

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR BEXAR COUNTY, STATE OF LONE STAR
CRIMINAL DIVISION

STATE OF LONE STAR)
)
v.) Case No. 2004-1758
)
ALAN BLIZARD,)
)
 Defendant.)

)

Prepared by:

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This case file was commissioned by the Texas Young Lawyers Association and was prepared by Tracy E. Leduc for the 2005 National Trial Competition.

State of Lone Star

v.

Alan Blizard

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STATEMENT OF THE CASE

The State has charged Alan Blizzard with the premeditated murder of Adam Thomas McKenzie and with the second degree grand theft of Joe Kubinsky's van. Adam McKenzie was found in a dumpster behind a carpet store dead from a single gunshot to the head the day after he had an argument with Blizzard. Blizzard testified at a prior trial that he had a fight with McKenzie, but that after the fight he went to the gym to "blow off steam." He testified that he knew nothing about the murder and that his fingerprints got in Kubinsky's van when he moved the van several weeks earlier. Casey Snyder, the assistant manager of the skating rink owned by Blizzard, will testify that Kubinsky was working at the rink the day of the dispute between Blizzard and McKenzie, and that Kubinsky left the rink immediately after McKenzie did and never returned. Joe Kubinsky will testify that he was installing carpet in Blizzard's skating rink when the fight between Blizzard and McKenzie occurred. He will testify that Blizzard left the rink immediately after McKenzie did. Kubinsky will also testify that when he went to get more glue from his van about an hour later, his van was missing from the skating rink parking lot. Detective Morgan Richardson will testify that blood matching McKenzie's DNA and a spent bullet casing matching the caliber of the bullet taken from McKenzie's head during the autopsy were found in Kubinsky's van when it was located. However, Blizzard's fingerprints were found in the van, and the police received a note they believe implicates Blizzard in the murder. In addition, none of the gym employees remember seeing Blizzard at the gym on the day of the murder.

STIPULATIONS REGARDING EVIDENTIARY MATTERS

Procedural Matters

1. Federal Rules of Criminal Procedure and Federal Rules of Evidence apply.
2. All witnesses called to testify who have in depositions identified the parties, other individuals, or tangible evidence can, if asked, identify the same at trial.
3. Each witness who gave a deposition agreed under oath at the outset of his or her deposition to give full and complete answers to questions concerning what occurred and to correct the deposition for inaccuracies before signing the deposition.
4. All depositions were signed under oath.
5. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on a deposition does not comport with signatures or initials located on an exhibit.
6. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
7. This competition does not permit a listed witness, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that "invented" individual.

8. "Beyond the record" shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to National Rules VII(4)(C) and (D) and VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in rule VIII(4).

9. The State and the defendant must call the two witnesses listed as that party's witnesses on the witness list.

10. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

11. It is stipulated that no one shall attempt to contact the problem drafter about this problem before the conclusion of the 2005 National Trial Competition Final Round. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

12. 2005 should be the current year in which this case comes to trial.

13. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the State shall have four minutes to present any pretrial motions; (2) the defendant shall have four minutes to respond to the State's motion(s); (3) the defendant shall have four minutes to present any pretrial motions; and (4) the State shall have four minutes to respond to the defendant's motion(s).

14. This competition permits teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions or deletions are permitted to the provided jury instructions.

15. The testimony of Alan Blizzard shall conform to the testimony given by Blizzard at his earlier trial.

16. No team member is permitted to question any witness or to argue to the jury the absence of the bullet recovered during the autopsy, the bullet casing recovered from Kubinsky's van, or the carpet piece collected from the dumpster.

Substantive Matters

1. Alan Blizzard has entered a plea of not guilty and has requested a trial by jury.

2. The trial court has denied a motion to dismiss the indictment.

3. In a pretrial conference before this trial, the State and the defense stipulated to an "all or nothing" verdict form and that neither side would argue for or request instructions on any lesser included offenses.

4. The State and the defense agree and stipulate that the Bexar County crime lab conducted all DNA testing in conformance with all recognized DNA testing procedures and that the DNA in the blood found in Kubinsky's van positively matches that of Adam McKenzie. In addition, the State and the defense agree and stipulate that the tire tracks found next to the dumpster positively match the tires on Kubinsky's van.

The State and the defense also agree and stipulate that fingerprints found on the steering wheel of Kubinsky's van positively match known fingerprints of Alan Blizzard. Finally, the State and the defense agree and stipulate that the only fingerprint of value found on the bullet casing recovered from Kubinsky's van positively matched known fingerprints of Adam McKenzie. These stipulations may be read to the jury at the request of either the State or the defense.

5. The State and the defense agree and stipulate that the medical examiner, Scot Samis, found traces of arsenic in Adam McKenzie's hair, fingernails, and tissues during the autopsy; however, the cause of McKenzie's death was a single gunshot wound to the head. This stipulation may be read to the jury at the request of either the State or the defense.

6. The State and the defense stipulate that the trial testimony of Alan Blizzard, starting on page 27, is an accurate transcription of Blizzard's testimony taken from the trial record of a jury trial on September 8, 2004, where, at the conclusion of the trial, the jury was unable to reach a verdict.

7. Lone Star Statutes (2004) provide the following:

25.822 Murder.

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being

is murder in the first degree and constitutes a capital felony punishable by death or a term of natural life.

25.672 Theft

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with the intent to, either temporarily or permanently:
 - (a) Deprive the other person of a right to the property or a benefit from the property.
 - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.
- (2)(b)1. If the property stolen is valued at \$20,000 or more, but less than \$100,000;

.....

the offender commits grand theft in the second degree, punishable as a felony of the second degree.

8. The State and defense stipulate and agree that Blizzard was not in custody when he spoke with Detective Richardson before his arrest. In addition, Blizzard's motions to suppress his statements on Fifth and Sixth Amendment grounds were heard at a pretrial hearing and were denied. No further argument will be permitted on such motions.

(Revised 1/21/05)

WITNESS LIST

Witnesses for the State:

1. Morgan Richardson**
2. Joe Kubinsky*

Witnesses for the Defense:

1. Alan Blizzard*
2. Casey Snyder**

Each team must call witnesses 1 and 2 listed for their respective party.

* This witness must be a male.

