

JUN 31 2008

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J. Miller

CAUSE NO. 114-2867-06

THE STATE OF TEXAS X IN THE 114TH JUDICIAL DISTRICT COURT OF
VS. X SMITH COUNTY, TEXAS
TIMOTHY JOHNSON X

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, TIMOTHY JOHNSON, stands charged by indictment with the offense of Capital Murder, alleged to have been committed on or about the 26th day of September, 2006, in Smith County, Texas. To the allegations in the indictment the defendant has entered his plea of "not guilty."

1.

Our law provides that a person commits the offense of murder if he intentionally or knowingly causes the death of an individual.

Our law provides that a person commits the offense of capital murder if the person intentionally or knowingly murders more than one person during the same criminal transaction.

2.

Our law provides that a person commits the offense of aggravated assault if he intentionally or knowingly threatens

another with imminent bodily injury, including the person's spouse, and the person did use or exhibit a deadly weapon during the commission of the assault.

Our law provides that a person commits the offense of aggravated assault if he intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse, and the person did use or exhibit a deadly weapon during the commission of the assault.

Our law provides that a person commits the offense of aggravated assault if he intentionally, knowingly, or recklessly causes serious bodily injury to another, including the person's spouse.

Our law provides that a person commits the offense of robbery, if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain and maintain control of property of another, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

Our law provides that a person commits the offense of robbery, if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain and maintain control of property of another, he intentionally, knowingly, or recklessly causes

bodily injury to another.

Our law provides that a person commits the offense of aggravated robbery if the person commits robbery, as defined above, and that person uses or exhibits a deadly weapon.

Our law provides that a person commits the offense of aggravated robbery if the person commits robbery, as defined above, and causes serious bodily injury to another.

Our law provides that a person commits an offense if he knowingly or intentionally delivers a controlled substance. Cocaine is a controlled substance. "Deliver" means to transfer, actually or constructively, to another a controlled substance from one person to another of a controlled substance, whether or not there is an agency relationship.

Our law provides that a person commits an offense if he knowingly or intentionally possesses a controlled substance. Cocaine is a controlled substance. By the term "possession" is meant the actual care, custody, control or management of the controlled substance. "Possession" is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control. An accused may jointly possess a

controlled substance with another and exclusive possession need not be shown.

3.

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

A "deadly weapon" means a firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious bodily injury.

A "deadly weapon" means 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 a 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 term "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.

"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.

"Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary. Capital Murder, Murder, Aggravated Assault, Aggravated Robbery, Robbery, Delivery of a Controlled Substance, to-wit: Cocaine, Possession of a Controlled Substance, to-wit: Cocaine, are all felony offenses.

Our law provides that a person commits the offense of "Theft" if he unlawfully appropriates the corporeal personal property of another, with the intent to deprive the owner of said property.

Our law provides that a person commits the offense of "Theft from a Person" if he unlawfully appropriates the corporeal personal property of another from the person of another, with the intent to deprive the owner of said property.

"Appropriation" and "appropriate," as those terms are used herein, mean 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.

"Deprive" as used herein means to dispose of property in a manner that makes recovery of the property by the owner unlikely.

"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.

4.

You are instructed that with respect to the offenses of Capital Murder, Murder, Aggravated Assault, Aggravated Robbery or Robbery that: 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.

You are instructed that with respect to the offenses of Capital Murder, Murder, Aggravated Assault, Aggravated Robbery or Robbery that: 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.

You are instructed that with respect to the offenses of Delivery of a Controlled Substance, to-wit: Cocaine and Possession of a Controlled Substance, to-wit: Cocaine, that: A person acts intentionally, or with intent, with respect to the nature of his conduct when it is his conscious objective or desire to engage in the conduct.

You are instructed that with respect to the offenses of Delivery of a Controlled Substance, to-wit: Cocaine and Possession of a Controlled Substance, to-wit: Cocaine, that: 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 recklessly, or is reckless, with respect to the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that its

disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

5.

You are instructed that under Texas law "voluntary intoxication" does not constitute a defense to the commission of a crime.

6.

You are instructed that the State is not bound by the specific date which the offense, if any, is alleged in the indictment to have been committed, but that a conviction may be had upon proof that the offense, if any, was committed at any time prior to the filing of the indictment which is within the period of limitations. The indictment in this case was filed on December 14, 2006.

