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COURT ADMINISTRATION

**ORIGINAL**

NO. 2007-415,500

FILED FOR RECORD  
DISTRICT CLERK LUBBOCK CO.  
DEPUTY  
2008 MAY -7 AM 9:30  
D. Simmons  
District

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

DAROLD O SIMMONS

§ 137TH JUDICIAL DISTRICT

**COURT'S CHARGE**

**MEMBERS OF THE JURY:**

The defendant, DAROLD SIMMONS, stands charged by indictment with the offense of capital murder, alleged to have been committed in Lubbock County, Texas, on or about February 18, 2007. The defendant has entered a plea of not guilty to the indictment which was read to you.

You are instructed that you will consider only the guilt or innocence of the defendant from the evidence admitted before you and from the law as given to you in charge by the Court.

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

1.

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

A person commits capital murder when such person intentionally commits the murder in the course of committing or attempting to commit the offense of robbery.



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CCJR - COURT CHARGE TO THE JURY  
Case No: 2007415500

2.

A person commits a robbery if, in the course of committing theft, as defined hereinafter, and with intent to obtain or maintain control of the property, 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.

3.

“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.

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

4.

“Theft,” as used herein, is the unlawful appropriation of the corporeal personal property of another, with the intent to deprive such other person 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 represent or embody anything of value.

“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.

“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 the property.

5.

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, when he is aware that his conduct is reasonably certain to cause the result.

6.

Now, if you find from the evidence beyond a reasonable doubt that on or about February 18, 2007, in Lubbock County, Texas, the defendant, DAROLD SIMMONS,

did then and there intentionally cause the death of an individual, Ross Mosley, by stabbing the said Ross Mosley, and the said DAROLD SIMMONS was then and there in the course of committing or attempting to commit the offense of robbery, then you will find the defendant guilty of capital murder.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit defendant of the offense of capital murder and next consider if he is guilty of the lesser offense of murder.

7.

Now, if you find from the evidence beyond a reasonable doubt that on or about February 18, 2007, in Lubbock County, Texas, the defendant, DAROLD SIMMONS, did then and there intentionally cause the death of an individual, Ross Mosley, by stabbing the said Ross Mosley, but you have a reasonable doubt as to whether the defendant was then and there engaged in the commission of robbery, at the time of the stabbing, if any, 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 defendant of the offense of murder.

8.

Upon the law of self-defense, you are instructed that a person is justified in using force against another when and to the degree he reasonably believes the

force is immediately necessary to protect himself against the other person's use or attempted use of unlawful force.

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 force is immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force, and if a reasonable person in defendant's situation would not have retreated.

By the term "deadly force" is meant force that is intended or known by the person using it 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. "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.

9.

When a person is attacked with unlawful deadly force, or he reasonably believes he is under attack or attempted attack with unlawful deadly force, and

there is created in the mind of such person a reasonable expectation or fear of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, viewed from his standpoint at the time, to protect himself from such attack or attempted attack, and it is not necessary that there be an actual attack or attempted attack, as a person has a right to defend his life and person from apparent danger as fully and to the same extent as he would had the danger been real, provided that he acted upon a reasonable apprehension of danger, as it appeared to him from his standpoint at the time, and that he reasonably believed such force was immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

10.

You are further instructed that in determining the existence of real or apparent danger, it is your duty to consider all of the facts and circumstances in evidence in the case before you and consider the words, acts, and conduct, if any, of Ross Mosley at the time of and prior to the time of the alleged killing, if any, and in considering such circumstances, you should place yourselves in defendant's position at that time and view them from his standpoint alone. The defendant would have a right to consider any previous difficulties with the deceased, particularly any previous threats by the deceased to harm the defendant, and if the

defendant reasonably believed, as viewed from his standpoint alone, that Ross Mosley was then and there going to execute such threats to do him bodily harm and that such action on his own part was essential to protect himself, then he would have a right to use such force as is necessary to defend himself.

11.

