



**CAUSE NO. 13 DCR 064483B**

<b>THE STATE OF TEXAS</b>	<b>§</b>	<b>IN THE 434th DISTRICT COURT</b>
	<b>§</b>	
<b>VS.</b>	<b>§</b>	<b>OF</b>
	<b>§</b>	
<b>LAMELVIN DEWAYNE JOHNSON</b>	<b>§</b>	<b>FORT BEND COUNTY, TEXAS</b>

COURT’S CHARGE TO THE JURY

LADIES AND GENTLEMEN OF THE JURY:

The Defendant, Lamelvin Dewayne Johnson, stand charged by indictment with the offense of capital murder, alleged to have been committed on or about the 29<sup>th</sup> day of September 2013, in Fort Bend County, Texas. The defendant has entered a plea of not guilty.

I.

A person commits the offense of murder if he intentionally or knowingly causes the death of an individual.

A person commits capital murder if he intentionally or knowingly causes the death of more than one individual during the same criminal transaction.

II.

“Person” means an individual.

“Individual” means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

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

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

"Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

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

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

A person acts recklessly, or is reckless, with respect to the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that 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 as viewed from the defendant's standpoint.

### III.

The defendant is on trial solely on the charge contained in the indictment. In reference to evidence, if any, that the defendant has previously participated in acts, other than but similar to that which is charged in the indictment in this case, you are instructed that you cannot consider such other acts, if any, unless you find and believe beyond a reasonable doubt that the defendant committed such acts, if any; and even then you may only consider the same for the purpose of determining intent, knowledge, motive, identity, opportunity, common plan or scheme, absence of mistake or accident of the defendant, if it does.

You are further instructed that you may consider all relevant facts and circumstances surrounding the killings, if any, and the previous relationship existing between the defendant and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the offense alleged in the indictment, if there was such an offense.

### IV.

#### SELF DEFENSE

Upon the law of self defense you are instructed that a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

The use of force against another is not justified in response to verbal provocation alone.

A person is justified in using deadly force against another:

- (1) if the person would be justified in using force against the other; and
- (2) when and to the degree the person reasonably believes the deadly force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly force.

In determining whether an actor reasonably believed that the use of deadly force was necessary, a finder of fact may not consider whether the actor failed to retreat.

“Reasonable belief” means a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

“Deadly force” means force that is intended or known by the person using it to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

Where there is more than one assailant, the defendant has the right to act upon the hostile demonstration of either one or all of them and to assault either one of them, if it reasonably appears to him that they are present for the purpose and acting together to take his life or to do him serious bodily injury.

### NECESSITY

Conduct is justified under the law of necessity if the defendant reasonably believes the conduct is immediately necessary to avoid imminent harm and the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law prescribing the conduct.

“Ordinary standards of reasonableness” means the standards that would be applied by an ordinarily prudent person under the same or similar circumstances as the defendant.

Our law provides that a person commits the offense of manslaughter if he recklessly causes the death of an individual.

### CAPITAL MURDER

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that, on or about the 29<sup>th</sup> day of September 2013, in Fort Bend County, Texas, the defendant, Lamelvin Dewayne Johnson, during the same criminal transaction did then and there intentionally or knowingly cause the death of an individual, Johnny Simmons, by shooting him with a firearm, and did then and there intentionally or knowingly cause the death of an individual, Harvey Simmons, by shooting him with a firearm, you will find the defendant, Lamelvin Dewayne Johnson, “Guilty” of “Capital Murder” and say by your verdict. However, if you do not so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict, “Not Guilty.”

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether the defendant is guilty of Murder.

#### CAPITAL MURDER AND SELF DEFENSE

Now, therefore, bearing in mind the foregoing definitions and instructions, if you believe from the evidence beyond a reasonable doubt that the defendant Lamelvin Dewayne Johnson in the County of Fort Bend, the State of Texas, on or about the 29<sup>th</sup> day of September, 2013, during the same criminal transaction did then and there intentionally or knowingly cause the death of an individual, Johnny Simmons, by shooting him with a firearm, and did then and there intentionally or knowingly cause the death of an individual , Harvey Simmons, by shooting him with a firearm, as alleged in the indictment; but you further find from the evidence, or have a reasonable doubt thereof, that the defendant reasonably believed that deadly force when and to the degree used, if it was, was immediately necessary to protect himself against the use or attempted use of unlawful deadly force by the said Johnny Simmons, Harvey Simmons or Donntay Borom you will acquit the defendant and say by your verdict “not guilty.”

