

CAUSE No. 1970743

STATE OF TEXAS

vs.

POLIE PHAN

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IN THE 262ND DISTRICT COURT

OF

HARRIS COUNTY, TEXAS

INSTRUCTIONS OF THE COURT

MEMBERS OF THE JURY,

The State has accused the Defendant, Polie Phan, of committing the offense of capital murder.

The Defendant has pleaded "not guilty," and you have heard all of the evidence that will be produced on whether the Defendant has been proved guilty.

Both sides will soon present final arguments. Before they do so, I must now give you the instructions you must follow in deciding whether the Defendant has been proved guilty or not.

You will have a written copy of these instructions to take with you and to use during your deliberations.

First, I will tell you about some general principles of law that must govern your decision of the case. Then I will tell you about the specific law applicable to this case. Finally, I will instruct you on the rules that must control your deliberations.

GENERAL PRINCIPLES

The Indictment

The indictment is not evidence of guilt. The indictment is only a document required to bring the case before you. The indictment cannot be considered in any way by the jury. Do not consider the fact that the Defendant has been arrested, confined, or indicted or otherwise charged. You may not draw any inference of guilt from any of these circumstances.

Presumption of Innocence

The Defendant is presumed innocent of the charge. 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 law does not require a defendant to prove his innocence or produce any evidence at all. 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 presumption of innocence alone is sufficient to acquit the Defendant.

Burden of Proof

The burden of proof throughout the trial is always on the State. The Defendant does not have the burden to prove anything. The State must prove every element of the offense beyond a reasonable doubt to establish guilt for the offense. If the State proves every element of the offense beyond a reasonable doubt, then you must find the Defendant guilty. If the State does not prove every element of the offense beyond a reasonable doubt, then you must find the Defendant not guilty. If, after you have considered all the evidence and these instructions, you have a reasonable doubt about whether the Defendant is guilty, you must find the Defendant not guilty.

Jury as Fact Finder

As the jurors, you review the evidence and determine the facts and what they prove. You judge the believability of the witnesses and what weight to give their testimony. In judging the facts and the believability of the witnesses, you must apply the law provided in these instructions.

Evidence

The evidence consists of the testimony and exhibits admitted in the trial. You must consider only evidence to reach your decision. You must not consider, discuss, or mention anything that is not evidence in the trial. You must not consider or mention any personal knowledge or information you may have about any fact or person connected with this case that is not evidence in the trial. Statements made by the lawyers are not evidence. The questions asked by the attorneys are not evidence. Evidence consists of the testimony of the witnesses and materials admitted into evidence.

Nothing the judge has said or done in this case should be considered by you as an opinion about the facts of this case or influence you to vote one way or the other.

You should give terms their common meanings, unless you have been told in these instructions that the terms are given special meanings. In that case, of course, you should give those terms the meanings provided in the instructions.

While you should consider only the evidence, you are permitted to draw reasonable inferences from the testimony and exhibits that are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence.

You are to render a fair and impartial verdict based on the evidence admitted in the case under the law that is in these instructions. Do not allow your verdict to be determined by bias or prejudice.

Admitted Exhibits

You may, if you wish, examine exhibits. If you wish to examine an exhibit, the Foreperson will inform the court and specifically identify the exhibit you wish to examine. Only exhibits that were admitted into evidence may be given to you for examination.

Testimony

Certain testimony will be read back to you by the court reporter if you request. To request that testimony be read back to you, you must follow these rules. The court will allow testimony to be read back to the jury only if the jury, in a writing signed by the Foreperson, (1) states that it is requesting that testimony be read back, (2) states that it has a disagreement about a specific statement of a witness or a particular point in dispute, and (3) identifies the name of the witness who made the Statement. The court will then have the court reporter read back only that part of the Statement that is in disagreement.

Defendant's Right to Remain Silent

The Defendant has a constitutional right to remain silent. The Defendant may testify on his own behalf. The Defendant may also choose not to testify. The Defendant's decision not to testify cannot be held against him, and it is not evidence of guilt. You must not speculate, guess, or even talk about what the Defendant might have said if he had taken the witness stand or why he did not. The Foreperson of the jury must immediately stop any juror from mentioning the Defendant's decision not to testify.

Defendant's Prior Bad Acts

During the trial, you heard evidence that the Defendant may have committed wrongful acts that are not charged in the indictment. The State offered the evidence to show the Defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident. You are not to consider that evidence at all unless you find, beyond a reasonable doubt, that the Defendant did, in fact, commit the wrongful act. Those of you who believe that the Defendant committed a wrongful act beyond a reasonable doubt you may consider it. Even if you do find that the Defendant committed a wrongful act, you may consider this evidence only for the limited purpose that I have described. You may not consider this evidence to prove that the Defendant is a bad person. In other words, you should consider this evidence only for the specific, limited purposes that I have described. To consider this evidence for any other purpose would be improper.