** This witness may be either a male or a female.

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR BEXAR COUNTY
STATE OF LONE STAR**

THE 15TH DAY OF JUNE, 2004.

| | | |
|------------------------|---|-----------------------|
| THE STATE OF LONE STAR | : | |
| | : | |
| v. | : | CASE NUMBER 2004-1758 |
| | : | |
| ALAN BLIZARD | : | |

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF LONE STAR:

Count One

The Grand Jurors of the County of Bexar, State of Lone Star, charge that Alan Blizard, on the 2nd day of June, 2004, in the County and State aforesaid, did unlawfully kill a human being, to wit: Adam Thomas McKenzie, with a premeditated design to effect the death of the person killed, contrary to the form of the statute in such cases and made and provided, to wit: Lone Star Statute 25.822.

Count Two

The Grand Jurors of the County of Bexar, State of Lone Star, charge that Alan Blizard, on the 2nd day of June, 2004, in the County and State aforesaid, did knowingly and unlawfully obtain and/or use the property of Joe Kubinsky, to wit: a 2003 Dodge Sprinter van, with the intent to deprive Joe Kubinsky of his right to the property or any benefit from it, and with the intent to appropriate the property to his own use, contrary to the form of the statute in such cases and made and provided, to wit: Lone Star Statute 25.672.

INDICTMENT FOR FIRST DEGREE MURDER

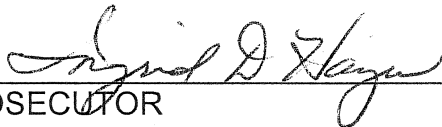
INDICTMENT FOR SECOND DEGREE
GRAND THEFT

A TRUE BILL:




Foreman of the Grand Jury

I, Prosecutor for the Sixth Judicial Circuit, in and for Bexar County, State of Lone Star, do hereby aver, as authorized and required by law, that I have acted in an advisory capacity to the Grand Jurors of Bexar County previous to their returning the above indictment in the above-styled cause.



PROSECUTOR
SIXTH JUDICIAL CIRCUIT
BEXAR COUNTY

Presented before: 

CIRCUIT JUDGE

DEPOSITION OF MORGAN RICHARDSON

- Q. Please state your name.
- A. Morgan Richardson.
- Q. How are you employed?
- A. I am a detective with the Armadillo City Police Department.
- Q. How long have you been with the Armadillo City Police?
- A. Not quite 20 years. I finished my police academy training in the fall of 1985.
- Q. What is your current assignment with the Armadillo City Police Department?
- A. I am assigned to the major crimes unit. Most of my work these days involves homicides and sexual batteries.
- Q. Are you involved with the Adam McKenzie case?
- A. Yes, I am the detective assigned to that case.
- Q. How did you become involved in that case?
- A. I received a call at home early in the morning of June 3, 2004. Our dispatcher had received a call reporting a body in a dumpster behind a small warehouse complex. I immediately went to the scene.
- Q. Is this warehouse complex in Bexar County?
- A. Yes, it is.
- Q. Do you know who called the police?
- A. I learned the identity of the caller when I arrived at the scene.

- Q. What time did you arrive at the dumpster?
- A. I got the scene at approximately 9:30 a.m.
- Q. What did you do first?
- A. I first made sure that the scene was secured. I put up crime scene tape to ensure that no evidence was lost, and I called for our crime scene technicians to come to the scene. Then I began my actual investigation.
- Q. How did you start your investigation?
- A. When I arrived at the scene, I saw Lou Zipman there by his car. Lou owns a junk shop in Armadillo, and he often goes dumpster-diving to find items for his shop. When I approached Lou, he said that he had found the body and made the call to our dispatcher.
- Q. What did he tell you?
- A. Lou said that he checks this particular dumpster on Thursday mornings because it is emptied on Wednesday mornings and by Thursday it has stuff in it. One of the warehouse tenants is a carpet installer, and Lou can often find pieces of carpet in the dumpster that are large enough to make into "area rugs." Anyway, Lou said that he got there and hopped into the dumpster and saw an arm poking out from under a piece of carpet. When he pulled the carpet back, he discovered the body.
- Q. Did Lou tell you what he did next?
- A. He told me that he was pretty "freaked out" because he had not seen a dead body since he was in Viet Nam. He said it took him a minute to realize what he was seeing. Once it sunk in, he dropped the carpet, got out of the dumpster, and called us.
- Q. What did you do next?

- A. By that time, the crime scene technicians had arrived. I directed them to take a picture of the body as it was in the dumpster, and they did so. I also directed them to take a picture of certain tire tracks that I saw in some dirt by the dumpster. They did that as well.
- Q. I'm showing you what has been marked for identification as Exhibit A. Do you recognize this?
- A. Yes, I do.
- Q. What is this?
- A. This is the photograph of the body as it was found in the dumpster. This photo was taken at my direction by the crime scene technician.
- Q. Does this photograph fairly and accurately depict the location and position of the body when you found it?
- A. Yes, it does.
- Q. Detective Richardson, I am now showing you what has been marked for identification as Exhibit B. Do you recognize this?
- A. Yes, I do.
- Q. What is this?
- A. This is the photograph of the tire tracks that were located near the dumpster. This photo was also taken by the crime scene technicians at my direction.
- Q. Does this photograph fairly and accurately depict the markings you found at the scene?
- A. Yes, it does.
- Q. What did you do next?

- A. I had the crime scene technicians take plaster casts of the tire tracks. Also, after they had finished collecting various possible trace evidence and after the body was removed, I had the crime scene technicians collect the piece of carpet that the body was under.
- Q. Were you ever able to identify the body?
- A. Yes. At the medical examiner's office, we were able to retrieve a wallet from the back pants pocket. That wallet contained a driver's license belonging to Adam Thomas McKenzie. We subsequently contacted Mr. McKenzie's wife, and she provided us with a positive identification of him.
- Q. Was the medical examiner able to determine the cause of death?
- A. Yes. According to the autopsy report, Mr. McKenzie died from a single gunshot to the back of his head.
- Q. Was the medical examiner able to make any other findings?
- A. Yes. The medical examiner, Scot Samis, determined that the bullet that killed Mr. McKenzie came from a 9 mm handgun, most likely a Beretta. He was also able to determine that Mr. McKenzie had been killed between 3:30 p.m. and 5 p.m. on June 2, 2004.
- Q. Did Dr. Samis make any other findings?
- A. Yes. Mr. Samis found traces of arsenic in Mr. McKenzie's hair and fingernails. He found this highly unusual, but this was not the cause of death, so we did not investigate that further.
- Q. What did you do next?
- A. I spoke with Mr. McKenzie's wife, Andrea. She told me that Mr. McKenzie had many enemies in town, including her. She told me that she had just learned that Mr. McKenzie had been having an affair with Christy Kubinsky. Apparently, Christy had left her husband, Joe, due to the affair, and Mr. McKenzie had set Christy up in an apartment. Joe also recently found out about the affair through some friends at the bowling alley. Also, Andrea knew that Mr. McKenzie had been involved in an ongoing dispute with Alan Blizzard, who owns the local skating rink.

