

CAUSE NUMBER 241-1467-12

THE STATE OF TEXAS

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VS.

JAMES CALVERT

IN THE 241ST JUDICIAL

DISTRICT COURT OF

SMITH COUNTY, TEXAS

CHARGE OF THE COURT

OCT - 1 2015
CLERK OF DISTRICT COURT SMITH CO., TX
BY [Signature]

LADIES AND GENTLEMEN OF THE JURY:

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give you some general instructions which apply in every case. Then I will give you some specific rules of law about this particular case, and finally I will explain to you the procedures you should follow in your deliberations.

You, as jurors, are the judges of the facts. But in determining what actually happened, that is, in reaching your decision as to the facts, it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences. It is also your duty to base your verdict solely upon the evidence that has been presented to you in court.

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 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.

As you determine the facts, you must consider only the evidence presented during the trial, including the sworn testimony of the witnesses and the exhibits. Remember that any statements, objections, or arguments made by the lawyers are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in this case. Except for the instructions to you on the

law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel 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 which have been established by the evidence.

You are to decide whether the State has proved beyond a reasonable doubt that the Defendant is guilty of the crime charged. The Defendant is not on trial for any act, conduct, or offense not alleged in the indictment. Neither are you concerned with the guilt of any person or persons not on trial as a Defendant in this case.

Our law provides a Defendant may testify in his own behalf if he elects to do so. This, however, is a privilege accorded to the Defendant, and in the event he does not testify, that fact cannot be taken as a circumstance against him. In this case the Defendant has not testified, and you are instructed that you cannot and must not refer or allude to this fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against the Defendant.

Now, bearing in mind these instructions, the Defendant, JAMES CALVERT, stands charged by indictment with the offense of Capital Murder, alleged to have been committed on or about October 31, 2012, in Smith County, Texas. The Defendant has pleaded not guilty.

1.

A person commits Capital Murder when such person intentionally commits the offense of Murder in the course of committing or attempting to commit the offense of Kidnapping.

A person commits Capital Murder when such person intentionally commits the offense of Murder in the course of committing or attempting to commit the offense of Burglary of a Habitation.

A person commits the offense of Murder when he intentionally or knowingly causes the death of an individual.

A person commits the offense of Kidnapping when he intentionally or knowingly abducts another person.

A person commits the offense of Burglary of a Habitation when, without the effective consent of the owner, he enters a habitation and commits or attempts to commit a felony, theft, or an assault.

2.

Definitions applicable to the offenses charged in the indictment include:

"Abduct" means to restrain a person with intent to prevent his liberation by:

- (A) secreting or holding him in a place where he is not likely to be found; or
- (B) using or threatening to use deadly force.

"Restrain" means to restrict a person's movements without consent, so as to interfere substantially with the person's liberty, by moving the person from one place to another or by confining the person. Restraint is "without consent" if it is accomplished by:

- (A) force, intimidation, or deception; or
- (B) any means, including acquiescence of the victim, if:
 - (i) the victim is a child who is less than 14 years of age or an incompetent person and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement or confinement; or

“Appropriation” and “appropriate” 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.

“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.

“Bodily injury” means physical pain, illness, or any impairment of physical condition, including death.

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

“Deprive” as used herein means to withhold property from the owner permanently.

“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.

“Enter,” as used above, is meant to intrude any part of the body or any physical object connected with the body into the building or habitation.

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

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

“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.

“Property” as used herein means tangible or intangible personal property or documents, including money that represents or embodies anything of value.

“Theft” as used herein is the unlawful appropriation of the corporeal personal property of another with the intent to deprive such person of said property.

3.

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 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 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.

4.

Now, if you find from the evidence beyond a reasonable doubt that on or about October 31, 2012 in Smith County, Texas, the Defendant, JAMES CALVERT, did intentionally cause the death of Jelena Calvert AKA Jelena Sriraman by shooting Jelena Calvert AKA Jelena Sriraman with a firearm, and the said Defendant was then and there in the course of committing or attempting to commit the offense of Kidnapping of Lucas Calvert, then you will find the Defendant guilty of Capital Murder; or

If you find from the evidence beyond a reasonable doubt that on or about October 31, 2012 in Smith County, Texas, the Defendant, JAMES CALVERT, did intentionally cause the death of Jelena Calvert AKA Jelena Sriraman by shooting Jelena Calvert AKA Jelena Sriraman with a firearm, and the said Defendant was then and there in the course of committing or

attempting to commit the offense of Burglary of a Habitation of Jelena Calvert AKA Jelena Sriraman, the owner of the habitation, then you will find the Defendant guilty of Capital Murder.