The Verdict

The law requires that you render a verdict of either "guilty" or "not guilty." The verdict of "not guilty" simply means that the State's evidence does not prove the Defendant guilty beyond a reasonable doubt. You may return a verdict only if all twelve of you agree on this verdict. When you reach a verdict, the Foreperson should notify the court.

LAW APPLICABLE TO THIS CASE

The State has accused the Defendant, Polie Phan of committing the offense of capital murder. Specifically, the accusation is that the Defendant is guilty of capital murder under three alternative theories:

1. Primary Actor Liability

The State contends that the Defendant, by his own conduct as a primary actor, committed capital murder.

2. Party Liability

The State contends that Jaidan Nguyen committed capital murder and the Defendant is criminally responsible for this offense as a party because the Defendant acted with the intent to promote or assist in the commission of the offense of capital murder, and he solicited, encouraged, directed, aided, or attempted to aid Jaidan Nguyen in committing it.

3. Co-conspirator Liability

The State contends that Jaidan Nguyen committed capital murder and the Defendant is criminally responsible for this offense as a co-conspirator.

Relevant Statutes

Liability as Primary Actor

A person commits the offense of capital murder (1) if the person intentionally or knowingly causes the death of a person, and the person murders more than one person during the same criminal transaction; or (2) if the person intentionally causes the death of a person in the course of committing or attempting to commit the offense of burglary.

Responsibility for Conduct of Another as Party

A person who does not by his own conduct commit an offense may nonetheless be criminally responsible for the conduct of another person.

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 defendant acts with intent to promote or assist in the commission of an offense when it is his conscious objective or desire to promote or assist in the commission of the offense.

A defendant's mere presence alone will not make him responsible for an offense. A defendant's mere knowledge of a crime or failure to disclose a crime is not sufficient. A defendant is guilty of an offense committed by another under the law set out here even if that other person 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.

Responsibility for Felony Committed by Co-Conspirator

The Defendant may be responsible for a capital murder committed by someone else, even though the Defendant himself did not intentionally or knowingly cause the death of another person, because the Defendant joined an unlawful conspiracy. At least one member of the unlawful conspiracy must have intentionally or knowingly caused the death of an individual before the Defendant can be responsible for capital murder. A member of a conspiracy to commit one felony offense is guilty of another felony offense committed by one of his co-conspirators when that other felony offense was committed in furtherance of the original unlawful conspiracy and was one that should have been anticipated as a result of the unlawful conspiracy. Under those circumstances, all co-conspirators are guilty of the felony offense actually committed by one member of the conspiracy, though the rest of them had no intent to commit it. For these purposes, "conspiracy" means an agreement between two or more persons to commit a felony. Murder and burglary are felony offenses.

Definitions

Intentionally Causing the Death of an Individual

A person intentionally causes the death of an individual if the person has the conscious objective or desire to cause that death.

Knowingly Causing the Death of an Individual

A person knowingly causes the death of an individual if the person is aware that his conduct is reasonably certain to cause that death.

Attempt to Commit Burglary

A person attempts to commit burglary if the person, with the specific intent to commit burglary, does an act amounting to more than mere preparation that tends but fails to effect a burglary.

In the Course of Committing or Attempting to Commit Burglary

“In the course of committing or attempting to commit burglary” means conduct that occurs in an attempt to commit, during the commission of, or in immediate flight after the attempt or commission of burglary.

Burglary

A person commits the offense of burglary if, without the effective consent of the owner, the person:

1. enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault; or
2. remains concealed, with intent to commit a felony, theft, or an assault, in a building or habitation; or
3. enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.

Consent

“Consent” means assent in fact, whether express or apparent.

Habitation

“Habitation” means a structure that is adapted for the overnight accommodation of persons, and includes:

1. each separately secured or occupied portion of the structure; and,
2. each structure appurtenant to or connected with the structure.

Building

“Building” means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

Owner

“Owner” means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the Defendant.

Theft

A person commits the offense of theft if:

1. the person appropriates property; and
2. this appropriation was unlawful, in that it was without the property owner's effective consent, and
3. the person did this with intent to deprive the owner of the property.

Appropriate Property

A person appropriates property if the person:

1. acquires the property; or,
2. otherwise exercises control over the property; or,
3. brings about a transfer or purported transfer of title or any other nonpossessory interest in the property, whether that transfer is to the defendant or another.

