

**ORIGINAL**

93198  
CAUSE NO. 219-81388-2015

THE STATE OF TEXAS,

v.

EVIN ANDREW PAGE,  
*Defendant.*

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH DISTRICT COURT

**JURY CHARGE**

**MEMBERS OF THE JURY:**

The Defendant, **Evin Andrew Page**, stands charged by indictment with the offense of *Capital Murder*. The offense is alleged to have been committed in Collin County, Texas on or about August 23, 2015. To this charge the Defendant has pleaded not guilty.

**Definitions**

Our law provides a person commits the offense of "*Capital Murder*" if the person intentionally commits murder in the course of committing or attempting to commit robbery.

Our law provides a person commits the offense of "*Murder*" if the person:

1. intentionally or knowingly causes the death of an individual; or
2. commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

Our law provides that a person commits the offense of "*Manslaughter*" if he recklessly causes the death of an individual.

A person commits the offense of "*Robbery*" if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain and maintain control of property of another, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. Robbery is a felony.

The term "*in the course of committing theft*" means conduct occurring in an attempt to commit, during the commission, or in immediate flight after the commission of theft.

"*Theft*" as used herein means the unlawful appropriation of the personal property of another, with the intent to deprive such person of said property. Appropriation of property is unlawful if it is without the owner's effective consent.

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

"*Deprive*" means to withhold property from the owner permanently or to dispose of property in a manner that makes recovery of the property by the owner unlikely.

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 LYNNE FINLEY  
 DISTRICT CLERK  
 COLLIN COUNTY, TX  
 DEPUTY

*“Effective consent”* includes consent by a person legally authorized to act for the owner. Consent is not effective if induced by deception or coercion.

An *“individual”* means a human being who is alive.

A person acts *“intentionally”*, or *“with intent”*, with respect to the nature of his conduct or to the result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

A person acts *“knowingly,”* or *“with knowledge,”* with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct result of his conduct when he is aware his conduct is reasonably certain to cause the result.

A person acts *“recklessly,”* or is *“reckless,”* with respect to the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

### **General Instructions**

You are instructed while the indictment alleges the offense was committed on or about August 23, 2015, you are not bound to find the offense, if any, took place on that specific date. It is sufficient if the alleged date is approximately accurate, and you find the offense, if any, occurred prior to October 27, 2015, the date of the return of the indictment in this case.

### **Application**

#### *Capital Murder*

Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about August 23, 2015, in Collin County, Texas, the Defendant, **Evin Andrew Page** did then and there intentionally cause the death of an individual, John Tran, by shooting John Tran with a firearm, while in the course of committing or attempting to commit the offense of robbery of John Tran, then you will next consider whether his conduct was justified.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof that the Defendant committed *Capital Murder* as charged, or if you cannot agree, you will next consider whether he is guilty of the lesser-included offenses of *Felony Murder* and *Murder* as instructed below.

#### *Felony Murder*

Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about August 23, 2015, in Collin County, Texas, the Defendant, **Evin Andrew Page** did then and there intentionally or knowingly commit or attempt to commit a felony, to wit: robbery, and in the course of and in furtherance of the commission or attempt, **Evin Andrew Page** committed an act clearly dangerous to human life by shooting John Tran

with a firearm, which caused the death of an individual, namely John Tran, then you will next consider whether his conduct was justified.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof that the Defendant committed *Felony Murder* as included in the indictment, or if you cannot agree, you will next consider whether he is guilty of the offense of *Murder* as instructed below.

*Murder*

Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about August 23, 2015, in Collin County, Texas, the Defendant, **Evin Andrew Page** did then and there intentionally or knowingly cause the death of an individual, John Tran, by shooting John Tran with a firearm, then you will next consider whether his conduct was justified.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof that the defendant committed Murder as included in the indictment, or if you cannot agree, you will next consider whether he is guilty of the lesser-included-offense of *Manslaughter* as instructed below.

*Manslaughter*

Now, if you find from the evidence beyond a reasonable doubt on or about August 23, 2015, in Collin County, Texas, the Defendant, **Evin Andrew Page** did then and there recklessly cause the death of an individual, John Tran, by shooting John Tran with a firearm, then you will next consider whether his conduct was justified.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the Defendant "not guilty."

*Justification—Self-Defense*

Upon the law of self defense you are instructed that a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

The use of force against another is not justified in response to verbal provocation alone.

A person is justified in using deadly force against another:

- (1) if the person would be justified in using force against the other; and
- (2) when and to the degree the person reasonably believes the deadly force is immediately necessary:
  - (A) to protect himself against the other's use or attempted use of unlawful deadly force; or
  - (B) to prevent the other's imminent commission of murder, robbery, or aggravated robbery.