- Q. Could Mrs. McKenzie account for her whereabouts the day before?
- A. She told me that she had been at home all day cleaning the house and reading the latest book by Ann Rule.
- Q. What did you do next?
- A. I went to see Joe Kubinsky.
- Q. Why did you start with him?
- A. Well, I thought that the affair was an issue that could make someone angry enough to kill. More importantly, Kubinsky owns Joe's House of Carpets, which leases space in the warehouse complex where the body was found.
- Q. Were you able to find Kubinsky?
- A. Yes, I found Kubinsky at his house. When I got there, he seemed glad to see me and asked if I had found his van. When I asked him what he was talking about, he told me that his van had been stolen from the local skating rink the day before while he was there doing work, and he was hoping that we had found it. I told him that we had not found his van, but that we had found Adam McKenzie's body in the dumpster behind Kubinsky's business.
- Q. How did Mr. Kubinsky respond?
- A. He seemed genuinely shocked. He sat down on the couch and just said "wow." He was kind of quiet, and then he said, "Well, that probably serves him right."
- Q. What did you do at that point?
- A. I asked Kubinsky what he meant by that comment. He then told me that his wife Christy had recently left him because she was having an affair with McKenzie. When he told some friends at the bowling alley about the affair, they told him that McKenzie had had many affairs with a lot of married women in Armadillo. Apparently, McKenzie serviced a lot more than the ATMs he sold.

Q. What did you do next?

A. I asked Kubinsky if he knew why McKenzie's body would end up in the dumpster behind his shop. He said no. I also asked if he knew anyone who would want to kill McKenzie.

Q. What did Mr. Kubinsky tell you?

A. Kubinsky told me that he had witnessed an argument the day before between McKenzie and Alan Blizzard, who owns the skating rink, over some problem with the ATM that McKenzie had sold Blizzard. Kubinsky thought that Blizzard might have been angry enough to do something.

Q. Did Mr. Kubinsky say where he was when this argument occurred?

A. Yes. He was installing new carpeting at the skating rink and so he witnessed part of the argument.

Q. When did Mr. Kubinsky discover his van missing?

A. Kubinsky told me that about an hour later, he needed more glue for the carpet. He went outside to get more from his van and discovered that it was missing. Kubinsky called the police and reported the stolen. Because he did not have his van, he had to leave his tools and the carpet trash at the rink and walk home.

Q. What did you do next?

A. After I left Kubinsky's house, I called back to the station. They were able to determine that his call about the stolen van came in at 4:42 p.m. on June 2, 2004.

Q. Did you conduct any further investigation?

A. Yes, I next spoke with Alan Blizzard.

Q. What did he tell you?

- A. I first asked Blizard whether he knew Adam McKenzie. Blizard said that McKenzie had come to him right after he bought the skating rink and told him how much money he could make by having an ATM in the rink. McKenzie would sell him the ATM and service it.
- Q. What else did Mr. Blizard tell you?
- A. Blizard said that he had signed the ATM contract against his wife's wishes. But as soon as the ATM was installed, Blizard began having problems with it. The ATM did not work all the time, so he was getting complaints. In addition, he was not getting the fees that he was promised, and he was having to pay McKenzie a lot of money to service the ATM. According to Blizard, instead of making money, he was losing around \$1000 per month on the ATM.
- Q. Did Mr. Blizard tell you what, if anything, happened on June 2?
- A. Yes, I asked him about that. Blizard said that he was entirely fed up with the ATM. He had called McKenzie and told him they needed to talk. When McKenzie arrived, Blizard told him he wanted out of the deal. McKenzie told him that he could not get out at this point - that the deal was done. Blizard said that he became very angry and told McKenzie that he would make him pay for getting him into this mess. Apparently, McKenzie then made a comment to the effect that he thought Blizard, as a former lawyer, would have known to read the contract before signing it. According to Blizard, this put him "over the edge," and he told McKenzie to get out and never come back.
- Q. What happened at that point?
- A. At that point according to Blizard, McKenzie left the building. Blizard was so angry that he left the skating rink and went to the gym to "blow off steam."
- Q. Did Mr. Blizard tell you whether anyone else was present when this happened?
- A. Alan said that Joe Kubinsky was at the rink replacing some carpet. There was also a rink employee, Casey Snyder, who was there part of the time. Kubinsky was there during the argument with McKenzie, and he was there when Blizard left. When Blizard got back to the rink, Kubinsky and his van were gone, although some of Kubinsky's tools were still there. Kubinsky did not come back that day.

- Q. Did you tell Blizzard why you were interviewing him?
- A. Yes.
- Q. Did he have any reaction when you told him McKenzie was dead?
- A. No. Blizzard said that he had already talked to his lawyer about the problems with the ATM, so his gripe with McKenzie was over before this happened.
- Q. What did you do next?
- A. I checked at the gym where Blizzard is a member and talked to the employees on duty that day. None of them recalled seeing Blizzard there at all that day.
- Q. Did anything else happen as part of your investigation?
- A. I got a call shortly thereafter that Adam McKenzie's car had been found in the parking lot of the apartment complex where Christy Kubinsky was living.
- Q. Did you inspect the car?
- A. Yes, I did. There was nothing in the car to indicate that there was any foul play in it, but the seat was in the wrong place.
- Q. What do you mean?
- A. Well, McKenzie was 6'4" tall, but the seat was pulled too far forward for him to have been driving it.
- Q. What, if anything, did that indicate to you?
- A. Well, the seat was in a position that would have been comfortable for someone around 5'10" tall. So the position indicated to us that someone significantly shorter than McKenzie drove the car to that apartment complex parking lot.
- Q. Was there anything else of note about McKenzie's car?

