

CAUSE NO. 9504-D

THE STATE OF TEXAS

VS.

YRINEO SIMON FLORES

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§

IN THE DISTRICT COURT OF
TAYLOR COUNTY, TEXAS

350TH JUDICIAL DISTRICT
PARTIAL DISTRICT CLERK TAYLOR COUNTY, TEXAS

FILED
AT 1:00 CLOCK P.M.
AUG 20 2010

[Signature]
PARTIAL DISTRICT CLERK TAYLOR COUNTY, TEXAS

COURT'S CHARGE TO THE JURY

LADIES & GENTLEMEN OF THE JURY:

The Defendant, YRINEO SIMON FLORES, stands charged by indictment with the offenses of capital murder and aggravated robbery, alleged to have been committed on or about the 10th day of July, 2009, in Taylor County, Texas. The Defendant has pled not guilty to both charges.

1.

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

A person commits capital murder when such person, (1) murders more than one person in the same criminal transaction, or (2) intentionally commits the murder in the course of committing or attempting to commit robbery.

A person commits the offense of robbery if, in the course of committing theft 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.

A person commits the offense of aggravated robbery if he commits robbery and he: (1) causes serious bodily injury to another; (2) uses or exhibits a deadly weapon; or (3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death.

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2.

“Individual” means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

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.

“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 tangible or intangible personal property including anything severed from land, or a document, including money, that represents or embodies anything of value.

“Same Criminal Transaction” is defined as a continuous and uninterrupted chain of conduct occurring over a very short period of time and in a rapid sequence of unbroken events.

“Conspiracy” is defined as an agreement between one or more persons to engage in conduct that would constitute a criminal offense. An agreement constituting a conspiracy may be inferred from the acts of the conspirators.

“Conspirator” is defined as a person who performs an overt act in pursuance of a conspiracy.

3.

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 with the commission of the offense.

Definition and Explanation of “party”:

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.

A person is criminally responsible for an offense committed by the conduct of another 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 an offense that should have been anticipated as a result of the carrying out of the conspiracy.

Mere presence alone will not constitute one a party to an offense.

4.

It is an affirmative defense to prosecution for capital murder that the person charged engaged in the proscribed conduct because he was compelled to do so by the threat of imminent death or serious bodily injury to himself or another. Such compulsion exists only if the threat of force is such as would render a person of reasonable firmness incapable of resisting the pressure.

The burden of proof for the affirmative defense of duress rests upon the Defendant. To establish such defense, the Defendant must prove it by a preponderance of the evidence. The term “preponderance of the evidence” means the greater weight and degree of the credible evidence admitted in the case.

Now, therefore, if you find from the evidence beyond a reasonable doubt that the Defendant did commit the offense of capital murder as alleged in the indictment as a party as has been defined in this charge, but you further find by a preponderance of the evidence that SANTIAGO GARZA, JR. had threatened to kill or injure the Defendant if he did not participate in said murder, and that his threats were such threats of force as would render a person of reasonable firmness incapable of resisting the pressure, and that Defendant was in fear of imminent loss of his life or serious bodily injury at the hands of SANTIAGO GARZA, JR. if he did not participate in the robbery and that, so believing, he did

participate therein, then you will acquit the Defendant of capital murder and next consider the offense of aggravated robbery.

