

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 ELIGIBILITY PHASE INSTRUCTIONS

The Honorable Ralph R. Erickson
United States District Judge

September 5, 2006

PRELIMINARY “ELIGIBILITY” PHASE INSTRUCTIONS

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the death penalty should be imposed.

In these “eligibility phase” instructions, I will explain to you the factors that you must consider and the issues that you must decide to determine whether or not the defendant is eligible for consideration of the death sentence.

Instruction No. 2

NATURE OF PROCEEDINGS

Before you may consider whether to impose a sentence of death, you must find the presence of at least one “threshold intent factor” and at least one “statutory aggravating factor.” You must make both of these findings unanimously and beyond a reasonable doubt. A “threshold intent factor” is a factor listed in the death penalty statute which concerns Defendant’s intent and role in the death of Dru Sjodin. A “statutory aggravating factor” is a factor or circumstance listed in the death penalty statute which would tend to support the imposition of the death penalty.

The United States alleges the following threshold eligibility factors regarding Defendant’s intent and role in the killing of Dru Sjodin:

- 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.

The United States alleges the following statutory aggravating factors:

- (1) Alfonso Rodriguez, Jr. caused the death of Dru Sjodin during the commission of a violation of 18 U.S.C. § 1201 (kidnapping);
- (2) Alfonso Rodriguez, Jr. 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;

- (b) On April 3, 1975, Attempted Aggravated Rape, Polk County, Minnesota, District Court, Case No. 5438; and
 - (c) On June 24, 1980, Attempted Kidnapping and Assault in the 1st Degree, Polk County, Minnesota, District Court, Case No. 6192.
- (3) Alfonso Rodriguez, Jr. killed Dru Sjodin in an especially heinous, cruel, or depraved manner, in that it involved torture or serious physical abuse to Dru Sjodin.
 - (4) Alfonso Rodriguez, Jr. killed Dru Sjodin after substantial planning and premeditation to cause the death of Dru Sjodin.

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.

Instruction No. 4

EVIDENCE

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

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 eligibility phase decisions duplicate those you followed in reaching your verdict in the merits phase, but others are different. An Eligibility Phase Verdict Form will be prepared for you. The Eligibility Phase Verdict Form will detail special findings that you must make in this case and will help you perform your duties properly.

Instruction No. 6

DUTY TO KEEP AN OPEN MIND -- JUROR CONDUCT

Deciding whether or not the defendant is eligible for consideration of the death penalty 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 and the eligibility phase, and discussed that evidence with your fellow jurors. Remember, you, the jury, must determine whether or not the circumstances in this case are such that the defendant is eligible for consideration of a death sentence. You must not take anything the Court says or did during the merits phase of the trial or anything the Court may say or do during this eligibility phase as indicating what the Court thinks of the evidence or what the verdict on the eligibility question 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 eligibility or ineligibility for consideration of a death sentence must be based exclusively on the evidence presented in court during the merits phase and the eligibility phase, your common sense, the law, the definitions provided in the law, and nothing else.