

Members of the jury: All of the evidence has been presented in this case. It is now your duty to decide from this evidence what the true facts are. You must then apply the law which I am about to give you to those true facts, as you find them to be. It is absolutely necessary that you understand and apply the law as I give it to you, and not as you think it is, or as you might like it to be. This is important because justice requires that everyone tried for the same alleged crime be treated in the same way, and have the same law applied to him or to her.

The defendant, Jason Lynn Young, has entered a plea of "not guilty" to the charge of murder in the first degree. The fact that the defendant has been accused and indicted is no evidence of guilt. Under our system of justice, when a defendant pleads "not guilty," the defendant is not required to prove the defendant's innocence; the defendant is presumed to be innocent. The State must prove to you that the defendant is guilty beyond a reasonable doubt.

A reasonable doubt is a doubt based on reason and common sense, arising out of some or all of the evidence that has been presented, or lack or insufficiency of the evidence, as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the defendant's guilt.

You are the sole judges of the credibility, that is the accuracy and believability, of each witness.

You must decide for yourselves whether to believe the testimony of any witness. You may believe all, or any part, or none of what a witness has said on the stand.

In determining whether to believe any witness you should apply the same tests of accuracy and truthfulness which you apply in your everyday affairs. These tests may include, among other things: the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness has testified; the manner and the appearance of the witness; any interest, bias, or prejudice the witness may have; the apparent understanding and fairness of the witness; whether the testimony is reasonable; and whether the testimony is consistent with other believable evidence in the case.

You are also the sole judges of the weight to be given any evidence. By this I mean, if you decide that certain evidence is believable, you must then determine the importance of that evidence in light of all the other believable evidence in the case.

Ladies and gentlemen of the jury, I further instruct you that the defendant, Jason Lynn Young, has not testified at this trial. The law gives the defendant this privilege. That same law also assures the defendant that his decision not to testify at this trial creates no presumption against him. Therefore, the silence of the defendant at this trial is not to influence your decision in any way.

There are two types of evidence from which you may find the truth as to the facts of a case-- direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain or group of facts and circumstances indicating the guilt or innocence of a defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the

defendant beyond a reasonable doubt, you must find the defendant not guilty.

You may find that a witness is interested in the outcome of this trial. In deciding whether or not to believe such a witness, you may take the witness's interest into account. If, after doing so, you believe the testimony of that witness in whole or in part, you should treat what you believe the same as any other believable evidence.

In this case you have heard evidence from witnesses who have testified as expert witnesses. An expert witness is permitted to testify in the form of an opinion in a field where the witness purports to have specialized skill or knowledge.

As I have instructed you, you are the sole judges of the credibility of each witness and the weight to be given to the testimony of each witness. In making this determination as to the testimony of an expert witness, in addition to the other tests of credibility and weight which I have previously mentioned, you should consider the expert witness's training, qualifications, and experience or lack thereof; the reasons, if any, given for the opinion; whether the opinion is supported by facts that you find from the evidence; whether the opinion is reasonable; and whether it is consistent with other believable evidence in the case.

You should consider the opinion of an expert witness, but you are not bound by it. In other words, you are not required to accept an expert witness's opinion to the exclusion of the facts and circumstances disclosed by other testimony.

When evidence has been received tending to show that at an earlier time during an investigation a witness made one or more statements which may be consistent with or may conflict with that witness's testimony at this trial, you must not consider such earlier statement as evidence of the truth of what was said at that earlier time because it was not made under oath at this trial. If you believe that such earlier statement was made, and that it is consistent with or does conflict with the testimony of the witness at this trial, then you may consider this, together with all other facts and circumstances bearing upon the witness's truthfulness, in deciding whether you will believe or disbelieve the witness's testimony at this trial.

You have heard reference to the term "motive." Proof of motive for a crime is permissible and often valuable, but never essential for conviction. If you are convinced beyond a reasonable doubt that the defendant committed the crime charged, the presence or absence of motive is immaterial. Motive may be shown by facts surrounding the act if they support a reasonable inference of motive. When thus proved, motive becomes a circumstance to be considered by you. The absence of motive is equally a circumstance to be considered on the side of innocence.

The defendant contends that he was at some other place at the time this offense is alleged to have taken place. This is known as an alibi. The word "alibi" simply means "somewhere else."

The burden of proving an alibi does not rest upon the defendant. To establish the defendant's guilt, the State must prove beyond a reasonable doubt that the defendant was present at and participated in the crime charged. The defendant's contention that he was not present and did not participate is simply a denial of facts essential to the State's case.

Therefore, I instruct you that if, upon considering all the evidence in the case, including the evidence with respect to alibi, you have a reasonable doubt as to the defendant's presence at or participation in the crime charged, you must find him not guilty.