- A. Yes. McKenzie's wife told us that he kept a 9 mm handgun in a case under the driver's seat. When the car was found, the gun was missing.
- Q. Has that gun ever been recovered?
- A. No.
- Q. Did you do any other investigation?
- A. Well, Blizard had mentioned that he had called his attorney, Chris Jensen, about getting out of the contract. So I called Chris Jensen to see whether I could confirm when that happened.
- Q. Did Mr. Jensen tell you anything?
- A. It was a short phone call. Mr. Jensen said that he had received a voice mail message from Blizard around mid-afternoon on June 2. According to Mr. Jensen, Blizard asked him to call because Blizard had found a way out of the ATM mess. However, Blizard was arrested before Mr. Jensen could return the call.
- Q. Has anything else happened in this investigation?
- A. Yes. The day after we found McKenzie's body, I received an envelope containing a single piece of paper.
- Q. What was on that paper?
- A. The paper was a hand-written note that said "Christine, we won't be having any more problems with ATM. I've taken care of it."
- Q. Detective Richardson, I'm showing you what has been marked for identification as State's Exhibit C. Do you recognize that?
- A. Yes, I do.
- Q. What is this?

- A. This is the note I received in the mail.
- Q. Is it in the same or substantially the same condition as when you received it?
- A. Yes, it is.
- Q. I'm also showing you what has been marked for identification as State's Exhibit D. Do you recognize that?
- A. Yes, I do.
- Q. What is that?
- A. It is the envelope that the note came in.
- Q. Is it in the same or substantially the same condition as when you received it?
- A. Yes, it is.
- Q. Did you ever ask Blizzard about this note?
- A. Yes, I did.
- Q. What, if anything, did he tell you?
- A. He told me that he knew nothing about the note and that it was not his handwriting.
- Q. Were you ever able to find out where the note came from?
- A. No.
- Q. Was Joe Kubinsky's van ever found?
- A. Yes, it was found about two days after Adam's body was found.
- Q. Where was it found?

- A. It was found abandoned in a wooded lot about a mile from the skating rink.
- Q. Was anything of value found in it?
- A. Yes, several spots of blood were found in the van. These spots have been positively identified through DNA analysis as having come from Adam McKenzie.
- Q. Was anything else found in the van?
- A. Yes, a spent 9 mm gun casing.
- Q. Was any gun ever recovered in this case?
- A. No.
- Q. Was the van dusted for fingerprints?
- A. Yes, it was.
- Q. Whose fingerprints were found inside?
- A. Joe Kubinsky's and Alan Blizard's.
- Q. Could anyone explain why Blizard's fingerprints were found in Kubinsky's van?
- A. Blizard told me that he had had to move Kubinsky's van when Kubinsky was at the rink measuring for the carpet. He assumed the fingerprints would have been left then.
- Q. Did Kubinsky confirm that?
- A. No. Kubinsky told me that Blizard had never been in his van to his knowledge and that he never gave his keys to anyone. If his van needed to be moved, he would have done it himself.
- Q. Detective Richardson, did you learn anything else during the course of your investigation?

A. Yes. I learned that Andrea McKenzie had increased the insurance on her husband two months before he was killed. She also obtained a \$500,000 policy with a provision for double indemnity in case of an accidental death.

Q. What did that mean in the context of your investigation?

A. It meant that Andrea McKenzie had 1,000,000 reasons to want her cheating husband killed by accidental means.

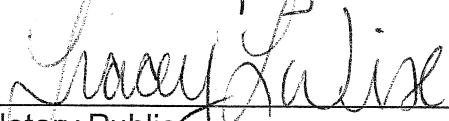
Q. Were you able to conclude anything based on your investigation?

A. Well, despite the insurance issue, I believe that Alan Blizzard murdered Adam McKenzie and then tried to frame Joe Kubinsky. From what I can tell, Blizzard has been in a downward spiral for several years. I think this was simply the final straw.



Morgan Richardson

Sworn and subscribed before me
this ~~20~~ day of July, 2004.



Notary Public

DEPOSITION OF JOE KUBINSKY

Q. Please state your name for the record.

A. Joe Kubinsky.

Q. How are you employed?

A. I own and operate Joe's House of Carpet.

Q. What type of work do you do?

A. Well, I employ a salesman and a bookkeeper to work in the office. I go to the customer's houses and businesses, measure for the carpet, and then install it when it comes in.

Q. How long have you been doing this?

A. I have been in the carpet business for 25 years here in Armadillo. I grew up here and this is all that I have ever done.

Q. Did you know Adam McKenzie?

A. Yeah, I knew him.

Q. How did you know him?

A. Well, ever since high school, he liked to think of himself as an entrepreneur. He always had some new get-rich-quick scheme going. So I heard about him in the business community, but I had never had any business dealings with him.

Q. Did you discover a more personal connection recently?

A. Yes. I learned that my wife, Christy, was having an affair with McKenzie. She moved out of our house and into an apartment that he was paying for.

Q. What did you do when you learned about this?

- A. Well, I was angry. I talked about it to a couple of my friends in the bowling league, and they said that McKenzie had had affairs with a lot of the women in town. That was the first that I had heard of it. Based on that, I thought that McKenzie was scum. I can't say that I am sorry that he is dead.
- Q. Turning to June 2, did anything unusual happen that day?
- A. Lots of things happened that day, but I did not know it then.
- Q. Well, let's start with where you were.
- A. In early May, Alan Blizzard, who owns the local skating rink, had called me because some of the carpet was worn. He had not owned the rink that long, and he was trying to upgrade it. I went to the rink and measured for the carpet, which came in at the end of May. I went to the rink on June 2 to start installing the new carpet.
- Q. Is the skating rink located in Bexar County?
- A. Yes, it is.
- Q. What time did you arrive at the skating rink on June 2?
- A. I think around 10 a.m.
- Q. What did you do first?
- A. I started by pulling out the old carpet and putting it in the rink's dumpster. I then had to prepare the floor for the new carpet. It was around 3 p.m. before I got started with the new carpet.
- Q. Was Blizzard there when you arrived?
- A. Yes, he was there when I got there, and he was there most of the afternoon.
- Q. Did there come a time when Adam McKenzie arrived?

