



“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.

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

“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.

“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.

“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.

“Deadly weapon” means a firearm or anything manifestly designed, made, or adapted for the purpose of causing 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.

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

“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.

### 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.

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.

### IV.

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.

V.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 8th day of March, 2007, in San Jacinto County, Texas, the defendant, JASON LEWIS TURNER, did intentionally cause the death of Barney Burton Carnes 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 Barney Burton Carnes, then you will find the defendant guilty of capital murder.

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 offense of murder.

VI.

If you find from the evidence beyond a reasonable doubt that on or about the 8th day of March, 2007, the defendant, JASON LEWIS TURNER, did intentionally or knowingly cause the death of Barney Burton Carnes by shooting him with a firearm, but you have a reasonable doubt as to whether the defendant was then and there engaged in the commission of robbery, then you will find the defendant guilty of murder.

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

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder on the one hand or 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 the defendant's favor and find him guilty of the lesser offense of murder.

If you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge you will acquit the defendant and say by your verdict "Not Guilty."

## VII.

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 accused at the time of the killing in question, if any.

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 question 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.

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.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the

notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

Occasionally, during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the Court and request that the Court read the portion of disputed testimony to you from the official transcript. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts. The dispute must be settled by the official transcript, for it is the official transcript, rather than any juror's notes, upon which you must base your determination of the facts and, ultimately, your verdict in this case.

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.

You may have heard evidence regarding extraneous crimes or bad acts alleged to have been committed by the defendant other than the one charged in the indictment in this case. This evidence was admitted only for the purpose of assisting you, if it does, for the purpose of showing the defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, if any. You cannot consider the testimony unless you find and believe beyond a reasonable doubt that the defendant committed these acts.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and the weight to be given their testimony, but you must be governed by the law you shall receive in these written instructions.

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 you deliberations, vote with you, and, when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form attached hereto and signing the same as Foreperson.

No one has any authority to communicate with you except the officer who has you in charge. During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

After you have retired, you may communicate with this court in writing through the officer who has you in charge. 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. After you have reached a unanimous verdict, the Foreman will certify thereto by filling in the appropriate form attached to this charge and signing his name as Foreman. You may now retire to consider your verdict.

FILED: \_\_\_\_\_

*Robert H. Terry*  
\_\_\_\_\_  
JUDGE PRESIDING

*Oct 22nd 2008*

On *22nd* Day of *October* AD 20 *08*  
Time *3:24 P.M.*

REBECCA CAPERS

Clerk District Court San Jacinto County, Texas

*Rebecca Capers* Deputy

CAUSE NO. 9565

THE STATE OF TEXAS  
VS.  
JASON LEWIS TURNER

§  
§  
§

IN THE 411TH DISTRICT COURT  
OF  
SAN JACINTO COUNTY, TEXAS

VERDICT FORM

We, the jury, find the defendant, JASON LEWIS TURNER, not guilty.

\_\_\_\_\_  
FOREPERSON

We, the jury, find the defendant, JASON LEWIS TURNER, guilty of capital murder as charged in the indictment.

*Marie L. Matfield*  
\_\_\_\_\_  
FOREPERSON

We, the jury, find the defendant, JASON LEWIS TURNER, guilty of the lesser offense of murder.

\_\_\_\_\_  
FOREPERSON

FILED  
On 22<sup>nd</sup> Day of October AD 20 08  
Time 5:20 PM  
REBECCA CAPERS  
Clerk District Court San Jacinto County, Texas  
*Rebecca Capers* Deputy