

THE STATE OF TEXAS	§	IN THE 199TH JUDICIAL
VS.	§	DISTRICT COURT OF
CURTIS LEE ARMSTRONG	§	COLLIN COUNTY, TEXAS

**CHARGE OF THE COURT**

**MEMBERS OF THE JURY:**

The defendant, **CURTIS LEE ARMSTRONG**, stands charged by indictment with the offense of Capital Murder, alleged to have been committed on or about May 3, 2007, in Collin County, Texas. To this charge the defendant has pleaded not guilty.

Our law provides that a person commits the offense of murder if the person intentionally or knowingly causes the death of an individual or, intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.

A person commits capital murder when he intentionally causes the death of an individual in the course of committing or attempting to commit the offense of robbery or burglary.

A person commits the offense of robbery if, in the course of committing theft and with intent to obtain and maintain control of the property, he intentionally or knowingly causes bodily injury to another or he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

A person commits the offense of burglary if, without the effective consent of the owner, the person enters a habitation with the intent to commit a felony, theft or an assault or remains concealed, with intent to commit a felony, theft or an assault in a habitation or enters a habitation and commits or attempts to commit a felony, theft or an assault.

A person commits theft if he unlawfully appropriates property with intent to deprive the owner of the property. Appropriation of property is unlawful if it is without the owner's effective consent.

"Individual" means a person who has been born and was alive.

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

"Appropriation" and "appropriate" 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" as used herein 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 or force or threats.

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

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

"Enter" as used above, is meant to intrude any part of the body or any physical object

connected with the body into the habitation.

“Habitation” means a structure that is adapted for the overnight accommodation of persons, and includes each separately secured or occupied portion of the structure and each structure appurtenant to or connected with the structure.

“Deadly weapon” 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.

A person acts intentionally, or with intent, with respect to the 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 the result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

You are instructed that while the indictment alleges that the offense was committed on or about the 3rd day of May, 2007, you are not bound to find that the offense, if any, took place on that specific date. It is sufficient if the alleged date is approximately accurate, and you find that the offense, if any, occurred prior to the 7th day of June, 2007 the date of the return of the indictment in this case and is not barred by the statute of limitations.

You are further instructed that there are no statute of limitations for the offenses of Capital Murder or Murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about May 3, 2007 in Collin County, Texas, the defendant, **CURTIS LEE ARMSTRONG**, did then and there intentionally cause the death of Jennifer McCallum, an individual, hereinafter called deceased, by stabbing deceased with a knife, a deadly weapon, or by stabbing deceased with an object, a deadly weapon, the exact nature of which is unknown to the grand jurors, or by striking deceased with an object, a deadly weapon, the exact nature of which is unknown to the grand jurors, while

the defendant was in the course of committing or attempting to commit the offense of robbery or burglary, 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, that the defendant is guilty of Capital Murder, you will acquit the defendant of Capital Murder and next consider whether he is guilty of the lesser included offense of Murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of May, 2007, in Collin County, Texas, the defendant, **CURTIS LEE ARMSTRONG**, did then and there intentionally or knowingly cause the death of an individual, namely: Jennifer McCallum, hereinafter called deceased, by stabbing deceased with a knife, a deadly weapon, or by stabbing deceased with an object, a deadly weapon, the exact nature of which is unknown to the grand jurors, or by striking deceased with an object, a deadly weapon, the exact nature of which is unknown to the grand jurors, but you have a reasonable doubt as to whether the defendant was then and there engaged in the commission of Burglary of a Habitation or Robbery, then you will find the defendant guilty of Murder.

Or, if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of May, 2007, in Collin County, Texas, the defendant, **CURTIS LEE ARMSTRONG**, did then and there intending to cause serious bodily injury to an individual, namely: Jennifer McCallum, hereinafter called deceased, commit an act clearly dangerous to a human life, to-wit: by stabbing deceased with a knife, a deadly weapon, or by stabbing deceased with an object, a deadly weapon, the exact nature of which is unknown to the grand jurors, or by striking deceased with an object, a deadly weapon, the exact nature of which is unknown to the grand jurors, then you will find the defendant guilty of the lesser included offense of Murder.

If you so find from the evidence beyond a reasonable doubt that the defendant is guilty of Capital Murder or the lesser included offense of Murder, but you have a reasonable doubt as to

which offense he is guilty, then you must resolve that doubt in the defendant's favor and find him guilty of the lesser included offense of Murder.

Unless you so find from the evidence beyond a reasonable doubt or if you have a reasonable doubt thereof, that the defendant is guilty of any offense defined in this charge, then you should acquit the defendant and say by your verdict "not guilty."

