

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHEASTERN DIVISION

United States of America,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Case No. 2:04-cr-55
	)	
Alfonso Rodriguez, Jr.,	)	
	)	
Defendant.	)	

INSTRUCTIONS TO THE JURY

FINAL ELIGIBILITY PHASE INSTRUCTIONS

The Honorable Ralph R. Erickson  
United States District Judge

September 6, 2006

FINAL ELIGIBILITY PHASE INSTRUCTIONS

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INSTRUCTIONS TO THE JURY

FINAL ELIGIBILITY PHASE INSTRUCTIONS

Instruction No. 1

INTRODUCTION

Now that you have heard all of the evidence in this case and the arguments of each side, it is my duty to give you instructions as to the law that you must follow.

The purpose of this phase of the sentencing hearing is to determine whether the government has proven unanimously and beyond a reasonable doubt at least one threshold eligibility factor and at least one statutory aggravating factor. You may not consider imposing the death penalty unless you are unanimously convinced of these factors.

Instruction No. 2

STEP ONE: "THRESHOLD ELIGIBILITY FACTOR"

In Step One, you must determine whether or not the United States has proved beyond a reasonable doubt a specific threshold eligibility factor. A threshold eligibility factor centers on the defendant's intent and role in committing the offense for which he was convicted. Your focus must be on the individual intent of Alfonso Rodriguez. The government has alleged the following four possible ways in which this threshold intent to kill may be established:

a) the defendant intentionally killed Dru Sjodin;

OR

b) the defendant intentionally inflicted serious bodily injury that resulted in the death of Dru Sjodin;

OR

c) the defendant intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and Dru Sjodin died as a direct result of the act;

OR

d) the defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and Dru Sjodin died as a direct result of the act.

Before you may consider the imposition of the death penalty, you must unanimously find beyond a reasonable doubt that the defendant intentionally killed or committed acts resulting in the death of Dru Sjodin in one of the manners described above. Also, all of you must agree on the same method, if any, and not on different theories. If you unanimously make that finding as to the murder of Dru Sjodin, you should so indicate on the appropriate page of the Special Verdict Form and continue your deliberations. If you do not unanimously make that finding, you should so indicate on the appropriate page of the Special Verdict Form, and no further deliberations will be necessary.

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid

in a determination of defendant's knowledge or intent. You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Instruction No. 3

STEP TWO: "STATUTORY AGGRAVATING FACTOR"

If you unanimously find beyond a reasonable doubt a threshold eligibility factor, then you must proceed to step two and determine whether the government has proved beyond a reasonable doubt the existence of any of the following alleged statutory aggravating factors. These aggravating factors are called "statutory" aggravating factors because they are expressly identified in the death penalty statute. If you unanimously find beyond a reasonable doubt any of these statutory aggravating factors, you should so indicate on the Special Verdict Form. If you do not unanimously find beyond a reasonable doubt any of the alleged statutory aggravating factors, you should so indicate on the Special Verdict Form and no further deliberations will be necessary.

The first statutory aggravating factor alleged by the government is that the defendant caused the death of Dru Sjodin during the commission of a violation of 18 U.S.C. § 1201 (kidnapping). In order for this statutory aggravating factor to exist you must unanimously find that the government has proved beyond a reasonable doubt that Alfonso Rodriguez caused Dru Sjodin's death, or caused an injury resulting in her death, during the commission of, or attempted commission of, or during his immediate flight from the commission of, the crime of kidnapping.

The second statutory aggravating factor alleged by the government is that the defendant has previously been convicted of two or more federal or state offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person, to wit:

- (a) On April 3, 1975, Aggravated Rape, Polk County, Minnesota, District Court, Case No. 5447 (Elizabeth Knudson);
- (b) On April 3, 1975, Attempted Aggravated Rape, Polk County Minnesota, District Court, Case No. 5438 (Shirley Seddon Iverson); and
- (c) On June 24, 1980, Attempted Kidnapping and Assault in the 1st Degree, Polk County, Minnesota, District Court, Case No. 6192 (Ardyce Whalen).

In order for this statutory aggravating factor to exist you must unanimously find that the government has proved beyond a reasonable doubt that two or more of the above-entitled offenses were committed by the defendant, Alfonso Rodriguez and that the offenses involved the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

The third statutory aggravating factor alleged by the government is that the defendant killed Dru Sjodin in an especially heinous, cruel, or depraved manner, in that it involved torture or serious

physical abuse to Dru Sjodin. In order for this statutory aggravating factor to exist you must unanimously find that the government has proved beyond a reasonable doubt that the defendant, Alfonso Rodriguez (1) killed Dru Sjodin; and (2) that the killing was committed in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Dru Sjodin.

The fourth statutory aggravating factor alleged by the government is that the defendant killed Dru Sjodin after substantial planning and premeditation to cause the death of Dru Sjodin. In order for this statutory aggravating factor to exist you must unanimously find that the government has proved beyond a reasonable doubt that the defendant, Alfonso Rodriguez (1) killed Dru Sjodin; and (2) that he did so only after substantial planning and premeditation to cause the death of Dru Sjodin.

The law directs you to consider and decide at this point the existence or nonexistence of only the statutory aggravating factors specifically claimed by the government. You are reminded that in order to find the existence of any statutory aggravating factor, your decision must be both unanimous and beyond a reasonable doubt.

Instruction No. 4

TWO OR MORE OFFENSES INVOLVING THE  
INFLICTION OF SERIOUS BODILY INJURY

The government and the defendant have stipulated--that is, they have agreed--that the defendant's conviction for attempted kidnapping and assault in the 1st degree in case number 6192 (Ardyce Whalen) is an offense involving the infliction of, or attempted infliction of, serious bodily injury. You must therefore treat that fact as having been proved.