Now, if you find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, DAROLD SIMMONS, did stab Ross Mosley with a knife, as alleged, but you further find from the evidence that, viewed from the standpoint of the defendant at the time, from words or conduct, or both, of Ross Mosley, it reasonably appeared to the defendant that his life or person 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 Ross Mosley, and that acting under such apprehension, he reasonably believed that the use of deadly force on his part was immediately necessary to protect himself against Ross Mosley's use or attempted use of unlawful deadly force, and he stabbed the said Ross Mosley, and that a reasonable person in the defendant's situation at that time would not have retreated, then you should acquit the defendant on the grounds of self defense; or if you have reasonable doubt as to whether or not the defendant was acting in self-defense on the occasion and under



the circumstances, then you should give the benefit of that doubt to the defendant and find him not guilty.

12.

If you find from the evidence beyond a reasonable doubt (1) that 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) that a reasonable person in the defendant's situation, at such time and place, would have retreated before using deadly force against Ross Mosley; or (3) that the defendant, under the circumstances, did not reasonably believe that the degree of force actually used by him was immediately necessary to protect himself against Ross Mosley's use or attempted use of unlawful deadly force, if any, as viewed from the defendant's standpoint at the time, then you must find against the defendant on the issue of self-defense.

13.

You are further instructed as part of the law of this case, and as a qualification of the law on self defense, that the use of force by a defendant against another is not justified if the defendant provoked the other's use or attempted use of unlawful force, unless the defendant abandons the encounter, or clearly communicates to the other person his intent to do so reasonably believing he cannot safely abandon the encounter and the other person, nevertheless,



continues or attempts to use unlawful force against the defendant. The use of force is not justified in response to verbal provocation alone.

So, in this case, if you find and believe from the evidence beyond a reasonable doubt that the defendant, DAROLD SIMMONS, immediately before the difficulty, if any, then and there did some act, or used some language, or did both, as the case may be, with the intent on his, the defendant's, part to produce the occasion for killing the deceased, Ross Mosley, and to bring on the difficulty with said deceased, and that such words and conduct on the defendant's part, if there was such, were reasonably calculated to, and did, provoke a difficulty, and that on such occasion the deceased attacked defendant with deadly force, or reasonably appeared to the defendant to so attack him or to be attempting to so attack him, and that the defendant then killed the said Ross Mosley by the use of deadly force, to wit, by stabbing him with a knife, in pursuit of his original design, if you find there was such, then you will find the defendant guilty of murder.

On the other hand, if you find from the evidence that the acts done or language used by the defendant, if any, were not, under the circumstances, reasonably calculated or intended to provoke a difficulty or an attack by the deceased upon the defendant, or if you have a reasonable doubt thereof, then in such event, defendant's right of self-defense would in no way be abridged, impaired, or lessened, and, if you so find, or if you have a reasonable doubt

thereof, you will decide the issue of self-defense in accordance with the law on that subject given in other portions of this charge, wholly disregarding and without reference to the law on the subject of provoking the difficulty.

14.

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 accused at the time of the offense, if any.

15.

You will next consider if the defendant, DAROLD SIMMONS, is guilty of the lesser offense of manslaughter.

16.

A person commits the offense of manslaughter if he recklessly causes the death of an individual.

A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or 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.

17.

Now, if you find from the evidence beyond a reasonable doubt that on or about February 18, 2007, in Lubbock County, Texas, the defendant, DAROLD SIMMONS, did then and there recklessly cause the death of an individual, Ross Mosley, by stabbing the said Ross Mosley, then you will find the defendant guilty of manslaughter.

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

18.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either the offense of capital murder, on the one hand, or the offense of murder, on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in defendant's favor and find him guilty of the lesser offense of murder, and so say by your verdict.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either the offense of murder, on the one hand, or the offense of manslaughter, on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in defendant's favor

and find him guilty of the lesser offense of manslaughter, and so say by your verdict.

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 and say by your verdict "Not Guilty."

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.

20.

