

CAUSE NO. 1217869

f.12

THE STATE OF TEXAS § IN THE 248TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
ZAJAHN ANTONIO JOHNSON § JANUARY TERM, A. D., 2012

Members of the Jury:

The defendant, Zajahn Antonio Johnson, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 21st day of August, 2008, in Harris County, Texas. The defendant has pleaded not guilty.

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

A person commits the offense of capital murder if he commits murder, as hereinbefore defined, and the person intentionally or knowingly causes the death of more than one person during the same criminal transaction.

"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

RECORDER'S MEMORANDUM
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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.

You are instructed that it is your duty to consider the evidence of all relevant facts and circumstances surrounding the deaths and the previous relationship, if any, existing between the accused and Gilbert Cruz and the accused and Henry Sepulveda, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the alleged offense.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 21st day of August, 2008, in Harris County, Texas, the defendant, Zajahn Antonio Johnson, did then and there unlawfully, during the same criminal transaction, intentionally or knowingly cause the death of Gilbert Cruz by shooting Gilbert Cruz with a deadly weapon, to-wit: a firearm, and intentionally or knowingly cause the death of Henry Sepulveda by shooting Henry Sepulveda with a deadly weapon, to-wit: a firearm, then you will find the defendant guilty of capital murder, as charged in the indictment.

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."

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 person'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 if he would be justified in using force against the other in the first place, as above set out, and when he reasonably believes that such deadly force is immediately necessary to protect himself and/or a third person against the other person's use or attempted use of unlawful deadly force.

A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used, is not required to retreat before using deadly force. You are not to consider whether the defendant failed to retreat.

By the term "reasonable belief" as used herein is meant a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

By the term "deadly force" as used herein is meant force that is intended or known by the persons using it to cause, or in the manner of its use or intended use, is capable of causing, death or serious bodily injury.

When a person, or the third person, is attacked with unlawful deadly force, or he reasonably believes he, or the third person,

is under attack or attempted attack with unlawful deadly force by one or more persons, and there is created in the mind of such person a reasonable expectation or fear of death or serious bodily injury to himself or the third person at the hands of such assailants, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, viewed from his standpoint at the time, to protect himself or the third person from such attack or attempted attack. And it is not necessary that there be an actual attack or attempted attack, as a person has a right to defend his life and person, or the life and person of the third person, from apparent danger as fully and to the same extent as he would had the danger been real, provided that he acted upon a reasonable apprehension of danger, as it appeared to him from his standpoint at the time, and that he reasonably believed such deadly force was immediately necessary to protect himself, or the third person, against the use or attempted use of unlawful deadly force by his assailants.

In determining the existence of real or apparent danger, you should consider all the facts and circumstances in evidence before you, the previous relationship, if any, existing between the defendant and Gilbert Cruz and/or Henry Sepulveda, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the occurrence in question, and in considering such circumstances, you should place yourselves in the defendant's position at that time and view them from his standpoint alone.

Therefore, if you find from the evidence beyond a reasonable doubt that the defendant, Zajahn Antonio Johnson, did during the same criminal transaction, intentionally or knowingly cause the death of Gilbert Cruz by shooting Gilbert Cruz with a deadly weapon, to-wit, a firearm, and intentionally or knowingly cause the death of Henry Sepulveda by shooting Henry Sepulveda with a deadly weapon, to-wit, a firearm, as alleged, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct, or both, of Gilbert Cruz and Henry Sepulveda, it reasonably appeared to the defendant that his life or person, or the life or person of Jameka Stevenson, was in danger, and there was created in his mind a reasonable expectation or fear of death or serious bodily injury to himself or Jameka Stevenson from the use of unlawful deadly force at the hands of Gilbert Cruz and Henry Sepulveda, and that acting under such apprehension, and reasonably believing that the use of deadly force on his part was immediately necessary to protect himself or Jameka Stevenson against Gilbert Cruz and Henry Sepulveda's use or attempted use of unlawful deadly force, he shot Gilbert Cruz and Henry Sepulveda, then you should acquit the defendant on the issue of self-defense and on the issue of defense of a third person; or if you have a reasonable doubt as to whether or not the defendant was acting in self-defense or in defense of Jameka Stevenson on said occasion, and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict, not guilty.

If you find from the evidence beyond a reasonable doubt that at the time and place in question the defendant did not reasonably believe that he or Jameka Stevenson was in danger of death or serious bodily injury, or that the defendant, under the circumstances as viewed by him from his standpoint at the time, did not reasonably believe that the degree of force actually used by him was immediately necessary to protect himself or Jameka Stevenson against Gilbert Cruz and Henry Sepulveda's use or attempted use of unlawful deadly force, then you should find against the defendant on the issue of self-defense and on the issue of defense of a third person.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a right accorded a defendant, and in the event he elects not to testify, that fact cannot be taken as a circumstance against him.

In this case, the defendant has elected not to testify and you are instructed that you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

A Grand Jury indictment is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence of guilt nor can it be considered by you in passing upon the question of guilt of the defendant. The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant.

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with the offense gives rise to no inference of guilt at his trial. The law does not require a defendant to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all 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.

In the event you have a reasonable doubt as to the defendant's guilt after considering all the evidence before you,

and these instructions, you will acquit him and say by your verdict "Not Guilty."

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

After you retire to the jury room, you should select one of your members as your Foreman. It is his or her duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form attached hereto and signing the same as Foreman.


During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

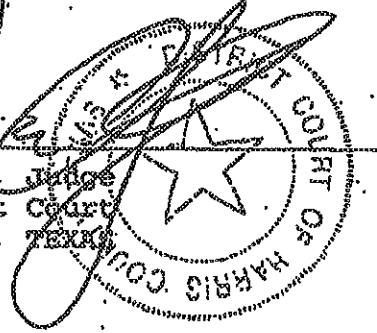
No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written, prepared and signed by the Foreman and shall be submitted to the court through this officer. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the Court, or anyone else concerning any questions you may have.

Your sole duty at this time is to determine the guilt or innocence of the defendant under the indictment in this cause and

restrict your deliberations solely to the issue of guilt or innocence of the defendant.

Following the arguments of counsel, you will retire to consider your verdict.


Joan Campbell, Judge
248th District Court
Harris County, TEXAS



FILED
Chris Dandaj
District Clerk
MAR 29 2012

Time: _____
By: _____
Harris County, Texas
Deputy

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§ OF HARRIS COUNTY, TEXAS

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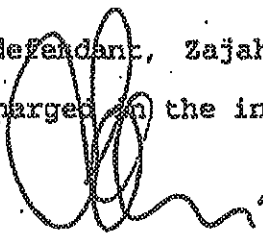
V E R D I C T

"We, the Jury, find the defendant, Zajahn Antonio Johnson, not guilty."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Zajahn Antonio Johnson, guilty of capital murder, as charged in the indictment."



Foreman of the Jury

ROBERT C. LAHIERE, JR
(Please Print) Foreman

FILED
Chris DeRial
District Clerk

MAR 29 2012

Time: _____
By: _____
Harris County, Texas
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