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CAUSE NO. 03-CR-457-B

FILED 8:05 O'CLOCK A M
AURORA DE LA GARZA, CLERK

JUL 26 2010

DISTRICT COURT OF CAMERON COUNTY, TEXAS
IN THE ~~106TH~~ JUDICIAL DEPUTY

THE STATE OF TEXAS

v.

JOHN ALLEN RUBIO

DISTRICT COURT OF

CAMERON COUNTY, TEXAS

CHARGE OF COURT TO THE JURY

LADIES AND GENTLEMEN OF THE JURY:

The defendant, JOHN ALLEN RUBIO, stands charged by indictment with four counts of the offense of capital murder, alleged to have been committed in Cameron County, Texas, on or about March 11, 2003. To this charge, the defendant has pleaded not guilty by reason of insanity.

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 this charge by the Court. You are instructed that the law applicable to this case is as follows:

1.

A person commits the offense of murder if he intentionally or knowingly causes the death of an individual. Such offense, however, is a capital murder when the person murders an individual under six years of age or murders more than one person in the same criminal transaction.

2.

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

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3.

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

4.

All persons are parties to an offense who are guilty of acting together in the commission of an offense. 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 both.

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. Mere presence alone will not constitute one as a party to an offense.

5.

You are instructed that no act done in a state of insanity can be punished as an offense. It is an affirmative defense to prosecution of a criminal action that, at the time of the conduct charged, the defendant, as a result of severe mental disease or defect, did not know that his conduct was wrong.

The severe mental disease or defect must have existed at the very time or times inquired about, that is, at the very time of the alleged commission of the offense.

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The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

The burden of proof is upon the defendant to prove this affirmative defense by a preponderance of the evidence.

By the term "preponderance of the evidence" is meant the greater weight and degree of the credible evidence in this case.

6.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 11th day of March, 2003, in Cameron County, Texas, the defendant, JOHN ALLEN RUBIO, acting alone or as a party with Angela Camacho, as that term has been defined hereinabove, did then and there intentionally or knowingly cause the death of an individual, namely, JULISSA A. QUESADA, by constricting or blocking the airway of said child with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury, and the said JULISSA A. QUESADA was then and there an individual younger than six years of age, then you will find the defendant, JOHN ALLEN RUBIO, "Guilty" of Capital Murder, as charged in Count I of the Indictment, and so state in your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of Capital Murder and say by your verdict "Not Guilty." If you do so find from the evidence beyond a reasonable doubt the defendant committed the offense as charged in Count I of the Indictment, you will next consider the following issue of insanity.

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Now, if you find from the evidence beyond a reasonable doubt that on or about the 11th day of March, 2003, in Cameron County, Texas, the defendant, JOHN ALLEN RUBIO, acting alone or as a party with Angela Camacho, as that term has been defined hereinabove, did then and there intentionally or knowingly cause the death of an individual, namely, JULISSA A. QUESADA, by constricting or blocking the airway of said child with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury, and the said JULISSA A. QUESADA was then and there an individual younger than six years of age, but you further believe, by a preponderance of the evidence in the case, that at the time he committed the act, if he did, the defendant, as a result of severe mental disease or defect, did not know that his conduct was wrong, then you will find the defendant "Not Guilty by Reason of Insanity," in Count I of the Indictment and so state in your verdict.

Under the instructions given you herein, you will state in your verdict whether you find the defendant "Guilty" or "Not Guilty" or "Not Guilty by Reason of Insanity" and next consider Count II of the Indictment.

7.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 11th day of March, 2003, in Cameron County, Texas, the defendant, JOHN ALLEN RUBIO, acting alone or as a party with Angela Camacho, as that term has been defined hereinabove, did then and there intentionally or knowingly cause the death of an individual, namely, MARY J. RUBIO, by constricting or blocking the airway of said child

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with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury, and the said MARY J. RUBIO was then and there an individual younger than six years of age, then you will find the defendant, JOHN ALLEN RUBIO, "Guilty" of Capital Murder as charged in Count II of the Indictment, and so state in your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of Capital Murder and say by your verdict "Not Guilty." If you do so find from the evidence beyond a reasonable doubt the defendant committed the offense as charged in Count II of the Indictment, you will next consider the following issue of insanity.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 11th day of March, 2003, in Cameron County, Texas, the defendant, JOHN ALLEN RUBIO, acting alone or as a party with Angela Camacho, as that term has been defined hereinabove, did then and there intentionally or knowingly cause the death of an individual, namely, MARY J. RUBIO, by constricting or blocking the airway of said child with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury, and the said MARY J. RUBIO was then and there an individual younger than six years of age, but you further believe, by a preponderance of the evidence in the case, that at the time he committed the act, if he did, the defendant, as a result of severe mental disease or

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defect, did not know that his conduct was wrong, then you will find the defendant "Not Guilty by Reason of Insanity," in Count II of the Indictment and so state in your verdict.

