

THE STATE OF TEXAS

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IN THE CRIMINAL DISTRICT COURT

VS.

NUMBER THREE OF

FILED

JAMES CURNEL

TARRANT COUNTY, TEXAS
THOMAS A. WILBER, CLERK
TARRANT COUNTY, TEXAS

COURT'S CHARGE

AUG 21 2008

TIME 2:40 PM
BY EB DEPUTY

MEMBERS OF THE JURY:

The Defendant, JAMES CURNEL, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 11th day of January, 2007, in Tarrant County, Texas. To this charge, the Defendant, JAMES CURNEL, has pled not guilty.

You are instructed that the law applicable to this case is as follows:

I.

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 causes the death of an individual in the course of committing or attempting to commit robbery.

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

You are further instructed that in order for a murder to qualify as capital murder, the state must prove beyond a reasonable doubt that the intent to rob was formed prior to or concurrent with the murder.

II.

"Deadly weapon" means anything manifestly designed 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 firearm is a deadly weapon.

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

"Individual" means a human being who has been born and is alive.

"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.

"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.

"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.

"Theft" as used herein is the unlawful appropriation of the property of another with the intent to deprive the owner of said property.

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

"Property" includes tangible personal property, 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.

III.

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.

IV.

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:

- (a) 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; or
- (b) 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.

"Conspiracy" is committed if, with intent that a felony be committed, a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and he or one or more of them performs an overt act in pursuance of the agreement.

An agreement constituting a conspiracy may be inferred from acts of the parties.

You are instructed that capital murder, murder, robbery, and aggravated robbery are

felony offenses in the State of Texas.

Each party to an offense may be charged with the commission of the offense.

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

V.

CAPITAL MURDER

If you find from the evidence beyond a reasonable doubt that on or about the 11th day of January, 2007, in Tarrant County, Texas, the Defendant, JAMES CURNEL, either acting alone or as a party thereto as hereinbefore defined, did then and there intentionally cause the death of an individual, CAVIT SEVENLER, by shooting him with a deadly weapon, to-wit: a firearm, and the said Defendant was then and there in the course of committing or attempting to commit the offense of robbery of CAVIT SEVENLER, then you will find the Defendant guilty of capital murder, as alleged in the indictment.

Unless you so find and believe beyond a reasonable doubt, of if you have a reasonable doubt thereof, you will next consider whether he is guilty of the offense of murder.

VI.

MURDER

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

Now, bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that the defendant, JAMES CURNEL, either acting alone or as a party thereto as hereinbefore defined, in Tarrant County, Texas, on or about the 11th day of January, 2007 did then and there intentionally or knowingly cause the death of an individual, CAVIT SEVENLER, by shooting him with a firearm, which caused the death of CAVIT SEVENLER, then you will find the defendant guilty of murder.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "not guilty."

VII.

In a criminal case the law permits a defendant to testify in his own behalf but he is not compelled to do so, and the same law provides that the fact that a defendant does not testify shall not be considered as a circumstance against him. You will, therefore, not consider the fact that the defendant did not testify as a circumstance against him; and you will not, in your retirement to consider your verdict, allude to, comment on, consider, or in any manner refer to the fact that the defendant has not testified.

VIII.

You are instructed that if there is any testimony before you in this case regarding the Defendant's having committed offenses, wrongs, or acts 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 offenses, if any were committed, and even then you may only consider the same in determining the motive, opportunity, intent, knowledge, or identity for this defendant now on trial before you, and for no other purpose.

IX.

All persons are presumed 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 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 the Defendant and say by your verdict "not guilty".

Your verdict must be by a unanimous verdict of all members of the jury. In deliberating on this case, you shall consider the charge as a whole and you must not refer to or discuss any matters not in evidence before you.

The Indictment in this case is no evidence whatsoever of the guilt of the Defendant. It is a mere pleading necessary in order to bring this case into court for trial and you will consider it for no purpose at all.

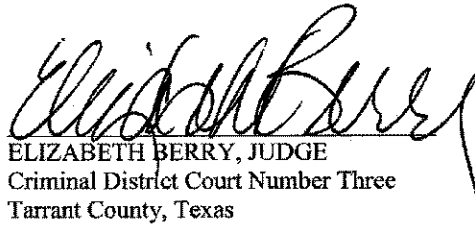
You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome.

You are the exclusive judges of the facts proven, of the credibility of the witnesses, and of the weight to be given to their testimony, but you are bound to receive the law from the Court, which is given herein, and be governed thereby.

During your deliberations in this case, you must not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case that is not shown by the evidence.

After you retire to the jury room, you should select one of your members as your Foreperson. It is his or her duty to preside at your deliberations, vote with you, and when you have reached a unanimous verdict, to certify to your verdict by using one of the attached forms and signing the same as your Foreperson.

If the jury wishes to communicate with the Court pertaining to this case, such communication must be in writing and signed by the Foreman and handed to the Bailiff. Please ring the buzzer in the jury room and wait for the Bailiff who will be in attendance. 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.




ELIZABETH BERRY, JUDGE
Criminal District Court Number Three
Tarrant County, Texas

Verdict of the Jury

CAPITAL MURDER

We, the Jury, find the Defendant, JAMES CURNEL, guilty of the offense of capital murder, as charged in the indictment.



FOREPERSON
THOMAS OWENS

FILED
THOMAS A. WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

AUG 21 2008

-OR-

TIME 6:39
BY *[Signature]* DEPUTY

MURDER

We, the Jury, find the defendant, JAMES CURNEL, guilty of the offense of murder.

FOREPERSON

-OR-

NOT GUILTY

We, the jury, find the Defendant, JAMES CURNEL, not guilty.

FOREPERSON