#### CAPITAL MURDER AND NECESSITY

Now, therefore, if you believe from the evidence beyond a reasonable doubt that the defendant LAMELVIN DEWAYNE JOHNSON, on or about the 29<sup>TH</sup> day of SEPTEMBER, 2013, in the County of FORT BEND, and State of Texas, during the same criminal transaction did then and there intentionally or knowingly cause the death of an individual, Johnny Simmons, by shooting him with a firearm, and did then and there intentionally or knowingly cause the death of an individual , Harvey Simmons, by shooting him with a firearm, as alleged in the indictment, but you further believe from the evidence or have a reasonable doubt thereof that at the time the defendant did the act aforesaid, if any, the defendant reasonably believed that such act was immediately necessary to avoid imminent harm, namely, the use of deadly conduct by Donntay Borom, Johnny Simmons or Harvey Simmons, and you further find, or have a reasonable doubt thereof that the desirability and urgency of avoiding the harm clearly outweighed according to ordinary standards of reasonableness, the harm sought to be prevented by the law denouncing the conduct of the said LAMELVIN DEWAYNE JOHNSON, you will acquit the defendant and say by your verdict “not guilty.”

### LESSER INCLUDED – MURDER OF JOHNNY SIMMONS

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that, on or about the 29<sup>th</sup> day of September 2013, in Fort Bend County, Texas, the defendant, Lamelvin Dewayne Johnson, did then and there intentionally or knowingly cause the death of an individual, Johnny Simmons, by shooting him with a firearm, you will find the defendant, Lamelvin Dewayne Johnson, “Guilty” of “Murder” regarding the death of Johnny Simmons and say by your verdict. However, if you do not so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict, “Not Guilty.”

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether the defendant is guilty of Manslaughter.

### LESSER INCLUDED – MURDER OF JOHNNY SIMMONS / SELF DEFENSE

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that, on or about the 29<sup>th</sup> day of September 2013, in Fort Bend County, Texas, the defendant, Lamelvin Dewayne Johnson, did then and there intentionally or knowingly cause the death of an individual, Johnny Simmons, by shooting him with a firearm, you will find the defendant, Lamelvin Dewayne Johnson, “Guilty” of “Murder” regarding the death of Johnny Simmons; but if you further find from the evidence, or have a reasonable doubt thereof, that the defendant reasonably believed that deadly force when and to the degree used, if it was, was immediately necessary to protect himself against the use or attempted use of unlawful deadly force by the said Johnny Simmons, Harvey Simmons or Donntay Borom you will acquit the defendant and say by your verdict “not guilty.”

### LESSER INCLUDED – MURDER OF JOHNNY SIMMONS / NECESSITY

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that, on or about the 29<sup>th</sup> day of September 2013, in Fort Bend County, Texas, the defendant, Lamelvin Dewayne Johnson, did then and there intentionally or knowingly cause the death of an individual, Johnny Simmons, by shooting him with a firearm, you will find the defendant, Lamelvin Dewayne Johnson, “Guilty” of “Murder” regarding the death of Johnny Simmons, but you further believe from the evidence or have a reasonable doubt thereof that at the time the defendant did the act aforesaid, if any, the defendant reasonably believed that such

act was immediately necessary to avoid imminent harm, namely, the use of deadly conduct by Donntay Borom, Johnny Simmons or Harvey Simmons, and you further find, or have a reasonable doubt thereof that the desirability and urgency of avoiding the harm clearly outweighed according to ordinary standards of reasonableness, the harm sought to be prevented by the law denouncing the conduct of the said LAMELVIN DEWAYNE JOHNSON, you will acquit the defendant and say by your verdict “not guilty.”

LESSER INCLUDED – MURDER OF HARVEY SIMMONS

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that, on or about the 29<sup>th</sup> day of September 2013, in Fort Bend County, Texas, the defendant, Lamelvin Dewayne Johnson, did then and there intentionally or knowingly cause the death of an individual, Harvey Simmons, by shooting him with a firearm, you will find the defendant, Lamelvin Dewayne Johnson, “Guilty” of “Murder” regarding the death of Harvey Simmons and say by your verdict. However, if you do not so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict, “Not Guilty.”

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether the defendant is guilty of Manslaughter.