Possession

"Possession" means actual care, custody, control or management.

Intent to Deprive of Property

A person has the intent to deprive another of property if the person has the conscious objective or desire to:

1. withhold the property from the owner permanently; or,
2. withhold the property from the owner for so extended a period of time that the major portion of the value or enjoyment of the property is lost to the owner; or,
3. restore the property only on payment of reward or other compensation; or,
4. dispose of the property in a manner that makes recovery of the property by the owner unlikely.

Property

Property means:

1. tangible or intangible personal property, including anything severed from the land; or,
2. real property; or,
3. a document, including money, that represents or embodies anything of value.

Unlawful Appropriation

Appropriation of property is unlawful if:

1. It is without the consent of the owner or a person legally authorized to act for the owner; or,
2. It is with such consent but that consent is ineffective.

Assault

A person commits the offense of assault if the person:

1. Intentionally, knowingly causes bodily injury to another, including the person's spouse; or,
2. Intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse.

Bodily Injury,

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

Intentionally or Knowingly Causes Bodily Injury

A person intentionally or knowingly causes bodily injury when it is their conscious objective or desire to cause bodily injury or is aware that his conduct is reasonably certain to cause bodily injury.

Intentionally or Knowingly Threaten

A person intentionally or knowingly threatens another when it is their conscious objective or desire to threaten the other or if they are aware that they are threatening the other.

Application of Law to Facts

You must determine whether the State has proved, beyond a reasonable doubt, that the Defendant is guilty of capital murder, either as the primary actor, as a party, or as a co-conspirator.

Liability as Primary Actor

You must determine whether the State has proved that the Defendant committed the crime by his own conduct. To prove this, the State must prove, beyond a reasonable doubt, the following elements. The elements are that:

1. in Harris County, Texas, on or about the 26th of January, 2023, the Defendant
 - a. intentionally or knowingly caused the death of Dana Ryssdal, by shooting Dana Ryssdal with a deadly weapon, namely, a firearm, and intentionally or knowingly caused the death of an individual, James G. Martin III, by shooting James G. Martin III with a deadly weapon, namely, a firearm, and the Defendant engaged in this conduct during the same criminal transaction; or
 - b. intentionally caused the death of an individual, Dana Ryssdal, by shooting Dana Ryssdal with a deadly weapon, namely, a firearm, and the Defendant engaged in this conduct while in the course of committing or attempting to commit the offense of burglary of James G. Martin III.

In order for the defendant to be guilty under primary actor liability you need not find both manners listed in element 1.a and 1.b beyond a reasonable doubt, so long as you find that one or both apply beyond a reasonable doubt.

If you all agree that the State has proved, beyond a reasonable doubt, element 1 listed above, you must find the Defendant “guilty” of the charged offense of capital murder.

Liability as Party

If any of you fail to agree that the State has proved, beyond a reasonable doubt, element 1 listed above, you must next decide whether the State has proved that the Defendant is guilty because he is criminally responsible for the commission of a crime committed by the conduct of another person. This is the case if the State has proved, beyond a reasonable doubt, three elements. The elements are that:

1. in Harris County, Texas, on or about the 26th of January, 2023, Jaidan Nguyen:
 - a. intentionally or knowingly caused the death of an individual, Dana Ryssdal, by shooting Dana Ryssdal with a deadly weapon, namely, a firearm, and intentionally or knowingly caused the death of an individual, James G. Martin III, by shooting James G. Martin III with a deadly weapon, namely, a firearm, and Jaidan Nguyen engaged in this conduct during the same criminal transaction; or
 - b. intentionally caused the death of an individual, Dana Ryssdal, by shooting Dana Ryssdal with a deadly weapon, namely, a firearm, and Jaidan Nguyen engaged in this conduct while in the course of committing or attempting to commit the offense of burglary of James G. Martin III; and
2. the Defendant solicited, encouraged, directed, aided, or attempted to aid Jaidan Nguyen to commit the offense of the capital murder, as alleged above; and
3. the Defendant acted with the intent to promote or assist the commission of the offense of capital murder by Jaidan Nguyen.

In order for the defendant to be guilty under party liability you must find that the State proved, beyond a reasonable doubt, elements 1, 2 and 3 listed above, but you need not find both manners listed in element 1.a and 1.b beyond a reasonable doubt, so long as you find that one or both apply beyond a reasonable doubt.

If all of you who did not find the defendant guilty as a primary actor agree that the State has proved, beyond a reasonable doubt, each of the three elements of party liability, listed above, you must find the Defendant “guilty” of the charged offense of capital murder.

