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CAUSE NO. 57,383

THE STATE OF TEXAS	§	IN THE 264TH JUDICIAL
VS.	§	DISTRICT COURT OF
TIMOTHY DOAN PAYNE	§	BELL COUNTY, TEXAS

CHARGE OF THE COURT

Ladies and Gentlemen of the Jury:

The defendant, Timothy Doan Payne, stands charged by indictment with the offense of Capital Murder alleged to have been committed in Bell County, Texas, on or about the 26th day of November, 2004.

To this charge the defendant has pleaded not guilty. You are instructed that the law applicable to this case is as follows:

I.

A person commits the offense of murder if he intentionally or knowingly causes the death of an individual.

A person commits the offense of capital murder if he commits murder as defined above and he murders more than one person during the same criminal transaction.

II.

"Individual" means a human being who is alive.

III.

A person commits the offense of Robbery if in the course of committing theft as hereinafter defined and with intent to obtain or maintain control of the property, he

(1) intentionally, knowingly, or recklessly causes bodily injury to another; or



(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

You are instructed that Robbery is a felony offense.

IV.

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

V.

A person commits Theft if he unlawfully appropriates property with intent to defraud the owner of the property.

Appropriation of property is unlawful if it is without the owner's effective consent.

"Appropriate" means to acquire or to otherwise exercise control over property other than real property.

"Deprive" means to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner.

VI.

"In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.

"Property" means:

(A) tangible or intangible personal property, including anything severed from land;
or

(B) a document, including money, that represents or embodies anything of value.

"Consent" means assent in fact, whether expressed or apparent.

"Effective consent" includes consent by a person legally authorized to act for the owner.

Consent is not effective if induced by force, threat, or fraud.

VII.

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.

VIII.

A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both. Each party to an offense may be charged as a principal with commission of the offense.

A person is criminally responsible for the offense committed by conduct of another if:

(1) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense.

(2) All traditional distinctions between accomplices and principals are abolished, and each party to an offense may be charged and convicted without alleging that he acted as a principle or an accomplice.

In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to its commission.

It is no defense that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

Mere presence alone does not constitute being a party to an offense.

IX.

If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in the furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

"Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute a felony offense and that person or one or more of them perform an overt act in furtherance of that agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

X.

You are further instructed that you may consider all relevant facts and circumstances surrounding the killings, if any, and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense alleged in the indictment.

XI.

Now bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt, that Richard Lee Tabler, on or about the 26th day of November, 2004, in the County of Bell, and State of Texas, did then and there intentionally or knowingly cause the death of an individual, namely, Haitham Zayed, by shooting Haitham Zayed with a firearm, and did then and there intentionally or knowingly cause the death of another individual, namely Mohamed-Amine Rahmouni, by shooting Mohamed-Amine Rahmouni with a firearm, and both murders were committed during the same criminal transaction, and you further find

beyond a reasonable doubt that the defendant, Timothy Doan Payne, acting with the intent to promote or assist the commission of the offense by Richard Lee Tabler, encouraged or aided or attempted to aid Richard Lee Tabler in committing the offense of capital murder, you will find the defendant guilty of capital murder as alleged in the indictment and so say by your verdict, or, if you believe from the evidence beyond a reasonable doubt, that the Defendant, Timothy Doan Payne conspired with Richard Lee Tabler to commit the offense of Robbery and that in the attempt to carry out the conspiracy, Richard Lee Tabler, on or about the 26th day of November, 2004, in the County of Bell, and State of Texas, did then and there intentionally or knowingly cause the death of an individual, namely, Haitham Zayed, by shooting Haitham Zayed with a firearm, and did then and there intentionally or knowingly cause the death of another individual, namely Mohamed-Amine Rahmouni, by shooting Mohamed-Amine Rahmouni with a firearm, and both murders were committed during the same criminal transaction, and that such offense was committed in furtherance of the unlawful purpose of the conspiracy, and should have been anticipated by Timothy Doan Payne as a result of the carrying out of the conspiracy, you will find the defendant guilty of capital murder as alleged in the indictment and so say by your verdict, but if you do not believe or if you have a reasonable doubt thereof, you will acquit the defendant of capital murder and next consider the lesser offense of Murder.