Under the instructions given you herein, you will state in your verdict whether you find the defendant "Guilty" or "Not Guilty" or "Not Guilty by Reason of Insanity" and next consider Count III of the Indictment.

8.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 11th day of March, 2003, in Cameron County, Texas, the defendant, JOHN ALLEN RUBIO, acting alone or as a party with Angela Camacho, as that term has been defined hereinabove, did then and there intentionally or knowingly cause the death of an individual, namely, JOHN E. RUBIO, by constricting or blocking the airway of said child with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury, and the said JOHN E. RUBIO was then and there an individual younger than six years of age, then you will find the defendant, JOHN ALLEN RUBIO, "Guilty" of Capital Murder as charged in Count III of the Indictment, and so state in your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of Capital Murder and say by your verdict "Not Guilty" as alleged in the indictment. If you do so find from the evidence beyond a reasonable doubt the defendant committed the offense as charged in Count III of the Indictment, you will next consider the following issue of insanity.

Now, if you find from the evidence beyond a reasonable doubt that on or about

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the 11th day of March, 2003, in Cameron County, Texas, the defendant, JOHN ALLEN RUBIO, acting alone or as a party with Angela Camacho, as that term has been defined hereinabove, did then and there intentionally or knowingly cause the death of an individual, namely, JOHN E. RUBIO, by constricting or blocking the airway of said child with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury, and the said JOHN E. RUBIO was then and there an individual younger than six years of age, but you further believe, by a preponderance of the evidence in the case, that at the time he committed the act, if he did, the defendant, as a result of severe mental disease or defect, did not know that his conduct was wrong, then you will find the defendant "Not Guilty by Reason of Insanity," in Count III of the Indictment and so state in your verdict.

Under the instructions given you herein, you will state in your verdict whether you find the defendant "Guilty" or "Not Guilty" or "Not Guilty by Reason of Insanity" and next consider Count IV of the Indictment.

9.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 11th day of March, 2003, in Cameron County, Texas, the defendant, JOHN ALLEN RUBIO, acting alone or as a party with Angela Camacho, as that term has been defined hereinabove, did then and there intentionally or knowingly cause the death of an individual, namely, JULISSA A. QUESADA, by constricting or blocking the airway of said child with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury

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and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury and, did then and there intentionally or knowingly cause the death of another individual, namely, MARY J. RUBIO, by constricting or blocking the airway of said child with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury, and did then and there intentionally or knowingly cause the death of another individual, namely, JOHN E. RUBIO, by constricting or blocking the airway of said child with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury, and the murders were committed during the same criminal transaction, then you will find the defendant, JOHN ALLEN RUBIO, "Guilty" of capital murder as charged in Count IV of the Indictment, and so state in your verdict.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of Capital Murder and say by your verdict "Not Guilty." If you do so find from the evidence beyond a reasonable doubt the defendant committed the offense as charged in Count IV of the Indictment, you will next consider the following issue of insanity.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 11th day of March, 2003, in Cameron County, Texas, the defendant, JOHN ALLEN

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RUBIO, acting alone or as a party with Angela Camacho, as that term has been defined hereinabove, did then and there intentionally or knowingly cause the death of an individual, namely, JULISSA A. QUESADA, by constricting or blocking the airway of said child with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury and, did then and there intentionally or knowingly cause the death of another individual, namely, MARY J. RUBIO, by constricting or blocking the airway of said child with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury, and did then and there intentionally or knowingly cause the death of another individual, namely, JOHN E. RUBIO, by constricting or blocking the airway of said child with the defendant's hand or an object unknown to the Grand Jury and/or stabbing the body of said child with a knife or an object unknown to the Grand Jury and/or by causing the head to be severed from the body of said child with a knife or an object unknown to the Grand Jury and/or by manner and means unknown to the Grand Jury, and the murders were committed during the same criminal transaction, but you further believe, by a preponderance of the evidence in the case, that at the time he committed the act, if he did, the defendant, as a result of severe mental disease or defect, did not know that his conduct was wrong, then you will find the defendant "Not Guilty by Reason of Insanity," in Count IV of the Indictment and so state in your verdict.