The defendant's belief that the deadly force was immediately necessary is presumed to be reasonable if the defendant:

(1) knew or had reason to believe that the person against whom the deadly force was used:

(A) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the defendant from the defendant's vehicle; or

(B) was committing or attempting to commit murder, robbery, or aggravated robbery;

(2) the defendant did not provoke the person against whom the force was used; and

(3) the defendant was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force.

In determining whether an actor reasonably believed that the use of deadly force was necessary, you may not consider whether the actor failed to retreat.

*"Reasonable belief"* means a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

*"Deadly force"* means force that is intended or known by the person using it to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

*"Vehicle"* includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation, except such devices as are classified as "habitation".

The presumption of reasonable belief applies unless the State proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist.

If the State fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed facts exist.

Even though the jury may find the presumed fact does not exist, the state must prove beyond a reasonable doubt each of the elements of the offense charged.

If the jury has a reasonable doubt as to whether the presumed facts exist, the presumption applies and the jury must consider the presumed fact to exist.

You are further instructed that it is your duty to consider all relevant facts and circumstances surrounding the alleged killing 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 alleged offense.

Therefore, if you unanimously find and believe from the evidence beyond a reasonable doubt the Defendant, **Evin Andrew Page**, is guilty of *Capital Murder, Felony Murder*,

*Murder, or Manslaughter* as charged in one of the foregoing paragraphs, then you will find him guilty unless you further find, or have a reasonable doubt thereof, that the Defendant reasonably believed the use of deadly force, if any, was immediately necessary to protect himself from John Tran's use or attempted use of unlawful deadly force or to prevent John Tran from committing *Murder, Robbery, or Aggravated Robbery*. If you do so find, then you will find his conduct was justified and find the Defendant "not guilty."

### **Final Instructions**

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 a person has been arrested, confined, or charged with an offense gives rise to no inference of guilt at his trial. An indictment is no evidence of guilt. 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 of the evidence in the 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 they fail to do so, you must acquit the Defendant.

The State has introduced evidence of extraneous crimes or bad acts other than the one charged in the indictment in this case. This evidence was admitted only for the purpose of assisting you, if it does, in determining motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or to rebut a defensive theory. You cannot consider the testimony for any purpose unless you find and believe beyond a reasonable doubt that the Defendant committed such other acts, if any were committed.

You are instructed you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion upon any matter of fact in this case, and if you have observed anything which you have or may interpret as the Court's opinion upon any matter of fact in this case, you must wholly disregard it.

You are instructed any statements of counsel made during the course of the trial or during argument not supported by the evidence, or statements of law made by counsel not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

You are further instructed you should not question the Bailiff concerning the testimony or the law of the case, nor should you discuss the case in his presence. If you have any questions, you should reduce them to writing, to be signed by the presiding juror, and present them to the Court.

If the Jurors disagree as to the statement of any witness, they may, upon applying to the Court, have read to them from the Court Reporter's notes that portion of such witness' testimony, and only that portion, on the point in dispute.

You are instructed the indictment is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence, nor can it be considered as such when passing upon whether the Defendant is guilty or not guilty.

During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

After you retire to the jury room, you should select one of your members as your presiding juror. It is their duty to preside at your deliberations and vote with you. Your verdict must be unanimous and signed by the presiding juror.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and the weight to be given their testimony, but you must be governed by the law you receive in these written instructions.

Suitable forms for your verdict are attached hereto. Your verdict must be in writing and signed by your presiding juror. Your sole duty at this time is to determine whether the Defendant is guilty or not guilty under the indictment in this cause and you are to restrict your deliberations to that issue.



\_\_\_\_\_  
Scott J. Becker, Judge Presiding

Date: September 1, 2017

## Verdict Forms

We, the Jury, find the Defendant guilty of *Capital Murder* as charged in the indictment.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

**Presiding Juror**

**OR,**

We, the Jury, find the Defendant guilty of *Felony Murder* as included in the indictment.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

**Presiding Juror**

**OR,**

We, the Jury, find the Defendant guilty of *Murder* as included in the indictment.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

**Presiding Juror**

**OR,**

We, the Jury, find the Defendant guilty of *Manslaughter* as included in the indictment.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

**Presiding Juror**

**OR,**

We, the Jury, find the Defendant not guilty.

Signature Jennifer N. Lane

Printed Name JENNIFER N. LANE

**Presiding Juror**