XII.

Now bearing in mind the foregoing instructions and definitions, if you believe from the evidence beyond a reasonable doubt, that Richard Lee Tabler, on or about the 26th day of November, 2004, in the County of Bell, and State of Texas, did then and there intentionally or knowingly cause the death of an individual, namely, Mohamed-Amine Rahmouni by shooting Mohamed-Amine Rahmouni with a firearm, and you further find beyond a reasonable doubt that the defendant, Timothy Doan Payne, acting with the intent to promote or assist the commission of the

offense by Richard Lee Tabler, encouraged or aided or attempted to aid Richard Lee Tabler in committing the offense of murder, you will find the defendant guilty of the lesser offense of murder and so say by your verdict, or

if you believe from the evidence beyond a reasonable doubt, that the Defendant, Timothy Doan Payne conspired with Richard Lee Tabler to commit the offense of Robbery and that in the attempt to carry out the conspiracy, Richard Lee Tabler, on or about the 26th day of November, 2004, in the County of Bell, and State of Texas, did then and there intentionally or knowingly cause the death of an individual, namely, Mohamed-Amine Rahmouni, by shooting Mohamed-Amine Rahmouni with a firearm, and that such offense was committed in furtherance of the unlawful purpose of the conspiracy, and should have been anticipated by Timothy Doan Payne as a result of the carrying out of the conspiracy, you will find the defendant guilty of the lesser offense of murder and so say by your verdict, but if you do not believe or if you have a reasonable doubt thereof, you will acquit the defendant of the lesser offense of murder and say by your verdict "Not Guilty".

XIII.

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 this 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 him and say by your verdict "Not guilty".

You are further instructed as a part of the law in this case that the indictment against the defendant is not evidence in the case, and that the true and sole use of the indictment is to charge the offense, and to inform the defendant of the offense alleged against him. The reading of the indictment to the jury in the statement of the case of the State against the defendant cannot be considered as a fact or circumstance against the defendant in your deliberations.

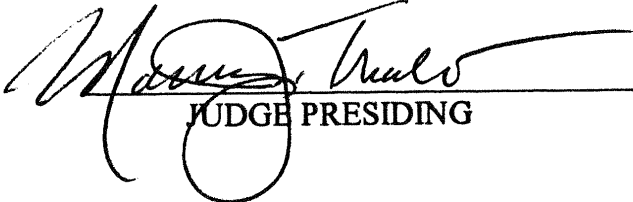
In deliberating on the cause you are not to refer to or discuss any matter or issue not in evidence before you; and in determining the guilt or innocence of the defendant, you shall not discuss or consider the punishment, if any, which may be assessed against the defendant in the event he is found guilty beyond a reasonable doubt.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, or any witness therein, and no juror is permitted to communicate to any other juror anything he may have heard regarding the case of any witness therein, from any source other than the witness stand.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given to the testimony. But you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

After the reading of this Charge, you shall not be permitted to separate from each other, nor shall you talk with anyone not of your jury. After argument of counsel, you will retire and select one of your members as your foreman. It is his or her duty to preside at your deliberations and to vote with you in arriving at an unanimous verdict. After you have arrived at your verdict, you may use

one of the forms attached hereto by having your foreman sign his or her name to the particular form that conforms to your verdict, but in no event shall he or she sign more than one of such forms.


JUDGE PRESIDING

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VERDICT OF THE JURY

We, the Jury, find beyond a reasonable doubt that the Defendant is guilty of the offense of Capital Murder, as charged in the indictment.

Sealed By
Order of The Court

We, the Jury, find beyond a reasonable doubt that the Defendant is guilty of the lesser offense of Murder.

FOREMAN

We, the Jury, find the Defendant, NOT GUILTY.

FOREMAN