

PROCEEDING

1 comes in.

2 *** (DELIBERATIONS) ***

3 THE COURT: We have a note. I'm going to read to them
4 the charge on murder in the second-degree and kidnapping.

5 MR. DRUCKER: Yes, your Honor.

6 COURT OFFICER: Jury entering.

7 MR. WILLIAMS: Your Honor, may we approach briefly?

8 THE COURT: Yes.

9 (Discussion at the bench was held off the record).

10 THE COURT: Okay. So you asked me for the instructions
11 on the law regarding felony murder. Regarding the
12 kidnapping. And I will do that.

13 The penal law states a person is guilty of murder in
14 the second-degree when acting either alone or with one or
15 more other persons he commits or attempts to commit a
16 kidnapping and in the course of and in furtherance of the
17 crime or of the immediate flight from the crime he or
18 another participant causes the death of a person other than
19 one of the participants.

20 Under our law a person is guilty of kidnapping in the
21 second-degree when he abducts another person. To abduct
22 means to restrain a person with the intent to prevent the
23 person's liberation either by secreting or holding him in a
24 place where he is not likely to be found or by using or
25 threatening to use deadly physical force.

Lourdes Torres-Fuster, Senior Court Reporter

PROCEEDING

1 Restrain means to restrict a person's movements
2 intentionally and unlawfully in such a manner as to
3 interfere substantially with his liberty by moving him from
4 one place to another or by confining him either in a place
5 where the restriction began or in a place to which he has
6 been moved without consent and with knowledge that the
7 restriction is unlawful.

8 A person restricts another's movements intentionally
9 when his goal, his conscious objective is to restrict that
10 person's movement.

11 A person restricts another's movement unlawfully when
12 he is not authorized by law to do so and when he is aware
13 that the restriction is not authorized by law.

14 A person is moved or confined without consent when such
15 is accomplished by physical force, intimidation or
16 deception.

17 Intent means conscious objective or purpose.

18 Thus, a person acts with intent to prevent another's
19 liberation either by secreting or holding him in a place
20 where he is not likely to be found or by using or
21 threatening to use deadly physical force when that person's
22 goal or purpose is to do so.

23 Deadly physical force means physical force which under
24 the circumstances in which it is used is readily capable of
25 causing death or other serious physical injury.

 Lourdes Torres-Fuster, Senior Court Reporter

PROCEEDING

1 In order for you to find Mr. Dellos Santos guilty of
2 murder in the second-degree the prosecution is required to
3 prove from all the evidence in this case beyond a
4 reasonable doubt:

5 One, that on October 8, 1999 in New York Mr. Dellos
6 Santos acting in concert with others committed a
7 kidnapping.

8 And, two, that in the course of and in furtherance of
9 the commission of that kidnapping Mr. Dellos Santos or
10 another participant in the kidnapping caused the death of
11 Manuel Gonzalez and Mr. Gonzalez was not a participant in
12 the crime.

13 If you find that the prosecution has proven beyond a
14 reasonable doubt both of these elements then you must find
15 him guilty of murder in the second-degree as charged in
16 this count.

17 On the other hand, if you find that the prosecution has
18 not proven one or both of those elements beyond a
19 reasonable doubt then you must find him not guilty.

20 I hope that helped you.

21 So bring the jury in to deliberate.

22 COURT OFFICER: Jurors.

23 THE COURT: Please, I want them to stay.

24 COURT OFFICERS: Yes.

25 (Jurors exit the courtroom).

Lourdes Torres-Fuster, Senior Court Reporter