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CAUSE NO. 1252434

THE STATE OF TEXAS	§	IN THE 174TH DISTRICT COURT
VS.	§	OF HARRIS COUNTY, TEXAS
XAVIER ALEXANDER AUSTIN	§	JULY TERM, A. D., 2012

Members of the Jury:

The defendant, Xavier Alexander Austin, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 3rd day of June, 2009, in Harris County, Texas. The defendant has pleaded not guilty.

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 intentionally commits murder, as hereinbefore defined, in the course of committing or attempting to commit the offense of (robbery). Robbery is a felony offense.

A person commits the offense of robbery if, in the course of committing theft, and with intent to obtain or maintain control of property of another, he

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

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

A person commits the offense of aggravated robbery if he commits robbery, as hereinbefore defined, and he:

(1) causes serious bodily injury to another; or

(2) uses or exhibits a deadly weapon.

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

"Attempt" to commit an offense occurs if, with specific intent to commit an offense, a person does an act amounting to more than mere preparation that tends, but fails, to effect the commission of the offense intended.

"Theft" is the unlawful appropriation of property with intent to deprive the owner of property.

"Appropriation" and "appropriate", as those terms are used herein, means to acquire or otherwise exercise control over property other than real property. Appropriation of property is unlawful if it is without the owner's effective consent.

"Property" as used herein means tangible or intangible personal property or documents, including money, that represents or embodies anything of value.

"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.

"Effective consent" means assent in fact, whether express or apparent, and includes consent by a person legally authorized to act for the owner. Consent is not effective if induced by deception or coercion.

"Owner" means a person who has title to the property, possession of property, or a greater right to possession of the property than the actor.

"Possession" means actual care, custody, control, or management of the property.

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

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

"Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

The definition of intentionally relative to the offense of capital murder is as follows:

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.

The definitions of intentionally or knowingly relative to the offense of murder are as follow:

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.

The definitions of intentionally or knowingly relative to the offenses of robbery and aggravated robbery are as follow:

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a 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 is reasonably certain to cause the result.

All persons are parties to an offense who are guilty of acting together in the commission of the offense. 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.

A person is criminally responsible for an offense committed by the conduct of another if, 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. Mere presence alone will not constitute one a party to an offense.

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 furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

By the term "conspiracy" as used in these instructions, is meant an agreement between two or more persons with intent, that they, or one or more of them, engage in conduct that would constitute the offense. An agreement constituting a conspiracy may be inferred from acts of the parties.

Before you would be warranted in finding the defendant guilty of capital murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant was in the course of committing or attempting to commit the felony offense of robbery of Shahzad Qureshi, as alleged in this charge, but also that the defendant specifically intended to cause the death of Shahzad Qureshi, by shooting Shahzad Qureshi with a deadly weapon, namely, a firearm; or you must find from the evidence beyond a reasonable doubt that the defendant, Xavier Alexander Austin, with the intent to promote or assist in the commission of the offense of robbery, if any, solicited, encouraged, directed, aided, or attempted to aid Herbert Nash and/or Casey Carmon and/or Minh Truong in shooting Shahzad Qureshi, if he did, with the intention of thereby killing Shahzad Qureshi; or you must find from the evidence beyond a reasonable

doubt that on the occasion in question the defendant entered into an agreement with Herbert Nash and/or Casey Carmon and/or Minh Truong to commit the felony offense of robbery of Shahzad Qureshi, as alleged in this charge, and pursuant to that agreement they did carry out their conspiracy, and while in the course of committing said conspiracy, Herbert Nash and/or Casey Carmon and/or Minh Truong intentionally caused the death of Shahzad Qureshi by shooting Shahzad Qureshi with a deadly weapon, namely, a firearm, and the murder of Shahzad Qureshi was committed in furtherance of the conspiracy and was an offense that should have been anticipated by the defendant as a result of carrying out the conspiracy, and unless you so find, then you cannot convict the defendant of the offense of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of June, 2009, in Harris County, Texas, the defendant, Xavier Alexander Austin, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Shahzad Qureshi, intentionally cause the death of Shahzad Qureshi by shooting Shahzad Qureshi with a deadly weapon, namely, a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 3rd day of June, 2009, in Harris County, Texas, Herbert Nash and/or Casey Carmon and/or Minh Truong, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Shahzad Qureshi, intentionally cause the death of Shahzad Qureshi by shooting Shahzad Qureshi with a deadly weapon, namely, a firearm, and that the defendant, Xavier