You are further charged that if there is any evidence before you in this case tending to show that the defendant herein committed offenses other than the offense alleged against him in the indictment, 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 if you find and believe beyond a reasonable doubt from such testimony that other offenses were committed,

you may then consider the same in determining the motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, and for no other purpose.

21.

In your deliberations, you will consider this charge as a whole. You are instructed that the indictment in this case is of itself a mere accusation or charge against this defendant, and is not any evidence of the defendant's guilt; no juror in this case should permit himself/herself to be to any extent influenced against this defendant because of, or on account of, said indictment.

22.

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/she may have heard regarding the case from any source other than the witness stand.

23.

In deliberating on the cause you are not to refer to or discuss any matter or issue not in evidence before you; nor talk about this case to anyone not of your jury; and after the reading of this Charge you shall not separate from each other until you have reached a verdict.

24.

Your verdict, if any, will be by unanimous vote.

25.

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.

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."

26.

When the jury wishes to communicate with the Court, it shall so notify the Bailiff, who shall inform the Court thereof. Any communication relative to the cause must be written, signed by the Foreman, and shall be submitted to the Court through the Bailiff.

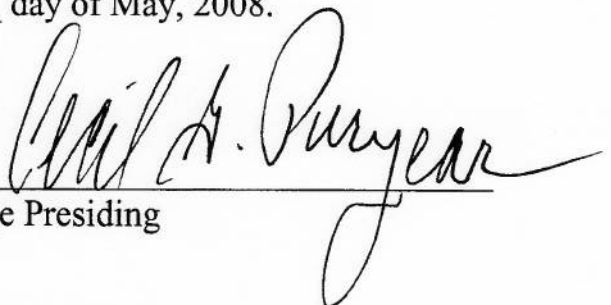
27.

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 herein given you, and be governed thereby.

28.

After argument of counsel, you will retire and select one of your members as your Foreman. It is his/her duty to preside at your deliberations and to vote with you in arriving at a verdict. Your verdict, if any, 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 his/her name to the particular form that conforms to your verdict.

The above and foregoing is the Charge in this case, and the same is hereby signed and certified by the Court, this the 7<sup>th</sup> day of May, 2008.

  
\_\_\_\_\_  
Judge Presiding



NO. 2007-415,500

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

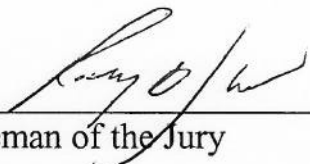
DAROLD O SIMMONS

§ 137TH JUDICIAL DISTRICT

FILED FOR RECORD  
DISTRICT CLERK LUBBOCK CO.  
DEPUTY  
BY \_\_\_\_\_  
2008 MAY - 8  
PM 10:48  
Rocky Bush Shaw

**VERDICT**

We, the jury, find from the evidence beyond a reasonable doubt the defendant is guilty of the offense of capital murder, as charged in the indictment.

  
\_\_\_\_\_  
Foreman of the Jury  
Rocky Bush Shaw

NO. 2007-415,500

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

DAROLD O SIMMONS

§ 137TH JUDICIAL DISTRICT

**VERDICT**

We, the jury, find from the evidence beyond a reasonable doubt the defendant is guilty of the offense of murder.

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Foreman of the Jury

NO. 2007-415,500

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

DAROLD O SIMMONS

§ 137TH JUDICIAL DISTRICT

**VERDICT**

We, the jury, find from the evidence beyond a reasonable doubt the defendant is guilty of the offense of manslaughter.

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Foreman of the Jury

NO. 2007-415,500

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

VS.

§ OF LUBBOCK COUNTY, TEXAS

DAROLD O SIMMONS

§ 137TH JUDICIAL DISTRICT

**VERDICT**

We, the jury, find the defendant not guilty.

\_\_\_\_\_  
Foreman of the Jury



I, Barbara Suesy, District Clerk, in and for Lubbock County, Texas, do hereby certify this to be a true and correct copy of a like instrument now on file in this office.

This 17th day of April 2008 Christiana Deputy  
Clerk of District Court, Lubbock County, Texas pg 19 of 17