There is no limitation period to the offenses of capital murder or murder.

The limitation period for the offense of aggravated assault is three (3) years from the date of the commission of the offense.

7.

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

You are further instructed, that 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. Capital murder, murder, aggravated assault, aggravated robbery, robbery, delivery of a controlled substance, to-wit: cocaine, and possession of a controlled substance, to-wit: cocaine are felonies.

By the term "conspiracy," as used in these instructions, is meant an agreement between two or more persons, with intent that a felony be committed, and that they, or one or more of them, engage

in conduct that would constitute the offense and that 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 the acts of the parties.

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

8.

Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about the 26th day of September, 2006, in Smith County, Texas:

a. the defendant, TIMOTHY JOHNSON, did then and there intentionally or knowingly cause the death of an individual, namely, UNNICE ROGERS, by shooting with a firearm, and did then and there intentionally or knowingly cause the death of another individual, namely, GARY MOSLEY, by shooting with a firearm, and both murders were committed during the same criminal transaction; or

b. KORRENTHIN BAKER did then and there intentionally or knowingly cause the death of an individual, namely, UNNICE ROGERS, by shooting with a firearm, and KORRENTHIN BAKER did then and there intentionally or knowingly cause the death of another individual,

namely, GARY MOSLEY, by shooting with a firearm, and both murders were committed during the same criminal transaction, and that the defendant, TIMOTHY JOHNSON, then and there knew of the intent, if any, of said KORRENTHIN BAKER to kill the said UNNICE ROGERS and TIMOTHY JOHNSON, then and there knew of the intent, if any, of said KORRENTHIN BAKER to kill the said GARY MOSLEY and that the defendant, TIMOTHY JOHNSON, acted with intent to promote or assist the commission of the offense by said KORRENTHIN BAKER, by TIMOTHY JOHNSON encouraging, soliciting, directing, aiding, or attempting to aid said KORRENTHIN BAKER to commit the offense of intentionally or knowingly causing the death of UNNICE ROGERS and the offense of intentionally or knowingly causing the death of GARY MOSLEY and both murders were committed during the same criminal transaction; or

c. TIMOTHY JOHNSON and KORRENTHIN BAKER entered into a conspiracy to commit the felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:

Cocaine; or

6. Possession of a controlled substance, to-wit:
Cocaine,

and that pursuant thereto they did carry out, or attempt to carry out, such conspiracy to commit said felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine,

and that on or about the 26th day of September, 2006, in Smith County, Texas in the course of committing or attempting to commit said felony offense;

1. Said KORRENTHIN BAKER in the conspiracy, if any, did intentionally or knowingly cause the death of UNNICE ROGERS by shooting with a firearm; and
2. Said KORRENTHIN BAKER in the conspiracy, if any, did intentionally or knowingly cause the death of another

individual, namely, GARY MOSELY, by shooting with a
firearm; and

3. both murders were committed during the same criminal
transaction,

and that the defendant, TIMOTHY JOHNSON, pursuant to said
conspiracy to commit or attempt to commit the felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine,

if any, with the intent to promote or assist said KORRENTHIN BAKER
in the conspiracy to commit or attempt to commit said felony
offense, if any, of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or

5. Delivery of a controlled substance, to-wit:
Cocaine; or

6. Possession of a controlled substance, to-wit:
Cocaine,

then and there at the time of the shooting and killing, if any, was acting with and aiding the said KORRENTHIN BAKER in the conspiracy, if any, in the commission or attempted commission of said felony offense, if any, of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine,

and that the intentional and knowingly shooting and killing of UNNICE ROGERS AND GARY MOSLEY during the same criminal transaction followed in the commission of the conspiracy, if any, of the Defendant, TIMOTHY JOHNSON and said KORRENTHIN BAKER in the conspiracy, if any, to commit the felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine

and that the shooting and killing of UNNICE ROGERS and GARY MOSLEY during the same criminal transaction by said KORRENTHIN BAKER in the conspiracy, if any, was done in furtherance of the conspiracy to commit the felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine

if any, and was an offense that should have been anticipated by

TIMOTHY JOHNSON as a result of the carrying out of the conspiracy to commit or attempt to commit the felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine

then you will find the defendant, TIMOTHY JOHNSON, guilty of capital murder, as charged in the indictment.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant, TIMOTHY JOHNSON, of capital murder.