"Serious bodily injury" means bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of a bodily member, organ, or mental faculty. Rape or other sexual abuse does not in and of itself constitute serious bodily injury.

You must determine unanimously and beyond a reasonable doubt that the offense in case number 5438 (Shirley Seddon Iverson) or the offense in case number 5447 (Elizabeth Knudson) involved the infliction of, or the attempted infliction of, serious bodily injury. If, after your deliberations, you are left with a reasonable doubt that the offenses in 5438 and 5447 involved the infliction of, or the attempted infliction of, serious bodily injury, then you must conclude that the government has failed to establish beyond a reasonable doubt the existence of the aggravating factor that Defendant has been previously convicted of two or more offenses involving the infliction of, or attempted infliction of, serious bodily injury.

Instruction No. 5

HEINOUS, CRUEL, OR DEPRAVED

To establish that the defendant killed the victim, Dru Sjodin, in an especially heinous, cruel, or depraved manner, the government must prove that the killing involved either torture or serious physical abuse to the victim. You must not find this factor to exist unless you unanimously find that “torture” or “serious physical abuse” or both has or have been proved beyond a reasonable doubt. In other words, all twelve of you must agree that it involved torture and was thus heinous, cruel, or depraved; or all twelve of you must agree that it involved serious physical abuse to the victim and was thus heinous, cruel, or depraved; or both.

“Heinous” means extremely wicked or shockingly evil, where the killing was accompanied by such additional acts of torture or serious physical abuse of the victim as to set it apart from other killings. “Cruel” means that the defendant intended to inflict a high degree of pain by torturing the victim in addition to killing the victim. “Depraved” means that the defendant relished the killing or showed indifference to the suffering of the victim, as evidenced by torture or serious physical abuse of the victim.

“Torture” includes severe mental as well as physical abuse of the victim. In either case, the victim must have been conscious of the abuse at the time it was inflicted, and the defendant must have specifically intended to inflict severe mental or physical pain or suffering upon the victim, in addition to the killing of the victim. Severe mental pain or suffering means prolonged mental harm caused by or resulting from intentionally inflicting or threatening to inflict severe physical pain or suffering or from the threat of imminent death.

“Serious physical abuse” means a significant or considerable amount of injury or damage to the victim’s body. To constitute “serious physical abuse,” the defendant must have specifically

intended the abuse in addition to the killing.

Pertinent factors in determining whether a killing was especially heinous, cruel, or depraved include the infliction of gratuitous violence upon the victim above and beyond that necessary to commit the killing and the helplessness of the victim.

The word “especially” means highly or unusually great, distinctive, peculiar, particular, or significant, when compared to other killings.

Instruction No. 6

SUBSTANTIAL PLANNING AND PREMEDITATION

“Planning” means mentally formulating a method for doing something or achieving some end. “Premeditation” means thinking or deliberating about something and deciding whether to do it beforehand. “Substantial” planning and premeditation means a considerable or significant amount of planning and premeditation.

You may only consider whether Defendant killed Dru Sjodin after substantial planning and premeditation to cause her death. Substantial planning and premeditation to commit the kidnapping that preceded the murder is not sufficient to establish this aggravating factor.

Instruction No. 7

DEFENDANT'S RIGHT NOT TO TESTIFY

Alfonso Rodriguez, Jr. did not testify. The defendant has a constitutional right to remain silent. Furthermore, there is no burden upon a defendant to prove that he should not be sentenced to death. The burden is entirely on the government to prove that the defendant is eligible for consideration of a sentence of death. Accordingly, the fact that Alfonso Rodriguez did not testify must not be considered by you in any way, or even discussed, in arriving at your decision on your eligibility verdict.

Instruction No. 8

JUSTICE WITHOUT DISCRIMINATION

In your consideration of whether the defendant is eligible or not eligible for consideration of a death sentence, you must not consider the race, color, religious beliefs, national origin, or sex of either the defendant or the victim. You are not to return a verdict that the defendant is eligible for consideration of a sentence of death unless you would find the defendant eligible for consideration of a sentence of death for the crime without regard to the race, color, religious beliefs, national origin, or sex of either the defendant or the victim.

To emphasize the importance of this consideration, the verdict form contains a certification statement. Each of you should carefully read the statement and then sign your name on a signature line if the statement accurately reflects the manner in which each of you reached your decision.

Instruction No. 9

SPECIAL VERDICT FORM

I have prepared a form entitled “Special Verdict Form” to assist you during your deliberations. You are required to record your decisions on this form.

Section I of the Special Verdict Form contains space to record your findings on the threshold eligibility factor. Section II contains space to record your findings on statutory aggravating factors.

You are each required to sign the Special Verdict Form.

Instruction No. 10

DUTY TO DELIBERATE

It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. In reaching your conclusions, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Instruction No. 11

CONCLUDING INSTRUCTION

If you want to communicate with me at any time during your deliberations, please write down your message or question and pass the note to the marshal or bailiff who will bring it to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally.

I caution you, however, with any message or question you might send, that you should not tell me any details of your deliberations or how many of you are voting in a particular way on any issue.

Let me remind you again that nothing that I have said in these instructions -- and nothing that I have said or done during the trial -- has been said or done to suggest to you what I think your decision should be. The decision is your exclusive responsibility.

Dated this \_\_\_\_\_ day of September, 2006.

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Ralph R. Erickson, District Judge  
United States District Court