Ladies and Gentlemen, the fifth Amendment to the United States Constitution protects a citizen's right to refuse to answer questions of the police during a criminal investigation. The exercise of that constitutional right may not be used as evidence against that citizen later at trial to create an inference of guilt. Therefore, the defendant's decision not to answer questions by law enforcement officers during the criminal investigation may not be considered against him as evidence of guilt to the pending charge. However, that same fifth Amendment does permit the jury to consider the defendant's refusal to answer police questions to the extent that the evidence surrounding that refusal bears upon the defendant's truthfulness if the defendant elects to testify or make a statement at a later time. The evidence presented in this case tends to show that the defendant elected to testify at a prior trial.

Therefore, I instruct you that you may consider evidence of the defendant's refusal to answer police questions during this investigation for one purpose only. If, considering the nature of that evidence, you believe that such evidence bears upon the defendant's truthfulness as a witness at his prior trial, then you may consider it for that purpose only. Except as it relates to the defendant's truthfulness, you may not consider the defendant's refusal to answer police questions as evidence of guilt in this case.

I also instruct you that this fifth Amendment protection applies only to police questioning. It does not apply to questions asked by civilians, including friends and family of the defendant and friends and family of the victim.

Ladies and gentlemen, I remind you that various witnesses from the Country Sun Shine Day Care Center where Cassady Young attended in 2006 testified regarding their observations of the child shortly after her mother's death. Due to a young child's limited understanding, comprehension and awareness of the significance of events in their young lives, this evidence should be viewed by you with care and caution. If you find this evidence to be accurate and true, you may consider the child's conduct and statements for one purpose only. You may consider this evidence, if you find it relevant, in determining whether or not the child actually witnessed some part of the assault on her mother. You may not consider this evidence for any other purpose. You may not consider the conduct and statements of the child as evidence of the identity of the person or persons who caused Michelle Young's death.

There is evidence that tends to show that a civil complaint was filed in the Civil Superior Court of Wake County against the defendant by Linda Fisher on behalf of the Estate of Michelle Young and that a civil summons was issued by the Clerk of Court commanding the defendant to answer or otherwise respond to the allegations of that civil complaint within the time required by law. There is further evidence that tends to show that the defendant was timely served with these documents and that he did not file answer or otherwise respond to the complaint and that a default judgment was entered against him by reason of that failure.

As I previously instructed you, when a defendant in a civil action has been properly served with the civil summons and civil complaint and fails to timely respond, upon motion of the Plaintiff the court is authorized to enter a civil judgment against the defaulting defendant. For purpose of the civil law, the allegations of the complaint which have not been denied, whether actually true or not, are deemed to be admitted for the purpose of allowing the Plaintiff to have a civil judgment entered

against the defendant. The burden of proof in a civil case requires only that the Plaintiff satisfy the court or jury by the greater weight of the evidence that the Plaintiff's claims are valid. This means that the Plaintiff must prove that the facts are more likely than not to exist in the Plaintiff's favor. Where there is a default, that burden is deemed in law to have been met.

The entry of a civil default judgment is not a determination of guilt by the court that the named defendant has committed any criminal offense.

There is a concept in the criminal law known as "Acting in Concert". I need to explain that legal concept to you because you may determine that it has some application to the facts of this case. You may also find that the concept has no application to the evidence that you have heard.

The State contends, and the defendant denies, that there is evidence from which you may find beyond a reasonable doubt that the defendant did not act alone in the killing of his wife. If you were to reach that conclusion, the State contends that the defendant acted in concert with some other unknown person to commit this crime.

By his plea of Not Guilty and by his testimony at a previous trial, the defendant denies that he killed his wife and denies that he acted with anyone else in causing his wife's death.

Under the law of this State, for a person to be guilty of a crime, it is not necessary that he personally do all of the acts necessary to commit that crime. If two or more persons join together with a common purpose to commit first degree murder, and each is actually present when that crime is committed, then each would be responsible for the acts committed by the other in the perpetration of that crime.

The defendant has been charged with first degree murder.

Under the law and the evidence in this case, it is your duty to return one of the following verdicts:

- (1) guilty of first degree murder, or
- (2) guilty of second degree murder, or
- (3) not guilty.

First degree murder is the unlawful killing of a human being with malice and with premeditation and deliberation.

Second degree murder is the unlawful killing of a human being with malice, but without premeditation and deliberation.

For you to find the defendant guilty of first degree murder, the state must prove five things

beyond a reasonable doubt:

First, that the defendant intentionally and with malice killed the victim with a deadly weapon.

Malice means not only hatred, ill will, or spite, as it is ordinarily understood--to be sure, that is malice--but it also means that condition of mind which prompts a person to take the life of another intentionally or to intentionally inflict serious bodily harm which proximately results in another's death without just cause, excuse or justification. If the state proves beyond a reasonable doubt, that the defendant intentionally killed the victim with a deadly weapon or intentionally inflicted a wound upon the victim with a deadly weapon that proximately caused the victim's death, you may infer first, that the killing was unlawful, and second, that it was done with malice, but you are not compelled to do so. -You may consider this along with all other facts and circumstances in determining whether the killing was unlawful and whether it was done with malice.