5.

Unless you find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant of Capital Murder and next consider whether the Defendant is guilty of the lesser-included offense of Murder.

If you find from the evidence beyond a reasonable doubt that on or about October 31, 2012 in Smith County, Texas, the Defendant, JAMES CALVERT, did intentionally or knowingly cause the death of Jelena Calvert AKA Jelena Sriraman by shooting Jelena Calvert AKA Jelena Sriraman with a firearm, then you will find the Defendant guilty of the lesser included-offense Murder.

6.

Unless you find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant and say by your verdict "Not Guilty."

7.

You are instructed that a deadly weapon is a firearm or 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.

"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 or any bodily member or organ.

8.

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, if any, 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.

9.

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 issue 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.

10.

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 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 of 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.

11.

At times throughout the trial the Court has been called upon to pass on the question of whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inference from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence, nor does it pass on the credibility of the witness. As to the offer of evidence that has been rejected by the Court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

You are instructed that you are not to allow yourselves to be influenced by 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 may interpret or have interpreted as the Court's opinion upon any matter of fact in this case, you must wholly disregard it.

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 not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

12.

You are instructed that if there is any testimony before you in this case regarding the Defendant having committed offenses or other 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, and even then you may only consider the same in determining the motive, opportunity, intent, preparation, plan, knowledge, identity of the Defendant, or absence of mistake or accident, in connection with the offense alleged against the Defendant in the indictment in this case.

13.

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.

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.

14.

You are the exclusive judges of the facts proved, or 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 to you, and be governed thereby.

15.

You must not be influenced in any degree whatsoever by any personal feelings of sympathy for, or prejudice against, the State or the Defendant in this case, for each is entitled to the same fair and impartial consideration.

16.

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

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges of the facts. Your sole duty is to decide whether the State has proved the Defendant guilty beyond a reasonable doubt.

When you go to the jury room, the first thing that you should do is select one of your number as your presiding juror, who will help to guide your deliberations and will speak for you here in the courtroom.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict, if any.

Any verdict you render must be unanimous.

At the conclusion of your deliberations, the presiding juror should sign the appropriate verdict form, if any.

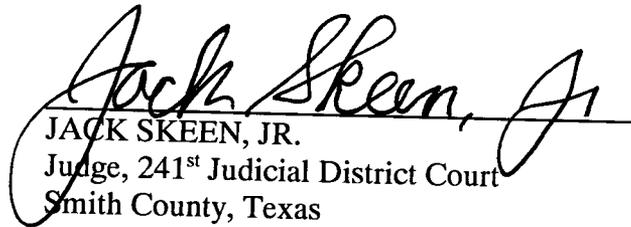
If you find the Defendant guilty of the offense of Capital Murder, or of the lesser-included offense of Murder, and further find that a deadly weapon was used by the Defendant in

the commission of such offense, the presiding juror should additionally sign that further finding on the verdict form.

If you need to communicate with me during your deliberations, the presiding juror should write the message and give it to the bailiff. I will either reply in writing or bring you back into the court to answer your message.

You are the exclusive judges of the facts proved, 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 herein given, and be governed thereby.

SIGNED on this the 1st day of October, 2015.


JACK SKEEN, JR.
Judge, 241st Judicial District Court
Smith County, Texas

CAUSE NO. 241-1467-12

THE STATE OF TEXAS

VS.

JAMES CALVERT

OCT - 1 2015

CLERK 241 JUD DIST COURT SMITH CO. TX
BY: [Signature] DEPUTY

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IN THE 241st JUDICIAL
DISTRICT COURT OF
SMITH COUNTY, TEXAS

Indicate your verdict by signing one of the verdict forms below. If you have found the Defendant guilty of the offense of Capital Murder or the lesser-included offense of Murder, you will then and only then consider whether the Defendant used or exhibited a deadly weapon during the commission of the offense. If you so find, indicate that additional finding by signing the deadly weapon paragraph below.

VERDICT FORM

WE, THE JURY, find the Defendant, JAMES CALVERT, GUILTY of the offense of CAPITAL MURDER as charged in the indictment.

[Signature]

PRESIDING JUROR

VERDICT FORM

WE, THE JURY, find the Defendant, JAMES CALVERT, GUILTY of the lesser-included offense of MURDER.

PRESIDING JUROR

VERDICT FORM

WE, THE JURY, find the Defendant, JAMES CALVERT, NOT GUILTY.

PRESIDING JUROR

FURTHER, WE, THE JURY, find that the Defendant, JAMES CALVERT, used or exhibited a deadly weapon in the commission of the offense.

[Signature]

PRESIDING JUROR