- A. Yes. I would say it was around 2:30 or 3 p.m., because I was just starting with the new carpet.
- Q. What did you see?
- A. I saw McKenzie come in. He and Blizard went in the rink's office, so I could not hear what was said, but I could hear voices that were raised.
- Q. What happened next?
- A. The door to the office was slammed open and McKenzie came out, obviously very angry. Blizard was right behind him, and he was angry as well. I heard McKenzie say something about putting Blizard out of business and him being a "failed lawyer." At that point, Blizard said that his ATM problems were going to stop right now. McKenzie left out the front door, and Blizard went back to the office. Then Blizard came back out of the office and went out the front door.
- Q. How long was it between the time Mr. McKenzie left and the time Mr. Blizard left?
- A. No more than 30 seconds.
- Q. Did you hear anything else?
- A. I heard what I thought was a car backfiring in the parking lot. I figured it was either McKenzie's car or Blizard's. At that point, I went back to work.
- Q. What happened next?
- A. Well, I worked a little while longer and got to a point where I needed more glue for the carpet. I thought I had some in my van, but when I went outside my van was gone.
- Q. Did you let Blizard borrow your van?
- A. No, I never let anyone drive my van. To the best of my knowledge, Blizard has never been in my van.

Q. What did you do at that point?

A. I called the police and reported that my van had been stolen. They took a report and told me that they would call me. Since I did not have my van, I had to leave my tools at the rink, and I walked home.

Q. Was your van ever recovered?

A. Yes. I believe it was three days later that the police called and said that they had found it abandoned in vacant lot about a mile from the rink. They found a bullet casing and some blood in it that they said came from McKenzie's murder. Apparently they also found Blizzard's fingerprints in the van.

Q. What did you do at that point?

A. Well, when I heard that, I was really mad. Here I was trying to help Blizzard out with his new business, and he steals my van to try to frame me for murder. He knew about Christy and Adam McKenzie, and I think he figured that the police would think that I had killed McKenzie over the affair if my van was involved.

Q. Why do you think that Alan would try to frame you?

A. Well, he has clearly had problems in the past. He killed a guy while drinking and driving. He was convicted of DUI manslaughter, but somehow he only got probation. He got disbarred, but he was allowed to just pick up and move to another town and start over. I think he figured he could get away with anything.

Q. How would he have gotten your keys?

A. Well, I keep a spare set in my toolbox, which was there at the rink. He could have taken that set at any time while I was working and I probably would not have noticed.

Q. Were your keys missing from your toolbox when the van was stolen?

A. I don't know. I did not check. They were there when I went back to get my tools, but, of course, Alan had been back to the rink by then and could have put them back.

Q. Joe, how tall are you?

A. I'm 5'8" tall.

Q. Were you aware that McKenzie carried a 9 mm handgun in his car?

A. No.

Q. Did you kill Adam McKenzie?

A. No, I did not.

Q. Do you know how McKenzie's blood ended up in your van and his body in the dumpster behind your business?

A. Not for sure. All I can think is that Blizzard shot him in the skating rink parking lot, put him in my van, dumped him in the dumpster behind my business, and then ditched my van and walked back to the rink, hoping the police would pin the whole thing on me.


Q. Do you know the value of your van when it was stolen?

A. Yes. My van is a 2003 Dodge Sprinter. I paid \$34,000 for it in August 2003. I took really good care of it, and it had only 8,000 miles on it by June 2004. I checked the classified and the auto dealers, and a used one in the same condition as mine was worth about \$23,000 in June 2004.



Joe Kubinsky

Sworn and subscribed before me
this 31st day of July, 2004.



Notary Public

PRIOR TRIAL TESTIMONY OF ALAN BLIZARD

Direct Examination:

Q. State your name.

A. Alan Blizzard

Q. Where do you reside?

A. Before my arrest, I was living at 8212 Petersen Road, Armadillo, State of Lone Star.

Q. What business are you in?

A. I own and operate Armadillo Skateworld.

Q. Do you know Adam McKenzie?

A. Yes, he and I had a business relationship.

Q. What was the nature of that relationship?

A. I had purchased an ATM from him for the rink and I had a contract with him to provide service to that ATM.

Q. Did you have a good working relationship with Mr. McKenzie?

A. Not really.

Q. Why not?

A. After I bought the ATM from him, I discovered that he had lied to me to get me to buy the ATM and that he had locked me into a contract that was draining money from my business.

Q. How did he lie to you?

- A. McKenzie told me that I would make \$2000-2500 per month from fees and commissions from the ATM. But it did not get the use that he said that it would, and with all the service that it needed, I was losing about \$1000 per month instead.
- Q. Before June 2, 2004, had you ever had an argument with Mr. McKenzie?
- A. I don't know that I would describe them as arguments. We had had heated discussions.
- Q. Turning to June 2, 2004, did you see Mr. McKenzie that day?
- A. Yes, he came to the rink to discuss the ATM.
- Q. Had you asked him to come to the rink.
- A. Not directly. I had told him that we needed to talk and that I would be at the rink all week. I am there most of the day everyday, so we had not set an appointment. But I was not surprised to see him when he got there.
- Q. What happened when he got there?
- A. Well, earlier that week, I had talked to my lawyer, Chris Jensen, about my options for getting out of the contract. When McKenzie got to the rink, I told him that I was going to return the ATM and cancel the contract for service.
- Q. What was his response?
- A. He told me that I could not do that. I told him that I had spoken with my lawyer; that I could and would get out of this deal; and that there was nothing he could do about it.
- Q. How did he respond?
- A. He became furious. He told me that he would ensure that my business failed and that everyone in town would know that I was not a man of my word because I would renege on contracts. Then he stormed out of the rink.

Q. What did you do at that point?

A. Well, I was angry about what he had said. I just moved to Armadillo last year, and I am trying hard to fit in and provide an outlet for the local kids. I don't need someone ruining my reputation. I was too angry to work at that point, so I decided to go to the gym and blow off steam.

Q. How soon after Mr. McKenzie left did you leave for the gym?

A. I'm not sure. A couple of minutes maybe.

Q. Was Mr. McKenzie still there when you left?

A. Yes, he was sitting in his car talking on his cell phone.

Q. Was anyone else at the rink when this happened?

A. Yes, I had one employee there, Casey Snyder, and Joe Kubinsky was there laying some carpet.

Q. What happened next?

A. I went to the gym and then came back to the rink.

Q. Was there anything unusual when you got back to the rink?

A. Yes. Kubinsky was gone and his van was gone, but all the carpet scraps and all of his tools were still there. Casey said that he had left shortly after I did and never came back.

Q. Why did that strike you as unusual?

A. Kubinsky has done other work for me at my house, and he is usually very meticulous about picking up the carpet scraps and taking his tools. He knew that we had a session that night and that this stuff was a hazard laying around. I thought it was very odd that he had left everything there.

