

**FILED**  
CAUSE NO. F12-23749-W

2013 OCT 30 AM 11:56

THE STATE OF TEXAS

v.

MATTHEW LEE JOHNSON

GARY FITZSIMMONS  
DISTRICT CLERK  
DALLAS CO., TEXAS  
*mf*  
DEPUTY

IN THE 363<sup>rd</sup> JUDICIAL  
DISTRICT COURT  
DALLAS COUNTY, TEXAS

**COURT'S CHARGE**

**MEMBERS OF THE JURY:**

Matthew Lee Johnson ("the defendant") stands charged by indictment with the offense of capital murder, alleged to have been committed on or about May 20, 2012, in Dallas County, Texas. To this charge, the defendant has pleaded not guilty.

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

**Offense Definitions**

A person commits capital murder if he intentionally causes the death of an individual while in the course of committing or attempting to commit robbery.

A person commits murder if he commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

A person commits robbery if, in the course of committing theft, as that term is herein defined, and with intent to obtain or maintain control of the property of another, he intentionally, knowingly, or recklessly causes bodily injury to another, or intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

You are instructed that the offense of robbery is a felony, other than voluntary or involuntary manslaughter.

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

### Term Definitions

“Appropriate” means 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.

“Attempt” to commit an offense occurs if, with specific intent to commit an offense, a person does an act amounting to more than mere preparation that tends, but fails, to effect the commission of the offense intended.

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

“Consent” means assent in fact, whether express or apparent. “Effective consent” includes consent by a person legally authorized to act for the owner. Consent is not effective if induced by force, threat, or fraud.

“Deadly weapon” means (a) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury, or (b) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

“Deprive” means to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner.

“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.

“Individual” means a human being who is alive.

“Owner” means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the person charged.

“Person” means an individual.

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

“Property” means tangible or intangible personal property or a document, including money, that represents or embodies anything of value.

### **Mental State Definitions**

The following definition of intentionally applies to the offense of capital murder:

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.

The following definitions of intentionally and knowingly apply to the offense of murder:

A person acts intentionally, or with intent, with respect to the nature of his conduct or a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

The following definitions of intentionally, knowingly, and recklessly apply to the offense of robbery:

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

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.

### **Capital Murder**

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that, on or about May 20, 2012, in Dallas County, Texas, the defendant, Matthew Lee Johnson, intentionally caused the death of Nancy Harris, an individual, by setting Nancy Harris on fire, and did use or exhibit a deadly weapon, to-wit: fire, and the defendant was in the course of attempting to commit or committing robbery of Nancy Harris, then you will find the defendant guilty of capital murder as charged in the indictment.

If you do not so find, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next go on to consider whether the defendant is guilty of the lesser included offense of murder.

### **Murder**

Bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, that on or about May 20, 2012, in Dallas County, Texas, the defendant, Matthew Lee Johnson, intentionally or knowingly committed or attempted to commit the felony offense of robbery, by then and there, while in the course of committing theft, and with intent to obtain or maintain control of the property of Nancy Harris, to wit: a ring, or cigarettes, or lighters, or currency, without the effective consent of Nancy Harris, and with intent to deprive Nancy Harris of said property, did then and there intentionally, knowingly, or recklessly

cause bodily injury to Nancy Harris, by setting Nancy Harris on fire, and while in the course of or in furtherance of the commission or the attempted commission of robbery or while in immediate flight from the commission or the attempted commission of robbery, the defendant committed an act clearly dangerous to human life by setting Nancy Harris on fire, and did use or exhibit a deadly weapon, to-wit: fire, and did thereby cause the death of Nancy Harris, then you will find the defendant guilty of murder as included in the indictment.

If you do not so find, or if you have a reasonable doubt thereof, you shall acquit the defendant and say by your verdict "not guilty."

If you should find from the evidence beyond a reasonable doubt that the defendant is either guilty of capital murder or murder, but you have a reasonable doubt as to which offense he is guilty of, then you should resolve that doubt in the defendant's favor and find the defendant guilty of the lesser included offense of murder.

