

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

FEB 09 2010

TIME 858A  
BY cm DEPUTY

NO. 1110045D

THE STATE OF TEXAS                    )( IN THE CRIMINAL DISTRICT  
VS.                                        )( COURT NUMBER TWO  
MALCOLM J. STRICKLAND               )( TARRANT COUNTY, TEXAS

MEMBERS OF THE JURY:

The Defendant, Malcolm J. Strickland, stands charged by Indictment with the offense of Capital Murder, alleged to have been committed on or about the 21st day of April, 2008, in Tarrant County, Texas. To this charge, the Defendant has pled 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, or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual. Or, if he commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in the immediate flight from the commission or attempt, he commits or

attempts to commit an act clearly dangerous to human life that causes the death of an individual.

2.

A person commits the offense of Capital Murder if the person intentionally commits the offense of Murder in the course of committing or attempting to commit Robbery.

3.

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 or maintain control of property of another, he intentionally or knowingly causes bodily injury to another or intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

4.


A person commits the offense of Theft if he unlawfully appropriates property with intent to deprive the owner of said property.

“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.

5.

A person commits the offense of Burglary of a Building if, without the effective consent of the owner, he enters a building not open to the public with the intent to commit theft, or commits or attempts to commit theft.

 "Attempt" means to commit an act with the specific intent to commit an offense where the act committed amounts to more than mere preparation that tends, but fails, to effect the commission of the offense intended.

"Property" means tangible or intangible property including anything severed from land; or a document, including money, that represents or embodies anything of value.

"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.

"Building" means any enclosed structure intended for use or

occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

“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.

“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 to the owner.

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

“Effective consent” 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.

“Act” means a bodily movement, whether voluntary or involuntary and includes speech.

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

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

"Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily converted to that use.

"Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary. Robbery and Burglary of a Building are felonies.

6.

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 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.

7.

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 prosecutions' 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".

8.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 21st day of April, 2008, in Tarrant County, Texas, Malcolm J. Strickland, did then and there intentionally cause the death of an individual, Michael Myers, by shooting him with a firearm, and the said Defendant was then and there in the course of committing or attempting to commit the offense of Robbery of Michael Myers, then you will find the Defendant, Malcolm J. Strickland, guilty of Capital Murder, but if you do not so believe, 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 felony offense of Murder.

9.

Now, if you find from the evidence beyond a reasonable doubt that on or about 21<sup>st</sup> day of April, 2008, in Tarrant County, Texas, the defendant Malcolm J. Strickland, did then and there commit or attempt to commit a felony, to wit: Robbery or Burglary of a Building, and in the course of and in furtherance of the commission or attempt or in the

immediate flight from the commission or attempt of said felony, Malcolm J. Strickland, committed or attempted to commit an act clearly dangerous to human life, to wit: shooting a firearm, at or in the direction of Michael Myers, 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 21st day of April, 2008, in Tarrant County, Texas, Malcolm J. Strickland, did then and there knowingly cause the death of an individual, Michael Myers, by shooting him with a firearm, then you will find the Defendant, Malcolm J. Strickland, guilty of Murder.

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

10.

You are instructed 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 motive, intent, credibility, character, plan, lack of mistake, or knowledge 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.

11.

Certain questions were asked by the State inquiring of character witnesses and whether they had heard about other offenses or bad acts on the part of the Defendant, if any. You are instructed that you may not consider such questions, nor may you consider any answers of such witnesses as to whether they had heard of any other offenses or bad acts, if any; if such answers were given, as any evidence of guilt in this case, but only for the purpose of testing, if it does, the knowledge of such witnesses as to the Defendant's character and the weight to be given to their testimony. You must not consider such questions and answers in regard to any other offenses or bad acts, if any, for any other purpose whatsoever.

12.

Voluntary intoxication does not constitute a defense to the commission of a crime.

“Intoxication” means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

13.

The Indictment in this case is no evidence whatsoever of the guilt of the Defendant. It is a written instrument necessary in order to bring this case into court for trial, and you will not consider the indictment as any evidence in this case or as any circumstance whatsoever against the Defendant.

14.

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.

15.

You are charged that it is only in open court that the jury is permitted to receive evidence regarding the case, or any witness therein, and no juror is permitted to communicate to any other juror

anything he or she may have seen or heard regarding the case or any witness therein, from any source other than in open court.

16.

Your verdict must be by a unanimous vote of all members of the jury. In your deliberations you shall consider the charge as a whole and you must not refer to or discuss any matters not in evidence.

17.

At times throughout the trial the Court may have been called upon to rule on the question of whether or not certain offered evidence might properly be admitted. You are not to concern yourselves with the reasons for the Court's ruling nor draw any inferences therefrom. Whether offered evidence is admissible is a question of law and in admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does the Court pass on the credibility of the witness. You must not consider any evidence offered that has been rejected by the Court. As to any question to which an objection was sustained, you must not engage in any conjecture as to what the answer might have been or as to the reason for the objection.

18.

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 the outcome of the case. The Court has not intended to express any opinion upon any matter of fact, and if you have observed anything which you may have interpreted as the Court's opinion as to any matter of fact, you must wholly disregard it.

19.

After you retire to the jury room, you should select one of your members as your foreman. Any member of the jury may serve as foreman. It is the foreman's duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form and signing the same as your foreman.

20.

At this time you will confine your deliberations solely to the issue

of whether the Defendant is guilty or not guilty of the offense set forth in this charge.

21.

Should the jury desire to have any or all of the admitted exhibits delivered to the jury for your deliberations, your foreman shall so notify the Court in writing and the requested exhibits will be delivered.

22.

After you have retired, you may communicate with the Court in writing through the bailiff who has you in charge. Your written communication must be signed by the foreman. Do not attempt to talk to the bailiff, the attorneys, or the Court regarding any question you may have concerning the trial of the case. After you have reached a unanimous verdict or if you desire to communicate with the Court, please knock on the door and one of the bailiffs will respond.



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JUDGE WAYNE F. SALVANT  
Criminal District Court No. 2  
Tarrant County, Texas

# VERDICT FORMS

We, the jury, find the Defendant, Malcolm J. Strickland, guilty of the offense of Capital Murder.

Sam E. Duley  
FOREMAN

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TIME \_\_\_\_\_  
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-OR-

We, the jury, find the Defendant, Malcolm J. Strickland, guilty of the offense of Murder.

\_\_\_\_\_  
FOREMAN

-OR-

We, the jury, find the Defendant, Malcolm J. Strickland, not guilty.

\_\_\_\_\_  
FOREMAN