5.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 10th day of July, 2009, in Taylor County, Texas, the Defendant, YRINEO SIMON FLORES, did then and there, acting as a party, murder more than one person during the same criminal transaction, to-wit: the said YRINEO SIMON FLORES did then and there act with intent to promote or assist in the commission of the offense of the murder of NATHANIEL MOSS, JR. and TINA RENEE MORENO, and that he did then and there solicit, encourage, direct, aid, or attempt to aid SANTIAGO GARZA, JR. in the murders by instructing the said SANTIAGO GARZA, JR. to make sure that they were dead, or by handing SANTIAGO GARZA, JR. a knife or knives used in the commission of the murders, and that the said SANTIAGO GARZA, JR. did then and there intentionally and knowingly cause the death of an individual, namely, NATHANIEL MOSS, JR., by stabbing the said NATHANIEL MOSS, JR. on or about the head and neck and the torso with a deadly weapon, to-wit: a knife, that in the manner of its use and intended use was capable of causing death and serious bodily injury; and that the said SANTIAGO GARZA, JR. did then and there intentionally or knowingly cause the death of an individual, namely, TINA RENEE MORENO, by cutting the throat of the said TINA RENEE MORENO with a deadly weapon, to-wit: a knife, that in the manner of its use and intended use was capable of causing death and serious bodily injury, then you will find the Defendant, YRINEO SIMON FLORES, guilty of capital murder as alleged in count one, paragraph one of the indictment.

Unless you so find from the evidence beyond a reasonable doubt that the Defendant is guilty of capital murder as alleged in count one, paragraph one of the indictment, or if you have a reasonable doubt thereof, or you cannot agree, you will acquit the Defendant of capital murder as alleged in count one, paragraph one of the indictment and next consider the offense of capital murder as alleged in count one, paragraph two of the indictment.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 10th day of July, 2009, in Taylor County, Texas, the Defendant, YRINEO SIMON FLORES, acting as a party, while in the course of attempting to commit and committing robbery of NATHANIEL MOSS, JR., did then and there solicit, encourage, direct, aid, or attempt to aid SANTIAGO GARZA, JR. in the murder of

NATHANIEL MOSS, JR., if he did, by instructing the said SANTIAGO GARZA, JR. to make sure that NATHANIEL MOSS, JR. was dead, or by obtaining another knife for SANTIAGO GARZA, JR. to stab the said NATHANIEL MOSS, JR. or by sitting or standing on NATHANIEL MOSS, JR. while SANTIAGO GARZA, JR. retrieved another knife, or by acting as a lookout, and that the said SANTIAGO GARZA, JR. did then and there intentionally commit murder of the said NATHANIEL MOSS, JR. by stabbing the said NATHANIEL MOSS, JR. on or about the head and neck with a deadly weapon, to-wit: a knife, that in the manner of its use and intended use was capable of causing death and serious bodily injury, then you will find the Defendant, YRINEO SIMON FLORES, guilty of capital murder, as alleged in count one, paragraph two of the indictment.

-OR-

If you find from the evidence beyond a reasonable doubt that on or about the 10th day of July, 2009, in Taylor County, Texas, the Defendant, YRINEO SIMON FLORES, acting as a party, along with the said SANTIAGO GARZA, JR., did then and there conspire to commit the offense of robbery of NATHANIEL MOSS, JR., and that during the commission of said robbery the murder of NATHANIEL MOSS, JR., if any, was committed by SANTIAGO GARZA, JR., to-wit: by stabbing the said NATHANIEL MOSS, JR. on or about the head and neck and the torso with a deadly weapon, to-wit: a knife, that in the manner of its use and intended use was capable of causing death and serious bodily injury, and that said murder, if any, was in fact committed in furtherance of the unlawful purpose of robbing NATHANIEL MOSS, JR. and that said murder was an offense that should have been anticipated as a result of the carrying out of the conspiracy to rob NATHANIEL MOSS, JR., then you will find the Defendant, YRINEO SIMON FLORES, guilty of capital murder as alleged in count one, paragraph two of the indictment.

Unless you so find from the evidence beyond a reasonable doubt that the Defendant is guilty of capital murder, or if you have a reasonable doubt thereof, or you cannot agree, you will acquit the Defendant of capital murder as alleged in count one, paragraph two of the indictment and next consider the offense of aggravated robbery as alleged in count two, paragraph one of the indictment.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 10th day of July, 2009, in Taylor County, Texas, the Defendant, YRINEO SIMON FLORES, did then and there, acting as a party, while in the course of committing theft of property and with intent to obtain and maintain control of said property, and while acting with intent to promote or assist in the commission of

the said robbery, he solicited, encouraged, directed, aided, or attempted to aid SANTIAGO GARZA, JR. in stabbing the said NATHANIEL MOSS, JR. on or about the head and the neck and the torso with a knife, then you will find the Defendant, YRINEO SIMON FLORES, guilty of aggravated robbery as alleged in count two, paragraph one of the indictment.

