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THE STATE OF TEXAS
VS
JOHNNY ANTHONY PALOMO

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IN THE 93rd DISTRICT COURT
OF
HIDALGO COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, JOHNNY ANTHONY PALOMO, stands charged by indictment with the offense of Murder alleged to have been committed in Hidalgo County, Texas, on or about NOVEMBER 29, 2014. To this charge, the Defendant has pleaded not guilty.

1.

Our law provides that 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.

2.

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.

A person is criminally responsible if the result would not have occurred but for his conduct.

3.

Now, if you find from the evidence beyond a reasonable doubt that on or about NOVEMBER 29, 2014, in Hidalgo County, Texas, the Defendant, JOHNNY ANTHONY PALOMO, did then and there intentionally or knowingly commit or attempt to commit an act clearly dangerous to human life, to-wit: by

striking JEREMY VILLA, against an object unknown to the Grand Jurors, that caused the death of JEREMY VILLA, and the Defendant was then and there in the course of intentionally or knowingly committing a felony, to-wit: Injury to a Child, and said death of JEREMY VILLA was caused while the Defendant was in the course of and in furtherance of the commission or attempt of said felony, then you will find the Defendant, JOHNNY ANTHONY PALOMO, guilty of the offense of Murder as charged in the indictment;

OR, if you find from the evidence beyond a reasonable doubt that on or about NOVEMBER 29, 2014, in Hidalgo County, Texas, the Defendant, JOHNNY ANTHONY PALOMO, did then and there intentionally or knowingly commit or attempt to commit an act clearly dangerous to human life, to-wit: by throwing JEREMY VILLA with his hand, thereby causing him to collide with an object unknown to the Grand Jurors, that caused the death of JEREMY VILLA, and the Defendant was then and there in the course of intentionally or knowingly committing a felony, to-wit: Injury to a Child, and said death of JEREMY VILLA was caused while the Defendant was in the course of and in furtherance of the commission or attempt of said felony, then you will find the Defendant, JOHNNY ANTHONY PALOMO, guilty of the offense of Murder as charged in the indictment;

OR, if you find from the evidence beyond a reasonable doubt that on or about NOVEMBER 29, 2014, in Hidalgo County, Texas, the Defendant, JOHNNY ANTHONY PALOMO, did then and there intentionally or knowingly commit or attempt to commit an act clearly dangerous to human life, to-wit: by pushing JEREMY VILLA against a wall with his hand, that caused the death of JEREMY VILLA, and the Defendant was then and there in the course of intentionally or knowingly committing a felony, to-wit: Injury to a Child, and said death of JEREMY VILLA was caused while the Defendant was in the course of and in furtherance of the commission or attempt of said felony, then you will find the Defendant, JOHNNY ANTHONY PALOMO, guilty of the offense of Murder as charged in the indictment;

OR, if you find from the evidence beyond a reasonable doubt that on or about NOVEMBER 29, 2014, in Hidalgo County, Texas, the Defendant, JOHNNY ANTHONY PALOMO, did then and there

intentionally or knowingly commit or attempt to commit an act clearly dangerous to human life, to-wit: by manner and means unknown or unknowable to the Grand Jurors, that caused the death of JEREMY VILLA, and the Defendant was then and there in the course of intentionally or knowingly committing a felony, to-wit: Injury to a Child, and said death of JEREMY VILLA was caused while the Defendant was in the course of and in furtherance of the commission or attempt of said felony, then you will find the Defendant, JOHNNY ANTHONY PALOMO, guilty of the offense of Murder as charged in the indictment.

Unless you so find, or if you have a reasonable doubt thereof, you will acquit the Defendant of the offense of Murder.

4.

You have heard evidence that the Defendant made an oral and recorded statement to the police in this case.

If you find the Defendant did make the oral statement, you may consider that statement against him only if you resolve some preliminary questions in favor of the State.

Our law provides that an oral recorded statement by a Defendant made as a result of custodial interrogation may be considered against the Defendant only if:

- 1) An electronic recording of the statement was made, the recording device made an accurate recording, the operator was competent, all voices in the recording were identified, and the recording made was accurate and not altered; AND,
- 2) That prior to the taking of the statement but during the recording, the Defendant was warned that:

He had the right to remain silent and not make any statement at all and that any statement he made could be used against him at his trial;

Any statement he made would be used as evidence against him in court;

He had the right to have a lawyer present to advise him before and during any questioning;

If he was unable to employ a lawyer, that he had a right to have a lawyer appointed to advise him before and during any questioning;

He had the right to terminate the interview at any time; and

He knowingly, intelligently, and voluntarily waived the rights set out in the warning of rights as set out above.

Therefore, you may consider any statement you believe the Defendant made to the police only if you first all agree the State has proved, beyond a reasonable doubt, that all of the requirements and warnings as specifically set forth above were met.

If you do not find the State has proved these requirements beyond a reasonable doubt, you must disregard and not consider for any purpose any oral statements the Defendant may have made to the police.

However, if you do find the State has proved compliance with all of these requirements, then you may consider the evidence that the Defendant made the oral statements to the police, and give that evidence whatever weight you believe appropriate.

5.

Your 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, 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 in question, if any.

6.

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.

7.

A grand jury indictment is the means whereby a defendant is brought to trial in a 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 never shifts to the defendant.

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 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 Defendant and say by your verdict "Not Guilty".

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

When you retire to the jury room, you should first select one of your members as 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 thereto, and signing the same as Presiding Juror.

In order to return a verdict, each juror must agree thereto, but jurors have a duty to consult with each other and to deliberate with a view of reaching an agreement, if it can be done without violence to individual judgment.

Each juror must decide the case for himself or herself, but only after an impartial consideration of the evidence with his or her fellow jurors.

In the course of deliberations, a juror should not hesitate to re-examine his or her own views and change his or her opinion if convinced it is erroneous. However, no juror should surrender his or her honest conviction as to the weight or effect of the evidence solely because of the opinion of his or her fellow jurors, or for the mere purpose of returning a verdict.

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 should not discuss or consider punishment for the offense charged for any purpose. You must concern yourselves solely with the question of guilt or innocence of the Defendant under these written instructions without regard to any possible punishment imposed by law for the offense charged.

During your deliberations, you are instructed that you should not consider the remarks, rulings or actions of the presiding judge during this trial as any indication of the Court's opinion as to the guilt or innocence of the Defendant. The remarks, rulings and actions of the presiding judge were upon matters of the law only and were not upon the facts which you and you alone, must determine.

While you are deliberating, no one has authority to communicate with you except the officer who has you in charge being the Bailiff. However, after you have retired, you may communicate with the Court as to any questions you may have, but that communication must be in writing through the officer of the Court.

When you have reached a verdict you will notify the bailiff in writing, as to reaching a verdict, but not what the verdict is.

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

Your verdict must be unanimous, and after you have reached a unanimous verdict, the Presiding Juror will certify thereto by signing the appropriate form attached to this charge.

Filed on this the 8th day of December, 2016, at 10:00 o'clock A.m.


G. JAIME GARZA
VISITING JUDGE PRESIDING
93RD DISTRICT COURT
HIDALGO COUNTY, TEXAS