LESSER INCLUDED – MURDER OF HARVEY SIMMONS / SELF DEFENSE

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that, on or about the 29<sup>th</sup> day of September 2013, in Fort Bend County, Texas, the defendant, Lamelvin Dewayne Johnson, did then and there intentionally or knowingly cause the death of an individual, Harvey Simmons, by shooting him with a firearm, you will find the defendant, Lamelvin Dewayne Johnson, “Guilty” of “Murder” regarding the death of Harvey Simmons; but if you further find from the evidence, or have a reasonable doubt thereof, that the defendant reasonably believed that deadly force when and to the degree used, if it was, was immediately necessary to protect himself against the use or attempted use of unlawful deadly force by the said Johnny Simmons, Harvey Simmons or Donntay Borom you will acquit the defendant and say by your verdict “not guilty.”

LESSER INCLUDED – MURDER OF HARVEY SIMMONS / NECESSITY

Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt that, on or about the 29<sup>th</sup> day of September 2013, in Fort Bend County, Texas, the defendant, Lamelvin Dewayne Johnson, did then and there intentionally or knowingly cause the death of an individual, Harvey Simmons, by shooting him with a firearm, you will find the defendant, Lamelvin Dewayne Johnson, "Guilty" of "Murder" regarding the death of Harvey Simmons, but you further believe from the evidence or have a reasonable doubt thereof that at the time the defendant did the act aforesaid, if any, the defendant reasonably believed that such act was immediately necessary to avoid imminent harm, namely, the use of deadly conduct by Donntay Borom, Johnny Simmons or Harvey Simmons, and you further find, or have a reasonable doubt thereof that the desirability and urgency of avoiding the harm clearly outweighed according to ordinary standards of reasonableness, the harm sought to be prevented by the law denouncing the conduct of the said LAMELVIN DEWAYNE JOHNSON, you will acquit the defendant and say by your verdict "not guilty."

LESSER INCLUDED – MANSLAUGHTER / JOHNNY SIMMONS

Now, if you find from the evidence beyond a reasonable doubt that on or about the 29<sup>th</sup> day of September, 2013, in Fort Bend County, Texas, the defendant, Lamelvin Dewayne Johnson, did then and there unlawfully, recklessly, as that term is hereinbefore defined, cause the death of Johnny Simmons by shooting Johnny Simmons, with a firearm, then you will find the defendant guilty of MANSLAUGHTER.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

LESSER INCLUDED – MANSLAUGHTER / HARVEY SIMMONS

Now, if you find from the evidence beyond a reasonable doubt that on or about the 29<sup>th</sup> day of September, 2013, in Fort Bend County, Texas, the defendant, Lamelvin Dewayne Johnson, did then and there unlawfully, recklessly, as that term is hereinbefore defined, cause the death of Harvey Simmons, by shooting Harvey Simmons, with a firearm, then you will find the defendant guilty of MANSLAUGHTER.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

VI.

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 ~~she~~ he has been arrested for, confined, indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at ~~his~~ his trial. The law does not require a defendant to prove ~~his~~ his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The prosecution has the burden of proving the defendant guilty and it must do so by proving each and every element of the offense charged beyond a reasonable doubt and if it fails to do so, you must acquit the defendant.

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

You are further charged that an indictment is no evidence as to the guilt of the Defendant, and you will not consider it as such. It is simply the means whereby the Defendant is informed of the nature of the offense alleged against him.

You are charged that you are the exclusive judges of the facts proven, of the credibility of the witnesses and of the weight to be given their testimony, but the law of the case you must receive from the Court as laid down in these instructions, and be governed thereby.

You are limited in your deliberations upon a verdict to the consideration and discussion of such facts and circumstances only as were admitted in evidence, or as are reasonably deducible from the evidence. You cannot legally and must not consider nor discuss any fact or circumstance not thus in evidence or reasonably deducible from the evidence. Nor may a juror relate to any others fact or circumstance of which he may have or claim to have knowledge or information that was not introduced in evidence. Neither may any of the jurors lawfully discuss anything else, so far as the evidence is concerned, other than the evidence introduced by the parties and admitted by the Court.

You will not talk about the case with anyone not of your jury, and even among yourselves, only when you are all together in the jury room prior to being discharged by the Court. During your deliberations, you must not communicate with or provide any information to anyone but your fellow jurors about this case. You may not use any electronic device or media, such as telephone, cell phone, smart phone, iPhone, Blackberry, or computer; the internet, any internet service, or any text

or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube, or Twitter, to communicate with anyone any information about this case or to conduct any research about this case until I accept your verdict.