Unless you so find from the evidence beyond a reasonable doubt that the Defendant is guilty of aggravated robbery, or if you have a reasonable doubt thereof, or you cannot agree, you will acquit the Defendant of aggravated robbery as alleged in count two, paragraph one of the indictment, and next consider aggravated robbery as alleged in count two, paragraph two of the indictment.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 10th day of July, 2009, in Taylor County, Texas, the Defendant, YRINEO SIMON FLORES, did then and there, acting as a party, while in the course of committing theft of property and with intent to obtain and maintain control of said property, and while acting with intent to promote or assist the commission of the robbery, he solicited, encouraged, directed, aided, or attempted to aid SANTIAGO GARZA, JR. in using or exhibiting a deadly weapon, to-wit: a knife, that in the manner of its use and intended use was capable of causing death and serious bodily injury, and the said SANTIAGO GARZA, JR. did then and there intentionally or knowingly threaten and place NATHANIEL MOSS, JR. in fear of imminent bodily injury and death by the use of said deadly weapon, then you will find the Defendant, YRINEO SIMON FLORES, guilty of aggravated robbery as alleged in count two, paragraph two of the indictment.

Unless you so find from the evidence beyond a reasonable doubt that the Defendant is guilty of aggravated robbery, or if you have a reasonable doubt thereof, or you cannot agree, you will acquit the Defendant of aggravated robbery as alleged in count two, paragraph two of the indictment and find the Defendant not guilty.

6.

You are instructed that in considering your verdict you may consider all relevant facts and circumstances surrounding the killing, 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 alleged killing, if any.

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 the Defendant.

7.

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.

8.

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, indicted for, or otherwise charged with the offense gives rise to no inference of guilt at that person's 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 the Defendant and say by your verdict "not guilty".

9.

Do not let bias, prejudice or sympathy play any part in your deliberations. 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 of the case you will receive in this Charge from the Court and you must be governed thereby.

10.

After you retire to the jury room, you should select one of your members as your Presiding Juror. It is the Presiding Juror's duty to preside at your deliberations, to 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 by signing the same as Presiding Juror.

11.

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. It is only from the witness stand that the Jury is permitted to receive evidence regarding the case. If any evidence has been withdrawn from the Jury by the Court, you will not discuss nor consider it for any purpose.

12.

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.


13.

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 or direct questions you may have to the Court in writing through the officer who has you in charge. Any communication relative to the cause must be written, prepared, and signed by the Presiding Juror 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 question you may have.

Your verdict must be unanimous and, after you have reached a unanimous verdict, the Presiding Juror will certify to your verdict by using the appropriate form attached to this Charge and by signing the form as Presiding Juror.

You may now retire to consider your verdict.



Thomas M. Wheeler, Judge Presiding

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THE STATE OF TEXAS

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IN THE DISTRICT COURT OF

VS.

TAYLOR COUNTY, T E X A S

YRINEO SIMON FLORES

350TH JUDICIAL DISTRICT

VERDICT OF THE JURY

We, the Jury, find the Defendant, YRINEO SIMON FLORES, guilty of capital murder, as alleged in count one, paragraph one of the indictment.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, YRINEO SIMON FLORES, guilty of capital murder, as alleged in count one, paragraph two of the indictment.



PRESIDING JUROR

OR

We, the Jury, find the Defendant, YRINEO SIMON FLORES, guilty of aggravated robbery, as alleged in count two, paragraph one of the indictment.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, YRINEO SIMON FLORES, guilty of aggravated robbery, as alleged in count two, paragraph two of the indictment.

PRESIDING JUROR

OR

We, the Jury, find the Defendant, YRINEO SIMON FLORES, not guilty.

PRESIDING JUROR