Q. How did you learn that McKenzie had been killed?

- A. Detective Richardson told me.
- Q. Why did you speak with Detective Richardson?
- A. Why not? I hadn't done anything so I had nothing to hide.
- Q. I'm showing you what has been marked for identification as State's Exhibit C. Do you recognize this?
- A. Not exactly.
- Q. What do you mean?
- A. Well, Detective Richardson showed it to me, so I have seen it before. But I do not know where this came from.
- Q. Is this your handwriting?
- A. No.
- Q. Do you know how your fingerprints got in Kubinsky's van?
- A. Yes, I had to move his van the day he came to the rink to measure for the carpet. I guess they must have gotten in there then.
- Q. Did you kill Adam McKenzie?
- A. No, I did not.
- Q. Did you steal Joe Kubinsky's van?
- A. No, I did not.

Cross Examination

- Q. Mr. Blizzard, have you ever been convicted of a felony?
- A. Yes.

Q. How many times?

A. Once.

Q. Have you ever been convicted of a crime involving dishonesty or false statement?

A. No.

Q. When did your felony conviction occur?

A. January 2004.

Q. Mr. Blizzard, I'm showing you what has been marked for identification as State's Exhibit E. Do you recognize this?

A. Yes.

Q. What is this?

A. This is the sales receipt for the ATM I purchased from McKenzie.

Q. Is this your signature on the bottom of the receipt?

A. Yes, it is.

Q. Mr. Blizzard, isn't it true that Mr. McKenzie called you a "failed lawyer" when you were fighting with him on June 2?

A. Yes.

Q. And that made you really angry, didn't it?

A. Yes, it touched a nerve.

Q. And you knew that Mr. Kubinsky's wife was having an affair with Adam McKenzie, didn't you?

A. Yes. Everyone in town knew that except Mr. Kubinsky.

Q. And you knew what apartment complex Mr. Kubinsky's wife had moved to, didn't you?

A. Yes.

Q. You have been a member of Armadillo Fitness Club for over a year, haven't you?

A. Yes.

Q. And all the employees and trainers there know you by name, don't they?

A. Yes.

Q. Now, you testified that you went to the gym when you left the rink after arguing with McKenzie on June 2, isn't that right?

A. Yes.

Q. Then why don't any of the employees recall seeing you that day?

A. I don't know. Perhaps they are just confused about the dates.

Q. Isn't it because instead of going to the gym you were actually dumping Mr. McKenzie's body and Mr. Kubinsky's van and then driving Mr. McKenzie's car to Christy Kubinsky's apartment complex?

Defense Counsel: Objection.

The Court: Overruled.

A. No, that is not true.

Q. How tall are you, Mr. Blizzard?

A. 5'10" or 5'11". Somewhere around there.

Revised (1/12/05)

Q. Your wife's name is Christine, isn't it?

A. Yes.

Q. But you claim you did not write the note that is State's Exhibit C, don't you?

A. That is correct. I did not write that note.

Q. Finally, Mr. Blizzard, did you know that Mr. McKenzie kept a 9 mm handgun in his car?

A. Yes.

Q. Do you know where he kept it?

A. Yes. It was in a case under the front seat.

[NO FURTHER QUESTIONS FROM THE PROSECUTOR OR THE DEFENSE.]

DEPOSITION OF CASEY SNYDER

- Q. Please state your name for the record.
- A. Casey Snyder.
- Q. Are you employed?
- A. Yes, I work at Armadillo Skateworld.
- Q. What do you do there?
- A. I am now the assistant manager.
- Q. How long have you had that position?
- A. I was promoted by Mr. Blizzard on June 2.
- Q. What was your position before that?
- A. I was just an employee. I did not have a title.
- Q. What types of things did you do?
- A. Well, sometimes I would work at the snack bar; sometimes I would work in the skate room; sometimes I would be the guard on the floor. It just depended.
- Q. How long had you worked there before you were promoted?
- A. About six months.
- Q. Did something else happen on June 2 besides your promotion?
- A. Yes, that was the day that Mr. Blizzard had a fight with Adam McKenzie.
- Q. Were you there when that happened?

A. Yes.

Q. What were you doing?

A. Well, it was after the morning skating session, but the evening session had not started. I was scheduled to work both sessions, and I was cleaning skates between sessions.

Q. Did you see Mr. McKenzie arrive?

A. No. I heard the sound of the front door – it beeps when someone comes in. Then I heard Mr. Blizzard talking to someone and I recognized the voice as being Mr. McKenzie's.

Q. What time was this?

A. Around 3:00 to 3:30 p.m.

Q. Why did you recognize Mr. McKenzie's voice?

A. He had been in the rink a lot. Mr. Blizzard had purchased an ATM from him, and Mr. McKenzie came to the rink a lot to service it. So Mr. McKenzie had been there before when I was there and I recognized his voice.

Q. What happened after Mr. McKenzie arrived?

A. I heard him talking to Mr. Blizzard and I heard their voices get loud. And then I heard the front door beep again.

Q. What happened next?

A. Right as the front door beeped, Mr. Blizzard came in and told me he was going out for a while. And then he left.

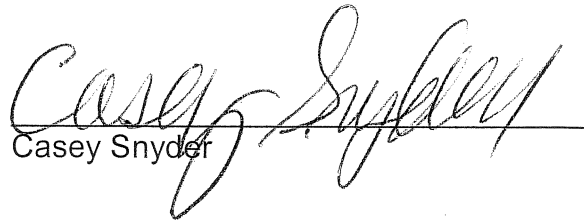
Q. Did you see or hear anything else?

A. Well, Joe Kubinsky had been there installing new carpet while this was going on. Right after Mr. Blizzard left, Mr. Kubinsky quit working and left also. I don't know where he went, but he did not come back that day.

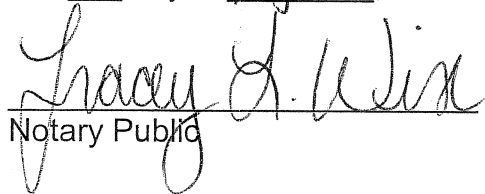
- Q. Did you hear any noise from outside the rink?
- A. I heard a car engine start and then I heard the car backfire.
- Q. How many engines started?
- A. Just one.
- Q. What happened next?
- A. About 45 minutes later, I heard another engine start in the parking lot. I thought that was odd since no one was at the rink but me, but I was busy so I did not go outside to see what was going on.
- Q. Then what happened?
- A. About an hour after that, Mr. Blizzard came back. He asked if I had heard him talking to Mr. McKenzie. When I said that I had, he told me not to worry about it. Mr. Blizzard was very sweaty, and he said that he had gone to the gym to blow off steam after the fight. And then he said that he had been meaning to talk to me about a promotion.
- Q. Did you find anything unusual about this?
- A. Well, not the promotion issue but the gym thing. Mr. Blizzard keeps his gym bag in the skate room where I was working, and he had not taken it with him to the gym.
- Q. Did you ask him about it?
- A. No, but after he had given me the promotion, he spotted the bag and said that he had left the gym bag because he had jogged to the gym and back and did not need it.
- Q. Did Joe Kubinsky ever come back?

