

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

PRELIMINARY SELECTION PHASE INSTRUCTIONS

The Honorable Ralph R. Erickson  
United States District Judge

September 11, 2006

PRELIMINARY SELECTION PHASE INSTRUCTIONS

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INSTRUCTIONS TO THE JURY

PRELIMINARY SELECTION PHASE INSTRUCTIONS

Instruction No. 1

INTRODUCTION

Members of the jury, in the eligibility phase of the trial, you unanimously found the defendant, Alfonso Rodriguez, Jr., eligible for consideration of a death sentence. Therefore, in this “selection phase” of the trial, you must now consider whether or not a sentence of death or a sentence of life imprisonment without the possibility of parole shall be imposed for commission of this crime. This decision is left exclusively to you, the jury. If you find that a death sentence should be imposed, then I am required to impose that sentence. If you find that a death sentence should not be imposed, then I shall impose a sentence of life imprisonment without the possibility of parole.

In these preliminary selection phase instructions, I will introduce you to the factors that you must consider and the issues that you must decide to determine which sentence shall be imposed. At the end of the selection phase of the trial, I will give you final written instructions on these matters.

Instruction No. 2  
NATURE OF PROCEEDINGS

There are three steps that you must go through to make your final determination of which sentence should be imposed.

In Step One, you must consider whether the government has proved beyond a reasonable doubt any “Non-statutory Aggravating Factors.” As with the statutory aggravating factors, non-statutory aggravating factors are facts or circumstances that would tend to support imposition of the death penalty. These factors are called “non-statutory” because they are not identified by the death penalty statute; instead they are identified by other applicable law. You may consider in Step Three, described below, any “Non-statutory Aggravating Factor” that you unanimously find that the government has proved beyond a reasonable doubt.

In Step Two, you must consider whether the defendant has proved by the greater weight of the evidence any “Mitigating Factors.” A “mitigating factor” is any aspect of a defendant’s character or background, any circumstance of the offense in question, or any other relevant fact or circumstances that might indicate that the defendant should receive a sentence of life imprisonment without the possibility of parole instead of a death sentence.

In addition to these mitigating factors, you are permitted to consider anything else that is established by the greater weight of the evidence about the commission of the crime or about the defendant’s background or character that would mitigate in favor of a sentence of life imprisonment without the possibility of parole and against the death penalty, whether or not specifically argued by defense counsel.

Unlike aggravating factors, which you must unanimously find to have been proved beyond a reasonable doubt, the law does not require unanimous agreement with regard to mitigating factors.

Any juror who finds the existence of a mitigating factor must consider it in this case, regardless of the number of jurors who agree that the factor has been established. Furthermore, any juror may consider a mitigating factor found by another juror, even if the first juror did not initially find that factor to be mitigating.

In Step Three, you must consider whether the statutory aggravating factors that you found during the eligibility phase, together with any non-statutory aggravating factors that you found to exist in Step One above, taken together, sufficiently outweigh any mitigating factors that you found in Step Two such that a sentence of death is justified. In the absence of any mitigating factors, you must consider whether the aggravating factors are themselves sufficient to justify a sentence of death. Based on your weighing of all of the factors, you will decide whether to impose a sentence of death or a sentence of life imprisonment without the possibility of parole. Furthermore, you must not simply count the number of aggravating factors and mitigating factors to reach your decision; rather, you must consider the weight and value of each factor.

A determination to impose a death sentence must be unanimous. If you each find that a death sentence should be imposed, then I am required to impose a death sentence. On the other hand, if, after weighing the aggravating factors proved in the case and all of the mitigating factors found by any juror, any one of you finds that a sentence of death is not justified, then the death sentence cannot be imposed, and I will impose a sentence of life imprisonment without the possibility of parole.

Instruction No. 3  
BURDEN OF PROOF

As I have just instructed you, the government must meet its burden of proof beyond a reasonable doubt. A “reasonable doubt” is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence received in this trial. It is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

The defendant does not have the burden of disproving the existence of anything the government must prove beyond a reasonable doubt. The burden is wholly upon the government; the law does not require the defendant to produce any evidence at all.