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Under the instructions given you herein, you will state in your verdict whether you find the defendant "Guilty" or "Not Guilty" or "Not Guilty by Reason of Insanity."

10.

You are further charged as the law in this case that the State is not required to prove the exact date alleged in the indictment but may prove the offense, if any, to have been committed at any time prior to the presentment of the indictment.

11.

You are instructed that under our law a confession of a defendant made while he was in jail or in custody of an officer and while under interrogation shall be admissible in evidence if it appears that the same was freely and voluntarily made without compulsion or persuasion. However, before a confession made orally to officers may be considered voluntary, it must be shown by legal evidence beyond a reasonable doubt that, prior to making such oral statement, the accused has been warned by the person to whom the statement is made, or by a magistrate, that (1) he has the right to remain silent and not make any statement, (2) that anything said by the defendant will be used against him at trial, (3) that the statement will be used against him in court, (4) that he has the right to terminate the questioning at any time during the interview or questioning, and (5) that he is entitled to the services of an attorney, his own or, if he is unable to employ one, a court-appointed attorney, to advise him prior to and during any questioning or interrogation.

So, in this case, if you find from the evidence, or if you have a reasonable doubt thereof, that prior to the time the defendant gave an alleged statement or confession to Detective Samuel Lucio, Detective Thomas Clipper and/or Officer Michael Cadriel, if he did give it, the said Detective Samuel Lucio, Detective Thomas Clipper and/or Officer Michael Cadriel, did not warn defendant in the respects enumerated above, or as to any

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one of such requirements, then you will wholly disregard the alleged confession or statement and not consider it for any purpose nor any evidence obtained as a result thereof. If, however, you find beyond a reasonable doubt that the aforementioned warning was given the defendant prior to his having made such statement, if he did make it, still, before you may consider such statement as evidence in this case, you must find from the evidence beyond a reasonable doubt that prior to making such statement, if he did, the defendant knowingly, intelligently and voluntarily waived the rights hereinbefore set out in the said warning, and unless you so find, or if you have a reasonable doubt thereof, you will not consider the statement or confession for any purpose whatsoever or any evidence obtained as a result of the statement, if any.

12.

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, 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.

13.

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 no rise to 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 find the defendant not guilty, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the

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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 will acquit him and say by your verdict "Not Guilty."

An indictment is the means whereby a defendant is brought to trial in felony prosecution. It is not evidence of guilt nor can it be considered by you in passing upon the issue of guilt of the defendant. The burden of proof in all criminal cases rests upon the State throughout the trial, and it never shifts to the defendant.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and the weight to be given their testimony, but the law you shall receive in these written instructions and you must be governed thereby.

After you retire to the jury room, you should first select one of your members as your Presiding Juror. It is the Presiding Juror's duty to preside at your deliberations, vote with you, and, when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form attached hereto, and signing the same as Presiding Juror.

You are instructed to consider only evidence admitted under the rulings of the Court. If proposed evidence has been stricken by the Court, you should not consider it for any purpose.

During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor 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 must not discuss nor consider punishment during your deliberations. You are to concern yourselves solely with the

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question of guilt or innocence without any regard whatsoever to the possible punishment for the offense charged.

You may communicate with this Court during your deliberations. The communication must be in writing through the officer who has you in charge. Any such writing must be signed by the Presiding Juror. After you have retired, no one has any authority to communicate with you except the officer who has you in charge. Do not attempt to talk to the officer, or anyone else concerning any question you may have; instead address your inquiry to the Court in writing.

After you have reached a unanimous verdict, the Presiding Juror will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as Presiding Juror. The Presiding Juror will then notify the officer who has you in charge that you have reached a verdict. Afterwards you will then be brought into open court.

SIGNED on the 26th day of July, 2010.