- A. He did not come back that day, and he left all his tools there, which I thought was weird because his van was gone. Usually, he cleans everything up and takes everything with him. We ended up having to put that stuff in a back room so that no one would take it or damage it during that evening's session.
- Q. Casey, I'm showing you what has been marked for identification as State's Exhibit C. Do you recognize this?
- A. Not really.
- Q. Have you ever seen this note before?
- A. No.
- Q. Even though you have not seen this before, do you recognize the handwriting?
- A. Yes, that is Mr. Blizzard's handwriting.
- Q. How do you know?
- A. Well, Mr. Blizzard prepares all the employee work schedules, and he gave me a handwritten review that I watched him write, and he signs our paychecks. That is his handwriting.
- Q. Does Mr. Blizzard know anyone named Christine?
- A. Yes, Christine is Mr. Blizzard's wife.
- Q. Since you have been working for Mr. Blizzard, have you known him to have a temper?
- A. I would say that he has a little temper. He gets mad a lot and yells, but he has never done anything physically.
- Q. Did you work at the rink before Mr. Blizzard bought it?

- A. Yes, I was working there when he bought it and he kept me on. And I was really glad because I am using the money to pay my way through Armadillo Community College. If it weren't for that job, I would have to drop out.
- Q. What will happen to you if Mr. Blizzard is convicted?
- A. I don't know. I guess I would have to hope that someone else would buy the rink and keep me on. But I would hate to lose the assistant manager job.


Casey Snyder

Sworn and subscribed before me
this 4th day of August, 2004.


Notary Public

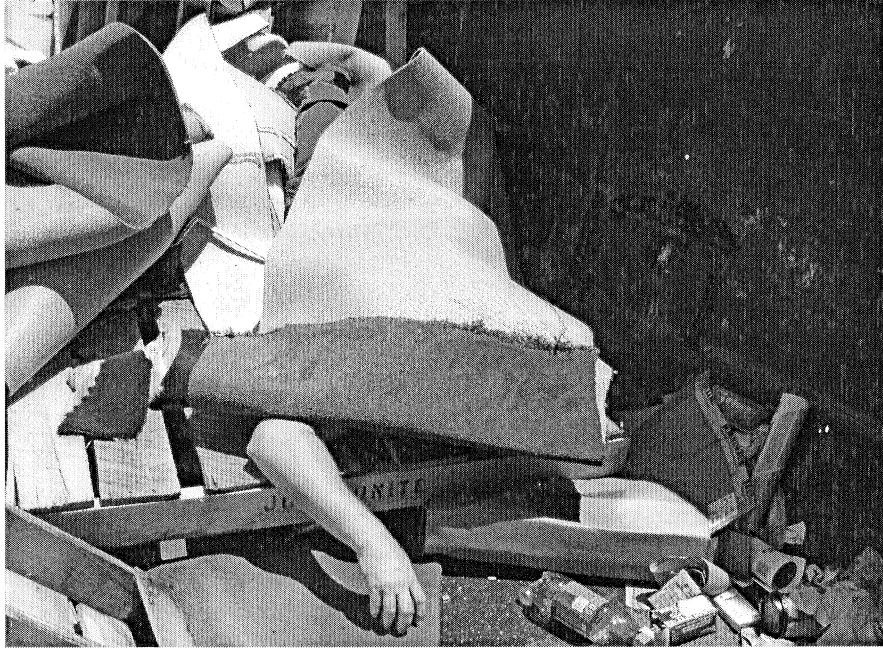


Exhibit A



Exhibit B

Christine,

We won't be having any
more problems with ATM.

I've taken care of it.

Exhibit C

Detective Richardson
Armadillo Police
101 E. Madison Street
Armadillo, Lone Star 77701

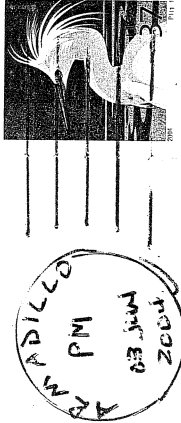


Exhibit D

ATM, INC.
2752 Commercial Road
Armadillo, Lone Star 77732

ORDER SHEET

Customer: Name: Armadillo Skateworld
Address: 7902 Paula Trail
City: Armadillo
Phone: 884-7688

Items: 1. Siebold Cash Source PlusSM 900 Cash Dispenser
2. \$7999 + tax
3. Total \$8318.96
4. _____

Terms: *Payment in full upon signing agreement. Service contract terms listed in separate document.*

Adam McKenzie
for ATM, Inc

Alan Blizard
for Customer

Exhibit E

PRELIMINARY JURY INSTRUCTIONS

Ladies and gentlemen of the jury:

You have been selected and sworn as the jury to try the case of the State of Lone Star vs. Alan Blizzard.

This is a criminal case. Alan Blizzard is charged with first degree murder and second degree grand theft. The definition of the elements of these crimes will be explained to you later.

It is your solemn responsibility to determine if the State has proved its accusations against Alan Blizzard beyond a reasonable doubt. I will decide which laws apply to this case and explain those laws to you. You will decide what the facts of this case are and apply the law to those facts. Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Your verdict must be based solely on the evidence, or lack of evidence, and the law. The indictment is not evidence and is not to be considered by you as any proof of guilt. The case must be tried only on the evidence presented during the trial in your presence and in the presence of the defendant, the attorneys, and the judge. Jurors must not conduct any investigation of their own. Accordingly, you must not visit any of the places described in the evidence, and you must not read or listen to any reports about the case. Further, you must not discuss this case with any person and you must not speak with the attorneys, the witnesses, or the defendant about any subject until your deliberations are finished.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. At the beginning of the trial, the attorneys will have an opportunity to make an opening statement, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have the opportunity to address you and to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered by you either as evidence in the case or as your instruction on the law. Nevertheless,

these statements and arguments are intended to help you properly understand the issues, the evidence, and the applicable law, so you should give them your close attention. Following the final arguments by the attorneys, I will instruct you on the law.

