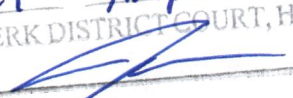


FILED this 5 day of November
2024 4:15 P.M.
CLERK DISTRICT COURT, HAYS CO. TX
By:  Deputy

CAUSE NO. CR22-3531-A

THE STATE OF TEXAS § IN THE 22ND
VS. § DISTRICT COURT
MARK BRIONES § HAYS COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, Mark Briones, is accused of Capital Murder of a Person under Ten. The defendant has entered a plea of “not guilty”, and you have heard all of the evidence that will be produced on whether the defendant has been proved guilty.

Both sides will soon present final arguments. Before they do so, I must now give you the instructions you must follow in deciding whether the defendant has been proved guilty or not.

You will have a written copy of these instructions to take with you and to use during your deliberations.

First, I will tell you about some general principles of law that must govern your decision of the case. Then, I will tell you about the specific law applicable to this case. Finally, I will instruct you on the rules that must control your deliberations.

GENERAL PRINCIPLES

The Indictment

The indictment is not evidence of guilt. The indictment is only a document required to bring the case before you. The indictment cannot be considered in any way

by the jury. Do not consider the fact that the defendant has been arrested, confined, or indicted or otherwise charged. You may not draw any inference of guilt from any of these circumstances.

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 an offense unless each element of the offense is proved beyond a reasonable doubt. 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.

Burden of Proof

The burden of proof throughout the trial is always on the State. The defendant does not have the burden to prove anything. The State must prove every element of the offense beyond a reasonable doubt to establish guilt for each offense. If the State proves every element beyond a reasonable doubt, then you must find the defendant guilty. If the State does not prove every element of the offense beyond a reasonable doubt, then you must find the defendant not guilty. If, after you have considered all of the evidence and these instructions, you have a reasonable doubt about whether the defendant is guilty, you must find the defendant not guilty.

Jury as Fact Finder

As the jurors, you review the evidence and determine the facts and what they prove. You judge the believability of the witnesses and what weight to give their testimony.

In judging the facts and the believability of the witnesses, you must apply the law provided in these instructions.

Evidence

The evidence consists of the testimony and exhibits admitted in the trial. You must consider only the evidence to reach your decision. You must not consider, discuss, 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 lawyers 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 the instructions that the terms are given special meanings. In that case, of course, you should give those terms the meanings provided in the instructions.

While you should consider only 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 are to render a fair and impartial verdict based on the evidence admitted in the case under the law that is in these instructions. Do not allow your verdict to be determined by bias or prejudice.

Admitted Exhibits

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

Testimony

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 writing signed by the foreperson, (1) states that it is requesting that 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.

Evidence of Other Crimes or Bad Acts by the Defendant

During the trial, you heard evidence that the defendant may have committed wrongful acts or offenses not charged in the indictment. The state offered the evidence as relevant facts and circumstances to assist the jury, if it does, in determining whether the defendant committed the Capital Murder charge, including testimony or evidence regarding the nature of the relationship between the defendant and the alleged victim. You are not to consider evidence of such a wrongful act or offense at all unless you find, beyond a reasonable doubt, that the defendant did, in fact, commit the wrongful act or offense. Those of you who believe the defendant did the wrongful act or offense may consider it for purposes of the Defendant's mental state.

Even if you do find that the defendant committed a wrongful act or offense, you may consider this evidence only for the limited purpose I have described. You may not consider this evidence to prove that the defendant is a bad person and for this reason was likely to commit the charged offense. In other words, you should consider this evidence only for the specific, limited purpose I have described. To consider this evidence for any other purpose would be improper.

Hearsay

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 or to give context to other evidence. You have been admonished by the Court not to use this evidence for the truth of the matter asserted.

The Verdict

The law requires that you render a verdict of either “guilty” or “not guilty.” The verdict of “not guilty” simply means that the State’s evidence does not prove the defendant guilty beyond a reasonable doubt.

