, or reasonably appeared to the defendant to so attack him or to be attempting to so attack him, and that the defendant then killed the said Summer Baldwin by the use of deadly force, to wit, by striking the said Summer Baldwin with or against a hard object or by choking the said Summer Baldwin or by causing the asphyxiation of the said Summer Baldwin, and was then and there in the course of committing or attempting to commit the offense of aggravated sexual assault, in pursuance of his original design, if you find there was such, then you will find the defendant guilty of capital murder; or

If you find and believe from the evidence beyond a reasonable doubt that the defendant, ROSENDO RODRIGUEZ III, immediately before the difficulty, if any, then and there did some act, or used some language, or did both, as the case may be, with the intent on his, the defendant's, part to produce the occasion for killing the deceased, Summer Baldwin, and to bring on the difficulty with said deceased, and that such words and conduct on the defendant's part, if there was such, were reasonably calculated to, and did, provoke a difficulty, and that on such occasion the deceased attacked defendant with deadly force, or reasonably appeared to the defendant to so

attack him or to be attempting to so attack him, and that the defendant then killed the said Summer Baldwin by the use of deadly force, to wit, by striking the said Summer Baldwin with or against a hard object or by choking the said Summer Baldwin or by causing the asphyxiation of the said Summer Baldwin, in pursuance of his original design, but you have a reasonable doubt as to whether the defendant was then and there engaged in the commission of or attempted commission of aggravated sexual assault, if you find there was such, then you will find the defendant guilty of murder.

On the other hand, if you find from the evidence that the acts done or language used by the defendant, if any, were not, under the circumstances, reasonably calculated or intended to provoke a difficulty or an attack by the deceased upon the defendant, or if you have a reasonable doubt thereof, then in such event, defendant's right of self-defense would in no way be abridged, impaired, or lessened, and, if you so find, or if you have a reasonable doubt thereof, you will decide the issue of self-defense in accordance with the law on that subject given in other portions of this charge, wholly disregarding and without reference to the law on the subject of provoking the difficulty.

15.

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

13

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.

16.

Our law provides that prior to the commencement of the trial a defendant must elect whether the Jury or the Judge shall determine punishment to be assessed in the event that the defendant is found guilty of an offense. The defendant has made the election for the Jury to assess any punishment. The fact that the defendant has made the election required cannot be taken as a circumstance against him. 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.

17.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not allow other jurors to read your notes, and

you should not permit the other jurors to give you their notes. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors if there is a dispute as to that testimony. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial if there is a dispute as to that testimony.

Occasionally, during jury deliberations, a dispute arises as to the testimony of a particular witness. If this should occur in this case, you shall inform the Court and request that the Court read the portion of disputed testimony to you from the court reporter's notes. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts. The dispute must be settled by the court reporter's notes, for it is

the official record, rather than any juror's notes, upon which you must base your determination of the facts and, ultimately, your verdict in this case.

18.

In your deliberations, you will consider this charge as a whole. You are instructed that the indictment in this case is of itself a mere accusation or charge against this defendant, and is not any evidence of the defendant's guilt; no juror in this case should permit himself/herself to be to any extent influenced against this defendant because of, or on account of, said indictment.

19.

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/she may have heard regarding the case from any source other than the witness stand

20.

In deliberating on the cause you are not to refer to or discuss any matter or issue not in evidence before you; nor talk about this case to anyone not of your jury; and after the reading of this Charge you shall not separate from each other until you have reached a verdict.

21.

Your verdict, if any, will be by unanimous vote.

22.

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 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 of the evidence in the case.

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."

23.

When the jury wishes to communicate with the Court, it shall so notify the Bailiff, who shall inform the Court thereof. Any communication relative to the cause must be written, signed by the Foreman, and shall be submitted to the Court through the Bailiff.

24.

You are the exclusive judges of the facts proven, of the credibility of the witnesses, and of the weight to be given to their testimony; but you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

25.

After argument of counsel, you will retire and select one of your members as your Foreman. It is his/her duty to preside at your deliberations and to vote with you in arriving at a verdict. Your verdict, if any, must be unanimous; and after you have arrived at your verdict, you may use one of the

forms attached hereto by having your Foreman sign his/her name to the particular form that conforms to your verdict.

The above and foregoing is the Charge in this case, and the same is hereby signed and certified by the Court, this the 28 day of March, 2008.



Judge Presiding

NO. 2005-410,654

FILE
 TIME _____
 DATE _____
 9:00 AM
 2/28/06
 Barbara Sucsy
 DISTRICT CLERK LUBBOCK COUNTY
 BY _____

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

ROSENDO RODRIGUEZ III

§ 140TH JUDICIAL DISTRICT

VERDICT

We, the jury, find from the evidence beyond a reasonable doubt the defendant is guilty of the offense of capital murder, as charged in the indictment.

Nelson Howell

Foreman of the Jury



I, Barbara Sucsy, District Clerk, in and for Lubbock County, Texas, do hereby certify this to be a true and correct copy of a like instrument now on file in this of

This 8 day of May 2005
 Clerk of District Court, Lubbock County, Texas pg 17 of 19