HON. NOE GONZÁLEZ
JUDGE PRESIDING

FILED 8:05 O'CLOCK A M
AURORA DE LA GARZA, CLERK

J JUL 26 2010

DISTRICT COURT OF CAMERON COUNTY, TEXAS
[Signature] DEPUTY

A TRUE COPY I CERTIFY
AURORA DE LA GARZA, CLERK
DISTRICT COURT CAMERON COUNTY, TEXAS
DATE 8/11/10
BY [Signature] DEPUTY



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JUL 26 2010

DISTRICT COURT OF CAMERON COUNTY, TEXAS
[Signature] DEPUTY

CAUSE NO. 03-CR-457-B

THE STATE OF TEXAS

IN THE 138TH JUDICIAL

v.

DISTRICT COURT OF

JOHN ALLEN RUBIO

CAMERON COUNTY, TEXAS

FORMS OF VERDICT – COUNT I

We, the Jury, find the defendant, John Allen Rubio, “**Not Guilty**” as charged in Count I (Julissa A. Quesada) of the Indictment.

Presiding Juror

OR

We, the Jury, find the defendant, John Allen Rubio, “**Not Guilty by Reason of Insanity**” of Capital Murder as charged in Count I (Julissa A. Quesada) of the Indictment.

Presiding Juror

OR

We, the Jury, find the defendant, John Allen Rubio, “**Guilty**” of Capital Murder as charged in Count I (Julissa A. Quesada) of the Indictment.

Michelle L. Perry

Presiding Juror

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CAUSE NO. 03-CR-457-B

JUL 26 2010

DISTRICT COURT OF CAMERON COUNTY, TEXAS
[Signature]
DEPUTY

THE STATE OF TEXAS

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IN THE 138TH JUDICIAL

v.

DISTRICT COURT OF

JOHN ALLEN RUBIO

CAMERON COUNTY, TEXAS

FORMS OF VERDICT – COUNT II

We, the Jury, find the defendant, John Allen Rubio “**Not Guilty**” of Capital Murder as charged in Count II (Mary J. Rubio) of the Indictment.

Presiding Juror

OR

We, the Jury, find the defendant, John Allen Rubio “**Not Guilty by Reason of Insanity**” of Capital Murder as charged in Count II (Mary J. Rubio) of the Indictment.

Presiding Juror

OR

We, the Jury, find the defendant, John Allen Rubio “**Guilty**” of Capital Murder as charged in Count II (Mary J. Rubio) of the Indictment.

Mich. R. Perry

Presiding Juror

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JUL 26 2010

CAUSE NO. 03-CR-457-B

DISTRICT COURT OF CAMERON COUNTY, TEXAS
DEPUTY

THE STATE OF TEXAS

IN THE 138TH JUDICIAL

v.

DISTRICT COURT OF

JOHN ALLEN RUBIO

CAMERON COUNTY, TEXAS

FORMS OF VERDICT – COUNT III

We, the Jury, find the defendant, John Allen Rubio, "**Not Guilty**" of Capital Murder as charged in Count III (John E. Rubio) of the Indictment.

Presiding Juror

OR

We, the Jury, find the defendant, John Allen Rubio, "**Not Guilty by Reason of Insanity**" of Capital Murder as charged in Count III (John E. Rubio) of the Indictment.

Presiding Juror

OR

We, the Jury, find the defendant, John Allen Rubio, "**Guilty**" of Capital Murder as charged in Count III (John E. Rubio) of the Indictment.

Mark L. Perry

Presiding Juror

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JUL 26 2011

CAUSE NO. 03-CR-457-B

DISTRICT COURT OF CAMERON COUNTY, TEXAS
Aurora de la Garza DEPUTY

THE STATE OF TEXAS

IN THE 138TH JUDICIAL

v.

DISTRICT COURT OF

JOHN ALLEN RUBIO

CAMERON COUNTY, TEXAS

FORMS OF VERDICT – COUNT IV

We, the Jury, find the defendant, John Allen Rubio, **“Not Guilty”** as charged in Count IV of the Indictment.

Presiding Juror

OR

We, the Jury, find the defendant, John Allen Rubio, **“Not Guilty by Reason of Insanity”** of Capital Murder as charged in Count IV of the Indictment.

Presiding Juror

OR

We, the Jury, find the defendant, John Allen Rubio, **“Guilty”** of Capital Murder as charged in Count IV of the Indictment.

Mark L. Lewis

Presiding Juror