Your deliberations at this time are limited solely to the issue of guilt or innocence of the Defendant of the offense charged and you are not authorized to pass upon the punishment, if any, to be imposed.

After argument of counsel, you will retire to the jury room, select your own foreman and proceed with your deliberations. It is the duty of your foreman to preside over your deliberations and to vote with you in arriving at your verdict. Your verdict must be unanimous.

After you have retired, you may communicate with this Court in writing through the officer who has you in charge. Do not attempt to talk to the officer, the attorneys, or the Court concerning any questions you may have. After you have reached a unanimous verdict, the foreman will certify thereof by filling in the appropriate form attached to this charge and signing his or her name as foreperson.

**FILED**

SEP 26 2019 ↗

AT 12:55 PM.

*Brenda M. ...*  
CLERK DISTRICT COURT, FORT BEND CO., TX

  
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Hon. James Shemake  
Judge Presiding

CAUSE NO. 13 DCR 064483B

THE STATE OF TEXAS

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IN THE 434th DISTRICT COURT

VS.

OF

LAMELVIN DEWAYNE JOHNSON

FORT BEND COUNTY, TEXAS

VERDICT

CAPITAL MURDER

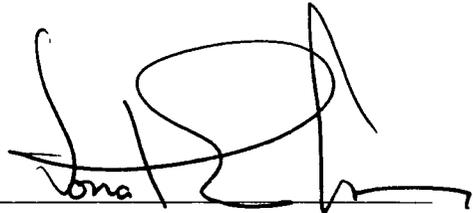
We, the Jury, find the defendant, Lamelvin Dewayne Johnson, GUILTY of CAPITAL MURDER as charged in the indictment.

**FILED**

SEP 26 2019

AT 3:28 P.M.

*Bentley M. ...*  
CLERK DISTRICT COURT, FORT BEND CO., TX



PRESIDING JUROR

CAUSE NO. 13 DCR 064483B

THE STATE OF TEXAS	§	IN THE 434th DISTRICT COURT
	§	
VS.	§	OF
	§	
LAMELVIN DEWAYNE JOHNSON	§	FORT BEND COUNTY, TEXAS

VERDICT  
LESSER-INCLUDED OFFENSE OF MURDER

We, the Jury, find the defendant, Lamelvin Dewayne Johnson, GUILTY of the lesser-included charge of MURDER as to the death of Harvey Simmons.

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PRESIDING JUROR

CAUSE NO. 13 DCR 064483B

THE STATE OF TEXAS	§	IN THE 434th DISTRICT COURT
VS.	§	OF
LAMELVIN DEWAYNE JOHNSON	§	FORT BEND COUNTY, TEXAS

**VERDICT**  
**LESSER-INCLUDED OFFENSE OF MURDER**

We, the Jury, find the defendant, Lamelvin Dewayne Johnson, GUILTY of the lesser-included charge of MURDER as to the death of Johnny Simmons.

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PRESIDING JUROR

CAUSE NO. 13 DCR 064483B

THE STATE OF TEXAS	§	IN THE 434th DISTRICT COURT
	§	
VS.	§	OF
	§	
LAMELVIN DEWAYNE JOHNSON	§	FORT BEND COUNTY, TEXAS

VERDICT

LESSER-INCLUDED OFFENSE OF MANSLAUGHTER

We, the Jury, find the defendant, Lamelvin Dewayne Johnson, GUILTY of the lesser-included charge of MANSLAUGHTER as to the death of Johnny Simmons.

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PRESIDING JUROR

CAUSE NO. 13 DCR 064483B

THE STATE OF TEXAS

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IN THE 434th DISTRICT COURT

VS.

OF

LAMELVIN DEWAYNE JOHNSON

FORT BEND COUNTY, TEXAS

VERDICT

LESSER-INCLUDED OFFENSE OF MANSLAUGHTER

We, the Jury, find the defendant, Lamelvin Dewayne Johnson, GUILTY of the lesser-included charge of MANSLAUGHTER as to the death of Harvey Simmons.

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PRESIDING JUROR

CAUSE NO. 13 DCR 064483B

THE STATE OF TEXAS

VS.

LAMELVIN DEWAYNE JOHNSON

§  
§  
§  
§  
§

IN THE 434th DISTRICT COURT

OF

FORT BEND COUNTY, TEXAS

VERDICT  
CAPITAL MURDER

We, the Jury, find the defendant, Lamelvin Dewayne Johnson, NOT GUILTY of CAPITAL MURDER.

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PRESIDING JUROR