You may return a verdict only if all twelve of you agree on this verdict.

When you reach a verdict, the foreperson should notify the court.

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, 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.

Note Taking

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 share your notes with the other jurors and you should not permit the other jurors to share their notes with you. 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. 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.

INSTRUCTIONS OF THE COURT

Accusations

The state accuses the defendant of having committed the offense of Capital Murder.

Relevant Statutes

A person commits the offense of capital murder if the person intentionally or knowingly causes the death of a person under 10 years of age.

To prove that a person is guilty of capital murder, the state must prove, beyond a reasonable doubt, two elements. The elements are that—

1. the person caused the death of an individual under 10 years of age;
and
2. the person did this intentionally or knowingly.

Burden of Proof

The state must prove, beyond a reasonable doubt, the accusation of Capital Murder.

Definitions

Intentionally

A person acts intentionally or with intent, with respect to a result when it is the person's conscious objective or desire to cause the result.

Knowingly

A person knowingly or with knowledge, with respect to a result of a person's conduct if the person is aware that the person's conduct is reasonably certain to cause the result.

Cause

A person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient.

Capital Murder

Application of Law to Facts

You must determine whether the state has proved, beyond a reasonable doubt, that the defendant is guilty of capital murder. This is the case if the state has proved, beyond a reasonable doubt, two elements. The elements are that—

1. the defendant, in Hays County, Texas, on or about the 20th day of June, 2022 caused the death of A.F.B., an individual under the age of ten, by striking A.F.B.,
and

2. the defendant did this either—

a. intentionally or

b. knowingly.

You must all agree on elements 1 through 2 listed above, but you do not have to agree on the specific mental state listed in 2a or 2b.

If you all agree the state has proved, beyond a reasonable doubt, all two elements listed above, you must find the defendant guilty of capital murder as alleged in the indictment.

If you all agree the State has failed to prove beyond a reasonable doubt either of the two elements listed above, you must find the defendant not guilty.

RULES THAT CONTROL DELIBERATIONS

You must follow these rules while you are deliberating and until you reach a verdict. After the closing arguments by the attorneys, you will go into the jury room.

Your first task will be to pick your foreperson. The foreperson should conduct the deliberations in an orderly way. Each juror has one vote, including the foreperson. The foreperson must supervise the voting, vote with other members on the verdict, and the sign the verdict sheet.

While deliberating and until excused by the trial court, all jurors must follow these rules:

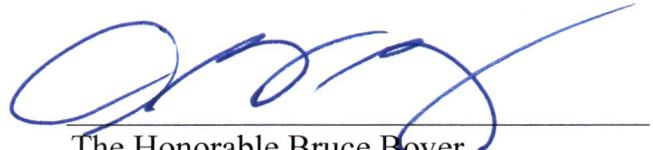
1. You must not discuss this trial with any court officer, or the attorneys, or anyone not on the jury.

2. You must not discuss this case unless all of you are present in the jury room. If anyone leaves the room, then you must stop your discussion about the case until all of you are present again.
3. You must communicate with the judge only in writing, signed by the foreperson and given to the judge through the officer assigned to you.
4. You must not conduct any independent investigations, research, or experiments. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Turn off all phones and other electronic devices. While you are deliberating, do not communicate with anyone through any electronic device. For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Instagram. Do not record or photograph any part of these court proceedings.
5. You must tell the judge if anyone attempts to contact you about the case before you reach your verdict.

Your sole duty at this point is to determine whether the Defendant has been proved guilty. You must restrict your deliberations to this matter.

After you have arrived at your verdict for each charge, you are to use the forms attached to these instructions. You should have your foreperson sign his or her name to the particular section of the form that conforms to your verdict.

After closing arguments by the attorneys, you will begin your deliberations to decide your verdict.



The Honorable Bruce Boyer
22nd District Court
Hays County, Texas