It is the defendant’s burden to establish any mitigating factors he asserts by the greater weight of the evidence. Any mitigating factor that you find on your own, which is not asserted by the defendant, must also be proved by the greater weight of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which of the evidence is more believable. To prove something by the greater weight of the evidence is a lesser standard of proof than proof beyond a reasonable doubt.

During jury selection, and at times during this trial, you have heard the lawyers and I use the phrase “preponderance of the evidence.” To prove something by a preponderance of the evidence is the same as saying it must be proved by the greater weight of the evidence.

Instruction No. 4

EVIDENCE

In making all the determinations you are required to make in this selection phase of the trial, you may consider any evidence that was presented during the merits phase of the trial, during the eligibility phase of the trial, as well as evidence that is presented at this selection phase of the trial.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it. In deciding what testimony of any witness to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with other evidence that you believe.

Instruction No. 5

VICTIM IMPACT TESTIMONY -- TESTIMONY ON  
DEFENDANT'S GENERAL CHARACTER

During this selection phase of the trial you may hear testimony from the family and very close friends of Dru Sjodin. Such evidence is commonly called “victim impact evidence.” The law allows this sort of testimony for only limited purposes, that is, to provide the jury with a “thumbnail sketch” of the victim and to describe in a general fashion the losses that have been or will be sustained by her family. These witnesses are not allowed to make any statements characterizing the crime, the defendant, the appropriateness of any sentence, or solely the emotional impact of the crime. Likewise the law does not allow these witnesses to comment on the sentence that should be imposed. The law requires that this testimony provide you with factual information relating to the “thumbnail sketch” of the persons involved or the losses involved.

I have specifically instructed the witnesses that they may not testify about the love and affection they felt for Dru Sjodin or feel for Alfonso Rodriguez nor may they testify about the love and affection Dru Sjodin felt for them or the love and affection Alfonso Rodriguez feels for them. The law does not allow appeals that are directed primarily to your emotions or passions, and you should disregard any comments that you believe involve such appeals to your emotions or passions.

During the selection phase of the trial you may hear similar testimony from the family and very close friends of Alfonso Rodriguez, Jr. Once again, this testimony about the defendant's general character is allowed for only limited purposes: to provide a “thumbnail sketch” of the defendant and to describe in a general way his character. Once again, these witnesses are not allowed to characterize the crime, the appropriate sentence, or solely the emotional impact of any sentence that might be imposed. Likewise, the law does not allow these witnesses to comment on

the sentence that should be imposed. Once again, it does not allow appeals that are directed primarily to your emotions or passions, and you should disregard any comments that you believe involve such appeals to your emotions or passions.

You are cautioned that this testimony, whether offered by the government or the defense, carries with it inherent risks, and you should consider the testimony carefully and take steps to insure that your rational decision-making process is not overwhelmed by the inherent emotional appeal of the testimony.

Instruction No. 6

**DUTY TO FOLLOW THE LAW**

Regardless of any opinion you may have as to what the law may be--or should be--it would be a violation of your oaths as jurors to base your verdict upon any view of the law other than that given to you in these instructions. Some of the legal principles that you must apply to your selection phase decisions duplicate those you followed in reaching your verdict in the merits phase, but others are different. A Special Findings Form will be prepared for you. The Special Findings Form will detail specific findings that you must make in this case and will help you perform your duties properly.

Instruction No. 7

DUTY TO KEEP AN OPEN MIND -- JUROR CONDUCT

The task of determining whether to impose a death sentence or a sentence of life imprisonment without the possibility of parole is an extremely important one. Therefore, please keep an open mind until you have heard the arguments of the parties; considered carefully the evidence presented during the merits phase, the eligibility phase, and the selection phase; and discussed that evidence with your fellow jurors. Remember, the decision as to whether or not the circumstances in this case justify a death sentence or a sentence of life imprisonment without the possibility of parole is entirely yours. You must not take anything I said or did during any phase of this trial as indicating what I think of the evidence or what I think the sentence should be.

The Court's prior instructions about how you must conduct yourselves during this trial must still be followed. Therefore, among other things that the Court has previously told you, do not talk to anyone about this case or let anyone talk to you about this case until after you have completed all of your deliberations and been discharged from service in this case. Do not conduct outside research or information gathering of any kind. Your decision about the defendant's sentence must be based exclusively on the evidence presented in court, your common sense, the law, the definitions provided in the law, and nothing else.