9.

Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about the 26th day of September, 2006, in Smith County, Texas:

a. the defendant, TIMOTHY JOHNSON, did then and there intentionally or knowingly cause the death of an individual,

namely, UNNICE ROGERS, by shooting with a firearm; or

b. the defendant, TIMOTHY JOHNSON, did then and here intentionally or knowingly cause the death or another individual, namely, GARY MOSLEY, by shooting with a firearm; or

c. KORRENTHIN BAKER did then and there intentionally or knowingly cause the death of an individual, namely, UNNICE ROGERS, by shooting with a firearm and that the defendant, TIMOTHY JOHNSON, then and there knew of the intent, if any, of said KORRENTHIN BAKER to kill the said UNNICE ROGERS, and that the defendant, TIMOTHY JOHNSON, acted with intent to promote or assist in the commission of the offense by said KORRENTHIN BAKER, by TIMOTHY JOHNSON encouraging, soliciting, directing, aiding, or attempting to aid said KORRENTHIN BAKER to commit the offense of intentionally or knowingly causing the death of UNNICE ROGERS; or

d. KORRENTHIN BAKER did then and there intentionally or knowingly cause the death of an individual, namely, GARY MOSLEY, by shooting with a firearm and that the defendant, TIMOTHY JOHNSON, then and there knew of the intent, if any, of said KORRENTHIN BAKER to kill the said GARY MOSLEY, and that the defendant, TIMOTHY JOHNSON, acted with intent to promote or assist in the commission of the offense by said KORRENTHIN BAKER, by TIMOTHY JOHNSON

encouraging, soliciting, directing, aiding, or attempting to aid said KORRENTHIN BAKER to commit the offense of intentionally or knowingly causing the death of GARY MOSLEY; or

e. TIMOTHY JOHNSON and KORRENTHIN BAKER entered into a conspiracy to commit the felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine,

and that pursuant thereto they did carry out, or attempt to carry out, such conspiracy to commit said felony offense, and that on or about the 26th day of September, 2006, in Smith County, Texas in the course of committing or attempting to commit said felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or

4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine,

said KORRENTHIN BAKER in the conspiracy, if any, did intentionally or knowingly cause the death of GARY MOSLEY or UNNICE ROGERS by shooting with a firearm; and

the defendant, TIMOTHY JOHNSON, pursuant to said conspiracy to commit or attempt to commit the felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine

if any, with the intent to promote or assist said KORRENTHIN BAKER in the conspiracy to commit or attempt to commit said felony offense, if any, of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine,

then and there at the time of the shooting and killing, if any, was acting with and aiding the said KORRENTHIN BAKER in the conspiracy, if any, in the commission or attempted commission of said felony offense, if any, and that the intentional or knowing shooting and killing of GARY MOSLEY or UNNICE ROGERS during the same criminal transaction followed in the commission of the conspiracy, if any, of the Defendant, TIMOTHY JOHNSON and said KORRENTHIN BAKER in the conspiracy, if any, to commit the felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:

Cocaine; or

6. Possession of a controlled substance, to-wit:
Cocaine,

and that the shooting and killing of GARY MOSLEY or UNNICE ROGERS during the same criminal transaction by said KORRENTHIN BAKER in the conspiracy, if any, was done in furtherance of the conspiracy to commit the felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or
4. Murder of an individual; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine,

if any, and was an offense that should have been anticipated by TIMOTHY JOHNSON as a result of the carrying out of the conspiracy to commit or attempt to commit the felony offense of:

1. Aggravated assault; or
2. Aggravated robbery; or
3. Robbery; or

4. Murder; or
5. Delivery of a controlled substance, to-wit:
Cocaine; or
6. Possession of a controlled substance, to-wit:
Cocaine,

but you do not find, or you have a reasonable doubt thereof, that the defendant, TIMOTHY JOHNSON, committed the offense of capital murder as defined above in this charge;

then you will find the Defendant, TIMOTHY JOHNSON, guilty of murder.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant of murder.