You are instructed that a person is justified in using force against another when and to the degree that he reasonably believes the force is immediately necessary to protect himself against the other person's use or attempted use of unlawful force. The use of force against another is not justified in response to verbal provocation alone. The use of force against another is not justified if the actor consented to the exact force used or attempted by the other. The use of force against another is also not justified if the actor provoked the other's use or attempted use of unlawful force, unless the actor abandons the encounter, or clearly communicates to the other his intent to do so, reasonably believing he cannot safely abandon the encounter, and the other nevertheless continues or attempts to use unlawful force against the actor.

A person is justified in using deadly force against another if he would be justified in using force against the other in the first place, as above set out, and when he reasonably believes that such deadly force is immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force, or to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery, and if a reasonable person in defendant's situation would not have retreated.

"Deadly force" means force that is intended or known by the actor to cause, or 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, including death.

“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.

By the term “reasonable belief” as used herein is meant a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

**NOW**, if you find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, **CURTIS LEE ARMSTRONG**, did commit the offense of Capital Murder or Murder of Jennifer McCallum by stabbing deceased with a knife, a deadly weapon, or by stabbing deceased with an object, a deadly weapon, the exact nature is unknown to the Grand Jurors, or by striking deceased with an object, a deadly weapon, the exact nature is unknown to the Grand Jurors, but you further find from the evidence, or you have a reasonable doubt thereof, that viewed from the standpoint of the defendant at the time, from the words or conduct, or both, of Jennifer McCallum, it reasonably appeared to the defendant that he was in danger, and there was created in his mind a reasonable expectation or fear of death or serious bodily injury from the use of unlawful deadly force at the hands of Jennifer McCallum, and that acting under such apprehension and reasonably believing that the use of deadly force on his part was immediately necessary to protect himself against Jennifer McCallum’s use or attempted use of unlawful deadly force, the defendant, **CURTIS LEE ARMSTRONG**, did commit the offense of Capital Murder or Murder of Jennifer McCallum by stabbing deceased with a knife, a deadly weapon, or by stabbing deceased with an object, a deadly weapon, the exact nature is unknown to the Grand Jurors, or by striking deceased with an object, a deadly weapon, the exact nature is unknown to the Grand Jurors, and that a reasonable person in defendant’s situation would not have retreated, then you will acquit the defendant on grounds of self defense, or, if you have a reasonable doubt as to whether or not the defendant was acting in self-defense on said occasion and under said circumstances, then you should give the defendant the benefit of that doubt and say by your verdict not guilty.

You are further instructed if you find from the evidence beyond a reasonable doubt that (1) at the time and place in question the defendant did not reasonably believe that he was in danger of death or serious bodily injury or (2) a reasonable person in defendant's situation, at such time and place, would have retreated before using deadly force against Jennifer McCallum, or (3) defendant, under the circumstances, did not reasonably believe that the degree of force actually used by him was immediately necessary to protect himself against Jennifer McCallum or other persons acting with her, if any, use or attempted use of unlawful deadly force, if any, as viewed from defendant's standpoint at the time, then you must find against the defendant on the issue of self-defense.

You are instructed that a witness may be impeached by showing that he had made other and different statements out of court from those made before you on the trial. Such impeachment evidence may be considered by you to aid you in determining if it does so, the weight, if any, to be given the testimony of the witness at trial and his credibility, but such impeaching evidence, if any, is not to be considered as tending to establish the alleged guilt of the defendant in such case.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed offenses other than the offense alleged against him in the indictment in this case, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offenses, if any were committed, and even then you may only consider the same in determining the intent of the defendant, if any, in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

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 charged with an 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 of the evidence in the case.

You are instructed that 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.

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.

All evidence in the case comes from the witness stand, and no juror may communicate anything heard about the case from any other source. You must not discuss any matter or issue not in evidence before you. You must talk about the case to anyone outside your jury.

You are instructed that 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 that 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 that 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.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, and no juror is permitted to communicate to any other juror

anything he might have heard regarding the case from any source other than the witness stand.

Signed this the 11th day of April, 2008.

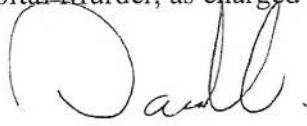
A handwritten signature in cursive script, appearing to read "Paul B. Biard", written over a horizontal line.

**WEB BIARD**  
**Judge**

## VERDICT

We, the jury, find the defendant guilty of Capital Murder, as charged in the indictment.

(signature)



(printed name)

DANA J. JONES

**PRESIDING JUROR**

OR,

We, the jury, find the defendant guilty of the lesser included offense of Murder.

(signature)

(printed name)

**PRESIDING JUROR**

OR,

We, the jury, find the defendant not guilty.

(signature)

(printed name)

**PRESIDING JUROR**