Liability as Co-conspirator

If any of you fail to agree the State has proved, beyond a reasonable doubt, element 1 of primary actor liability or elements 1, 2 and 3 of party liability, you must next determine whether the State has proved that the Defendant committed the crime because he is criminally responsible for the conduct of a co-conspirator. This is the case if the State has proved, beyond a reasonable doubt, four elements. The elements are that:

1. in Harris County, Texas, on or about the 26th of January, 2023, the Defendant joined a conspiracy to commit the burglary of James G. Martin III; and
2. in an attempt to carry out this conspiracy, Jaidan Nguyen:
 - a. intentionally or knowingly caused the death of an individual, Dana Ryssdal, by shooting Dana Ryssdal with a deadly weapon, namely, a firearm, and intentionally or knowingly caused the death of an individual, James G. Martin III, by shooting James G. Martin III with a deadly weapon, namely, a firearm, and Jaidan Nguyen engaged in this conduct during the same criminal transaction; or,
 - b. intentionally caused the death of Dana Ryssdal, by shooting Dana Ryssdal with a deadly weapon, namely a firearm, in the course of committing the burglary of James G. Martin III; and,
3. the murders were committed by Jaidan Nguyen in the course of committing or attempting to commit, and in furtherance of the unlawful conspiracy to commit, the burglary of James G. Martin III; and
4. the capital murder should have been anticipated as a result of this conspiracy.

In order for the defendant to be guilty under co-conspirator liability the you must find that the State proved, beyond a reasonable doubt, elements 1, 2, 3 and 4 listed above, but you need not find both manners listed in element 2.a and 2.b beyond a reasonable doubt, so long as you find that one or both apply beyond a reasonable doubt.

If all of you who did not find the defendant guilty as the primary actor or as a party agree that the State has proved, beyond a reasonable doubt, each of the four elements of coconspirator liability listed above, you must find the defendant “guilty.”

If you all agree the State has failed to prove, beyond a reasonable doubt, element 1 listed above establishing the defendant’s guilt as the primary actor; has failed to prove, beyond a reasonable doubt, one or more of elements 1 through 3 listed above establishing the defendant’s guilt as a party; and has failed to prove, beyond a reasonable doubt, one or more of elements 1 through 4 listed above

establishing the defendant's guilt as a coconspirator, then you must find the defendant "not guilty."

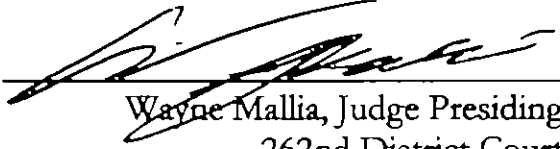
You need not be unanimous about the theory underlying your "guilty" verdict. If you all agree the defendant is guilty either as a primary actor, or as a party, or as a co-conspirator, then you must find the defendant "guilty." If you all agree that the State has failed to prove, beyond a reasonable doubt, element 1 of primary actor liability, has failed to prove, beyond a reasonable doubt, one or more of elements 1, 2 or 3 of party liability, and has failed to prove, beyond a reasonable doubt, one or more of elements 1, 2, 3 or 4 of co-conspirator liability, you must find the defendant "not guilty."

RULES THAT CONTROL DELIBERATIONS

You must follow these rules while you are deliberating and until you reach a verdict. After the closing arguments by the attorneys, you will go into the jury room. Your first task will be to pick your Foreperson. The Foreperson should conduct the deliberations in an orderly way. Each juror has one vote, including the Foreperson. The Foreperson must supervise the voting, vote with other members on the verdict, and sign the verdict sheet. While deliberating and until excused by the trial court, all jurors must follow these rules:

1. You must not discuss this case with any court officer, or the attorneys, or anyone not on the jury.
2. You must not discuss this case unless all of you are present in the jury room. If anyone leaves the room, then you must stop your discussions about the case until all of you are present again.
3. You must communicate with the judge only in writing, signed by the Foreperson and given to the judge through the officer assigned to you.
4. You must not conduct any independent investigations, research, or experiments.
5. You must tell the judge if anyone attempts to contact you about the case before you reach your verdict.

Your sole duty at this point is to determine whether the Defendant has been proved guilty. You must restrict your deliberations to this matter. After you have arrived at your verdict, you are to use one of the forms attached to these instructions. You should have your Foreperson sign his or her name to the particular form that conforms to your verdict. After the closing arguments by the attorneys, you will begin your deliberations to decide your verdict.


Wayne Mallia, Judge Presiding
262nd District Court
Harris County, TEXAS
8/14/26