10.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 26th day of September, 2006, in Smith County, Texas:

1. the defendant, TIMOTHY JOHNSON, did unlawfully:
 - A) intentionally, knowingly, or recklessly cause serious bodily injury to UNNICE ROGERS or GARY MOSLEY; or

- B) intentionally, knowingly, or recklessly cause bodily injury to UNNICE ROGERS or GARY MOSLEY, and did then and there use or exhibit a deadly weapon during the commission of the assault; or
- C) intentionally or knowingly threatened UNNICE ROGERS or GARY MOSLEY with imminent bodily injury, and did then and there use or exhibit a deadly weapon during the commission of the assault; or

2. KORRENTHIN BAKER did unlawfully:

- A) intentionally, knowingly, or recklessly cause serious bodily injury to UNNICE ROGERS or GARY MOSLEY; or
- B) intentionally, knowingly, or recklessly cause bodily injury to UNNICE ROGERS or GARY MOSLEY, and did then and there use or exhibit a deadly weapon during the commission of the assault; or
- C) intentionally or knowingly threatened UNNICE ROGERS or GARY MOSLEY with imminent bodily injury, and did then and there use or exhibit a deadly weapon during the commission of the assault;

and that TIMOTHY JOHNSON, then and there knew of the

intent, if any, of said KORRENTHIN BAKER to shoot the said GARY MOSLEY or UNNICE ROGERS, and that the defendant, TIMOTHY JOHNSON, acted with intent to promote or assist the commission of the offense by said KORRENTHIN BAKER by encouraging, soliciting, directing, aiding, or attempting to aid said KORRENTHIN BAKER to commit the offense of aggravated assault of GARY MOSLEY or UNNICE ROGERS;

but, you do not find beyond a reasonable doubt that the defendant is guilty of capital murder or murder as defined in this charge;

then you will find the defendant guilty of aggravated assault.

Unless you find beyond a reasonable doubt that the defendant is guilty of aggravated assault under the instructions given you, or if you have a reasonable doubt thereof, you will acquit him of aggravated assault.

11.

You are instructed that 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 defendant at the time of the

offense, if any.

12.

The mere presence of the defendant, TIMOTHY JOHNSON, at the capital murder, murder, aggravated assault, aggravated robbery, robbery, delivery of a controlled substance, to-wit: Cocaine, or possession of a controlled substance, to-wit: Cocaine, if any, would not constitute him a party to the offense charged, and if you should find from the evidence beyond a reasonable doubt that KORRENTHIN BAKER did commit the offense of capital murder, murder or aggravated assault as defined above but you further do not find and believe from the evidence, or you have a reasonable doubt thereof, that:

1. the defendant, TIMOTHY JOHNSON, acted with intent to promote or assist the commission of the said offense, if any, by encouraging, soliciting, directing, aiding, or attempting to aid KORRENTHIN BAKER in the commission of said offense; or

2. that the said TIMOTHY JOHNSON, was acting in an attempt to carry out a conspiracy to commit one felony when another felony was committed by one of the conspirators, KORRENTHIN BAKER, if any, and that 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;

then you will find the defendant, TIMOTHY JOHNSON, not guilty of such offense.

13.

If you find and believe beyond a reasonable doubt that the defendant is guilty of either capital murder or 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 offense of murder.

If you find and believe beyond a reasonable doubt that the defendant is guilty of either capital murder or murder on the one hand, or of aggravated assault on the other hand, 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 offense of aggravated assault.

If you should find from the evidence that the defendant is not guilty of capital murder, murder, or aggravated assault, or if you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge, then you will acquit the defendant of all charges of capital murder, murder, and aggravated assault and say by your verdict "not guilty".

The burden of proof in all criminal cases rests upon the State throughout the trial, and never shifts to the defendant.

All persons, including the defendant, 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 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."

15.

You are instructed under our law no evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

You are instructed that under our law no oral statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless the same was freely and voluntarily made without compulsion or persuasion. However, before a custodial statement of an accused made orally to officers may be considered voluntary, it must be shown by legal evidence beyond a reasonable doubt that prior to the statement but during the recording the accused has been warned by the person to whom the statement is made that:

(1) he has the right to remain silent and not make any statement at all and that any statement he makes may be used

against him at his trial; and

(2) any statement he makes may be used as evidence against him in court; and

(3) he has the right to have a lawyer present to advise him prior to and during any questioning; and

(4) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning; and

(5) he has the right to terminate the interview or questioning at any time.