Alexander Austin, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Herbert Nash and/or Casey Carmon and/or Minh Truong to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that the defendant, Xavier Alexander Austin, and Herbert Nash and/or Casey Carmon and/or Minh Truong entered into an agreement to commit the felony offense of robbery of Shahzad Qureshi, and pursuant to that agreement, if any, they did carry out their conspiracy and that in Harris County, Texas, on or about the 3rd day of June, 2009, while in the course of committing such robbery of Shahzad Qureshi, Herbert Nash and/or Casey Carmon and/or Minh Truong intentionally caused the death of Shahzad Qureshi by shooting Shahzad Qureshi with a deadly weapon, namely, a firearm, and the murder of Shahzad Qureshi was committed in furtherance of the conspiracy and was an offense that the defendant should have anticipated as a result of carrying out the conspiracy, then you will find the defendant guilty of capital murder, as charged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether the defendant is guilty of the lesser offense of aggravated robbery.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of June, 2009, in Harris County, Texas, the defendant, Xavier Alexander Austin, did then and there unlawfully, while in the course of committing theft of

property owned by Shahzad Qureshi, and with intent to obtain or maintain control of the property, intentionally or knowingly cause serious bodily injury to Shahzad Qureshi by shooting Shahzad Qureshi with a deadly weapon, namely, a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 3rd day of June, 2009, in Harris County, Texas, Herbert Nash and/or Casey Carmon and/or Minh Truong, did then and there unlawfully, while in the course of committing theft of property owned by Shahzad Qureshi, and with intent to obtain or maintain control of the property, intentionally or knowingly cause serious bodily injury to Shahzad Qureshi by shooting Shahzad Qureshi with a deadly weapon, namely, a firearm, and that the defendant, Xavier Alexander Austin, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Herbert Nash and/or Casey Carmon and/or Minh Truong to commit the offense, if he did, then you will find the defendant guilty of aggravated robbery.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder on the one hand or aggravated robbery on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in the defendant's favor and find him guilty of the lesser offense of aggravated robbery.

If you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge you will acquit the defendant and say by your verdict "Not Guilty."

An accomplice, as the term is here used, means anyone connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime by unlawful act or omission on their part transpiring either before or during the time of the commission of the offense, and whether or not they were present and participated in the commission of the crime. 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. Mere presence alone, however, will not constitute one a party to an offense.

A person is criminally responsible for an offense committed by the conduct of another if, 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. The term "conduct" means any act or omission and its accompanying mental state.

You are instructed that a conviction cannot be had upon the testimony of an accomplice unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

The witness, Minh Truong, is an accomplice, if an offense was committed, and you cannot convict the defendant upon his testimony unless you further believe that there is other evidence in the case, outside of the testimony of Minh Truong tending to

connect the defendant with the offense committed, if you find that an offense was committed, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission, and then from all of the evidence you must believe beyond a reasonable doubt that the defendant is guilty of the offense charged against him.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a right accorded a defendant, and in the event he elects not to testify, that fact cannot be taken as a circumstance against him.

In this case, the defendant has elected not to testify and you are instructed that you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

You are further instructed that any evidence that any witness has been convicted in any case or cases was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the credibility of the witness and the weight to be given his or her testimony, and you will not consider the same for any other purpose.

A Grand Jury indictment is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence of guilt nor can it be considered by you in passing upon the question of guilt of the defendant. The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant.

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

After you retire to the jury room, you should select one of your members as your Foreman. It is his or her duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form attached hereto and signing the same as Foreman.

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.

No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written, prepared and signed by the Foreman and shall be submitted to the court through this officer. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the Court, or anyone else concerning any questions you may have.

Your sole duty at this time is to determine the guilt or innocence of the defendant under the indictment in this cause and

restrict your deliberations solely to the issue of guilt or innocence of the defendant.

Following the arguments of counsel, you will retire to consider your verdict.

Ruben Guerrero, Judge
174th District Court
Harris County, TEXAS

FILED
Chris Daniel
District Clerk
SEP 12 2012
Time: 10:38 A.M.
Harris County, Texas
By _____
Deputy

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VS.	§	OF HARRIS COUNTY, TEXAS
XAVIER ALEXANDER AUSTIN	§	JULY TERM, A. D., 2012

CHOOSE ONE

"We, the Jury, find the defendant, Xavier Alexander Austin, not guilty."

_____
Foreman of the Jury

_____
(Please Print) Foreman

"We, the Jury, find the defendant, Xavier Alexander Austin, guilty of capital murder, as charged in the indictment."

FILED
Chris Daniel
District Clerk
SEP 12 2012
Time: 1:30 PM
Harris County, Texas
By [signature]
Deputy

_____
Foreman of the Jury
Issa Paul Tannous
(Please Print) Foreman

"We, the Jury, find the defendant, Xavier Alexander Austin, guilty of aggravated robbery."

_____
Foreman of the Jury

_____
(Please Print) Foreman