If you have reasonable doubt as to whether the defendant is guilty of either offense set forth in this charge, you will acquit the defendant and say by your verdict "not guilty."

### **Voluntary Intoxication**

Voluntary intoxication does not constitute a defense to the commission of a crime. "Intoxication" means the disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

### **Presumptions and Burden of Proof**

In all criminal cases the burden of proof is on the State. 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 you are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in this case.

The State 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. This burden rests upon the State throughout the trial and never shifts to the defendant. If the State fails to meet its burden, you must acquit the defendant.

It is not required that the State prove the defendant's guilt beyond all possible doubt; it is required that the State's proof excludes all "reasonable doubt" concerning the defendant's guilt.

### **Evidentiary Instructions**

At times throughout the trial, the Court has been called upon to pass on the question of whether or not certain offered evidence might properly be admitted. Do not be concerned with the reasons for such rulings and draw no inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the Court, you of course must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

You are instructed that the defendant may testify in his own behalf if he chooses to do so, but if he elects not to do so, that fact cannot be taken by you as a circumstance against him or prejudice him in any way. The defendant has elected not to testify in this phase of the trial, and you are instructed that you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed an offense other than the offense alleged against him in the indictment in this case, you cannot consider that testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offense, if any was committed, and even then you may only consider it in determining the motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, or state of mind of the defendant, and for no other purpose.

You are further charged as a part of the law in this case that the State is not required to prove the exact date alleged in the indictment but may prove the offense, if any, to have been committed at any time prior to the presentment of the indictment.

### Concluding Instructions

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, or any witness therein, and no juror is permitted to communicate to any other juror anything he may have heard regarding the case or any witness therein, from any source other than the witness stand.

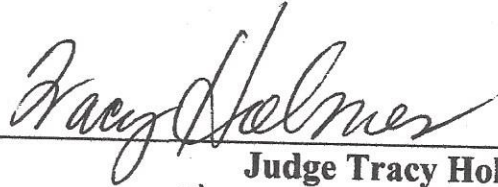
In deliberating on this case, you are not to refer to or discuss any matter or issue not in evidence before you; nor talk about this case to anyone not of your jury. You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion upon any matter of fact in this case, and if you have observed anything which you have or may interpret as the Court's opinion upon any matter of fact in this case, you must wholly disregard it.

Mere sentiment, conjecture, sympathy, passion, prejudice, public opinion, or public feeling is to play no part in your deliberations.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the testimony, but you are bound to receive the law from the court, which is herein given you, and be governed thereby.

After you have retired to consider the verdict, no one has any authority to communicate with you except the bailiff who has you in charge. You may communicate with this Court in writing, signed by your presiding juror, through the bailiff who has you in charge. Do not attempt to talk to the bailiff, the attorneys, or the Court concerning any question you may have.

After argument of counsel, you will retire and select one of your members as your presiding juror. It is the duty of your presiding juror to preside at your deliberations and to vote with you in arriving at a verdict. Your verdict must be unanimous, and after you have arrived at your verdict, you may use one of the attached forms by having your presiding juror sign the particular form that conforms to your verdict.

A handwritten signature in cursive script that reads "Tracy Holmes". The signature is written in black ink and is positioned above a horizontal line.

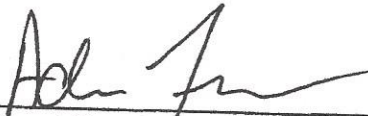
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**Judge Tracy Holmes**  
**363<sup>rd</sup> Judicial District Court**  
**Dallas County, Texas**



**VERDICT FORMS**

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

  
\_\_\_\_\_  
Presiding juror  
Printed name: Adam Forbes

We, the jury, find the defendant guilty of murder, as included in the indictment.

\_\_\_\_\_  
Presiding juror  
Printed name: \_\_\_\_\_

We, the jury, find the defendant not guilty.

\_\_\_\_\_  
Presiding juror  
Printed name: \_\_\_\_\_