You are instructed that the warning requirements set out above are not required and do not apply to a non-custodial interrogation of an accused.

You are instructed that under our law a person is in "custody" only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest. You are instructed that the "reasonable person" standard presupposes an innocent person.

You are instructed that the determination of custody is entirely objective, and the subjective intent of law-enforcement officials is not relevant unless communicated through their words

or actions to the suspect. You are further instructed that the subjective belief of the suspect is also not relevant. You are instructed that station-house questioning does not in and of itself constitute custodial interrogation.

So, in this case, if you find from the evidence, or if you have a reasonable doubt thereof, that the defendant TIMOTHY JOHNSON was in custody at the time of the alleged visually recorded statement to Adam Tarrant on September 29, 2006, then you will wholly disregard the alleged statement and not consider it for any purposes nor any evidence obtained as a result thereof.

16.

You are further instructed that a defendant cannot be convicted based on a confession standing alone, but there must be some evidence presented that corroborates the defendant's confession and tends to support the content of the confession. You are instructed that the corroborating evidence need not be sufficient in itself to prove the offense charged.

Therefore, if you find that the defendant, TIMOTHY JOHNSON, made a non-custodial confession but you also find that the confession is not corroborated by other evidence then you will wholly disregard the confession.

17.

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 an Indictment is no evidence of guilt. Therefore, you are instructed in this cause that the Indictment herein shall not be considered by the Jury as evidence of guilt, if any.

18.

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 that he or she may have heard regarding the case from any source other than the witness stand.

19.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however is a privilege 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 or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against the defendant, nor will you refer to or discuss any matter not before you in evidence.

20.

You are instructed that if there is any testimony before you in this case regarding the defendant having committed offenses or bad 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 other offenses or bad acts, if any were committed, and even then you may only consider the same in determining the motive, opportunity, identity, preparation, intent, knowledge, plan or scheme, 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.

21.

The issue of punishment is not before you, and you should confine your deliberations to the innocence or guilt of the

Defendant.

22.

In deliberating on this case you are not to refer to or discuss any matter not in evidence before you nor talk about this case to anyone not of your Jury.

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

23.

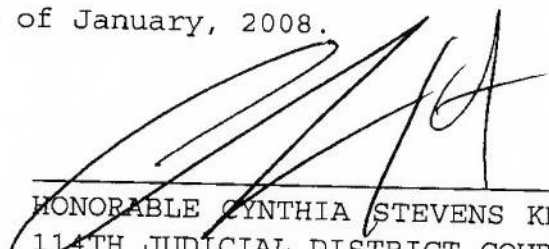
After you have retired to consider your verdict, no one has any authority to communicate with you except the officer who has you in charge. You may communicate with this Court in writing, signed by your foreman, through the officer or bailiff of the Court concerning any question you may have. Do not attempt to talk to the officer, the bailiff, the attorneys, or the Court concerning any questions you may have.

"Foreman," as used in this charge, is used in a descriptive and not generic sense. Both male and female members of the Jury are, of course, eligible to serve as Foreman.

After argument of Counsel, you will retire and select one of

your members as your Foreman. It is the duty of your foreman to preside at your deliberations and to vote with you in arriving at a verdict. Your verdict must be UNANIMOUS, and after you have arrived at your verdict, you may use one of the forms attached hereto by having your Foreman sign the particular form that conforms to your verdict.

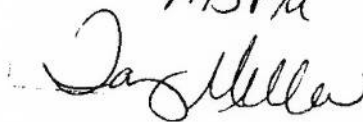
Signed this the 31st day of January, 2008.



HONORABLE CYNTHIA STEVENS KENT
114TH JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

JAN 31 2008

7:15 PM



Indicate your verdict by signing only ONE of the verdict forms below:

VERDICT FORMS

WE, THE JURY, find the Defendant, TIMOTHY JOHNSON, NOT GUILTY.

FOREMAN

WE, THE JURY, find the Defendant, TIMOTHY JOHNSON, GUILTY of Capital Murder as charged in the indictment.



FOREMAN

WE, THE JURY, find the Defendant, TIMOTHY JOHNSON, GUILTY of the offense of Murder.

FOREMAN

WE, THE JURY, find the Defendant, TIMOTHY JOHNSON, GUILTY of the offense of Aggravated Assault.

FOREMAN

JAN 31 2008

7:15 PM