You should give careful attention to the testimony and other evidence as it is received and presented for your consideration, but you should not form or express any opinion about the case until you have received all the evidence, the arguments of the attorneys, and the instructions on the law from me. In other words, you should not form or express any opinion about the case until you retire to the jury room to consider your verdict.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, I will either overrule or sustain the objection. If I overrule an objection to a question, the witness will answer the question. If I sustain an objection, the witness will not answer, but you must not speculate on what might have happened or what the witness might have said had I permitted the witness to answer the question. You should not draw any inference from the question itself.

During the trial, it may be necessary for me to confer with the attorneys out of your hearing, talking about matters of law and other matters that require consideration by me alone. It is impossible for me to predict when such a conference may be required or how long it will last. When such conferences occur, they will be conducted so as to consume as little of your time as necessary for a fair and orderly trial of the case.

FINAL JURY INSTRUCTIONS

Members of the Jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

In this case, Alan Blizzard is accused of First Degree Murder and Second Degree Grand Theft.

Before you can find Alan Blizzard guilty of First Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

1. Adam Thomas McKenzie is dead.
2. The death was caused by the criminal act of Alan Blizzard.
3. There was a premeditated killing of Adam Thomas McKenzie.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

"Killing with premeditation" is killing after consciously deciding to do so. The decision may be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

Before you can find Alan Blizzard guilty of Second Degree Grand Theft, the State must prove the following three elements beyond a reasonable doubt:

1. Alan Blizzard knowingly and unlawfully obtained and/or used the automobile of Joe Kubinsky.
2. He did so with the intent to, either temporarily or permanently, appropriate the property of Joe Kubinsky for his own use or for the use of any person not entitled to it.
3. The value of the property taken or used was \$20,000 or more but less than \$100,000.

"Obtains or uses" means any manner of taking or exercising control over the property; making any unauthorized use, disposition, or transfer of the property; or other conduct of a similar nature.

"Value" means the market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense. If the exact value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine a minimum value, you must find the value is less than \$20,000.

Alan Blizard has entered a plea of not guilty. This means you must presume or believe that Alan Blizard is innocent. This presumption stays with Alan Blizard as to each material allegation in the indictment through each stage of the trial until it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence, the State has the burden of proving the following two elements:

1. The crime with which the defendant is charged was committed.
2. The defendant is the person who committed the crime.

The defendant is not required to prove anything.

Whenever the words "reasonable doubt" are used, you must consider the following:

A reasonable doubt is not a possible doubt, a speculative, imaginary, or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if after carefully considering, comparing, and weighing all the evidence, there is not an abiding conviction of guilt or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced during this trial, and to it alone, that you are to look for that proof. A reasonable doubt as to the guilt of the defendant may arise from the evidence, a conflict in the evidence, or a lack of evidence. If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable or less reliable than other evidence. In doing so, you should consider how the witness acted as well as what he or she said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?
3. Was the witness honest and straightforward in answering the attorneys' questions?
4. Did the witness have some interest in how the case should be decided?
5. Does the witness's testimony agree with the other testimony and other evidence in this case?
6. Has the witness been offered or received any money, preferred treatment, or other benefit in order to get the witness to testify?
7. Had any pressure or threat been used against the witness that affected the truth of the witness's testimony?
8. Did the witness at some other time make a statement that is inconsistent with the testimony he or she gave in court?
9. Was it proved that the witness had been convicted of a crime?
10. Was it proved that the general reputation of the witness for telling the truth and being honest was bad?

You may rely upon your own conclusions about the witnesses. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

The defendant in this case has become a witness. You should apply the same rules to consideration of his testimony that you apply to the testimony of the other witnesses.

The decision as to what punishment should be imposed rests solely with the judge of this court. Therefore, during your deliberations, you need not concern yourself with what sentence the defendant may receive. You are to determine only whether or not Alan Blizzard is guilty of the crimes charged.

There are some general rules that apply to your deliberations. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing

to follow the law in this case. All of us are depending on you to make a wise and legal decision in this matter.

2. This case must be decided only upon the evidence that you have heard from the answers of the witnesses and have seen in the form of exhibits and these instructions.

3. This case must not be decided for or against anyone because you feel sorry for anyone or are angry at anyone.

4. Remember the lawyers are not on trial. Your feelings about them should not influence your decision in this case.

5. Your duty is to determine if the defendant has been proven guilty or not guilty in accordance with the law. It is the judge's job to determine the proper sentence if the defendant is found guilty.

6. Whatever verdict you render must be unanimous; that is, each juror must agree to the same verdict.

7. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited for talking to a lawyer about his or her testimony.

8. Your verdict should not be influenced by feelings of prejudice, bias, or sympathy. Your verdict must be based on the evidence and on the law contained in these instructions.

Deciding a proper verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

Only one verdict may be returned as to each crime charged. This verdict must be unanimous, that is, all of you must agree to the same verdict. The verdict must be in writing and, for your convenience, the necessary forms of verdict have been prepared for you. They are as follows:

[READ VERDICT FORM]

A separate crime has been charged in each count of the indictment and, although they have been tried together, each crime and the evidence applicable to it must be considered separately and a separate verdict returned as to each. A finding of guilty or not guilty as to one crime must not affect your verdict as to the crime charged.

In just a few moments, you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreperson who will preside over your deliberations like the chairperson of a meeting. It is the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict in this case and to bring the verdict back to the courtroom when you return. Either a man or a woman may be the foreperson of the jury.

Your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror as well as of the jury as a whole.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdicts. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries, we have agreed to a constitution and to live by the law. No one of us has the right to violate the rules we all share.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

IN AND FOR BEXAR COUNTY

STATE OF LONE STAR

CRIMINAL DIVISION

STATE OF LONE STAR)

v.)

ALAN BLIZARD,)

Defendant.)

Case No. 2004-1758

_____)
We, the Jury, find as to the Defendant, Alan Blizard, as follows:

As to Count I - First Degree Murder

_____ Guilty of First Degree Murder

_____ Not Guilty

As to Count II - Second Degree Grand Theft

_____ Guilty of Second Degree Grand Theft

_____ Not Guilty

So say we all.

Foreperson of the Jury

Date