A deadly weapon is a weapon which is likely to cause death or serious injury. In determining whether the instrument involved was a deadly weapon, you should consider its nature, the manner in which it was used, and the size and strength of the defendant as compared to the victim.

Second, the state must prove that the defendant's act was a proximate cause of the victim's death. A proximate cause is a real cause, a cause without which the victim's death would not have occurred.

Third, the state must prove that the defendant intended to kill the victim. Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. An intent to kill may be inferred from the nature of the assault, the manner in which it was made, the conduct of the parties and other relevant circumstances.

Fourth, the state must prove that the defendant acted with premeditation, that is, that the defendant formed the intent to kill the victim over some period of time, however short, before the defendant acted.

And Fifth, the state must prove that the defendant acted with deliberation, which means that the defendant acted while the defendant was in a cool state of mind. This does not mean that there had to be a total absence of passion or emotion. If the intent to kill was formed with a fixed purpose, not under the influence of some suddenly aroused violent passion, it is immaterial that the defendant was in a state of passion or excited when the intent was carried into effect.

Neither premeditation nor deliberation are usually susceptible of direct proof. They may be proved by circumstances from which they may be inferred, such as the lack of provocation by the victim, the conduct of the defendant before, during and after the killing, any threats and declarations of the defendant, the use of grossly excessive force, the infliction of lethal wounds after the victim is felled, the brutal or vicious circumstances of the killing and the manner in which or the means by which the killing was done.

Second degree murder differs from first degree murder in that neither specific intent to kill, premeditation nor deliberation are necessary elements. In order for you to find the defendant guilty of second degree murder, the State must prove beyond a reasonable doubt that the defendant unlawfully, intentionally and with malice wounded the victim with a deadly weapon, thereby proximately causing the victim's death.

So finally, I instruct you that If you find from the evidence beyond a reasonable doubt that on or about the alleged date, November 3, 2006, the defendant, alone or acting in concert with some *unknown person, with malice, killed the victim, Michelle Young, with a deadly weapon thereby proximately causing the victim's death, and that the defendant intended to kill the victim, and that the defendant acted after premeditation and with deliberation, then it would be your duty to return a verdict of guilty of first degree murder. However, If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of first degree murder.*

If you do not find the defendant guilty of first degree murder, you must determine whether the defendant is guilty of second degree murder.

If you find from the evidence beyond a reasonable doubt that on or about the date alleged the defendant, alone or acting in concert with some unknown person, intentionally and with malice wounded the victim with a deadly weapon, thereby proximately causing the victim's death, it would be your duty to return a verdict of guilty of murder in the second degree. However, if you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

Members of the jury, you have heard the evidence and the arguments of counsel. If your recollection of the evidence differs from that of the district attorneys, or of the defense attorneys, you are to rely solely upon your recollection. Your duty is to remember the evidence whether called to your attention or not.

You should consider all the evidence, arguments, contentions and positions urged by the attorneys and any other contention that arises from the evidence; and using your common sense you must determine the truth in this case.

The law requires the presiding judge to be entirely impartial. You should not infer from any statement I have made or question I have asked that any of the evidence is to be believed or disbelieved, or that a fact has been proved or what your findings ought to be. It is your duty to find the facts and to render a verdict reflecting the truth as you see it. You must be unanimous in your decision. All twelve jurors must agree.

When you have agreed upon a unanimous verdict your foreperson will so indicate on the verdict form.

*After reaching the jury room your first order of business is to select your foreperson who will lead you in your deliberations and will record your verdict on the verdict sheet.*

**WHILE IN THE JURY ROOM TURN YOUR CELL PHONES OFF AND KEEP THEM OFF. DO NOT CALL OR TEXT ANYONE AND DO NOT RECEIVE ANY CALL OR TEXT OR E-MAIL. IF YOU NEED TO USE YOUR PHONE NOTIFY THE BAILIFF AND THE COURT WILL TAKE A RECESS FOR YOU TO DO THAT.**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO: 09-CRS-19207

STATE OF NORTH CAROLINA  
VS  
JASON LYNN YOUNG

VERDICT

We the jury by unanimous verdict find the defendant, Jason Lynn Young, to be:

\_\_\_\_\_ Guilty of First Degree Murder of Michelle Fisher Young

Or

\_\_\_\_\_ Guilty of Second Degree Murder of Michelle Fisher Young

Or

\_\_\_\_\_ Not Guilty

This the \_\_\_\_\_ day of March, 2012

\_\_\_\_\_  
SIGNATURE FOREPERSON OF JURY

\_\_\_\_\_  
PRINTED NAME FOREPERSON OF JURY