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OFFICE OF
COURT ADMINISTRATION

CAUSE NO. F17-75751-I

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DALLAS COUNTY, TEXAS
DEPUTY

THE STATE OF TEXAS § **IN THE CRIMINAL DISTRICT**
V. § **COURT NUMBER TWO OF**
BRANDON DEMON JORDAN § **DALLAS COUNTY, TEXAS**

COURT'S INSTRUCTIONS TO THE JURY

MEMBERS OF THE JURY:

Brandon Demon Jordan, the defendant, stands charged by indictment with the offense of capital murder alleged to have been committed on or about 21st day of May, 2017, in Dallas County, Texas. To this charge, the defendant has pleaded not guilty.

The following instructions are the law applicable to this case. You are instructed that you may read these instructions as a whole.

OFFENSE DEFINITIONS

A person commits the offense of murder when he intentionally or knowingly causes the death of an individual, or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.

A person commits capital murder if he intentionally commits murder in the course committing or attempting to commit robbery.

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

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

TERM DEFINITIONS

“Act” means a bodily movement, whether voluntary or involuntary, and includes speech.

“Actor” means a person whose criminal responsibility is in issue in a criminal action.

“Another” means a person other than the actor.

“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.

“Appropriation” and “appropriate” mean 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.

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

“Conduct” means an act or omission and its accompanying mental state.

“Deadly weapon” means a firearm.

“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.

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

“Firearm” means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

“Individual” means a human being who is alive.

“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.

“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 actor.

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

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

“Serious bodily injury” as used herein 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.

“Unlawful” means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.

CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER
(LAW OF PARTIES)

All persons are parties to an offense who are guilty of acting together in the commission of the offense. A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or both.

A person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. Mere presence alone will not constitute one a party to an offense.

"Conspiracy" means an agreement between two or more persons, with intent that a felony be committed, that they, or one or more of them, engage in conduct that would constitute the offense. An agreement constituting a conspiracy may be inferred from acts of the parties.

If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, then all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy. Capital murder, robbery, attempted robbery, and aggravated robbery are felony offenses.

MENTAL STATE DEFINITIONS

With regard to the offenses of capital murder and 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.

With regard to the offense of murder, 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 and knowingly 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.

CAPITAL MURDER

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt, that on or about 21st day of May, 2017, in Dallas County, Texas, the defendant, either by his own conduct or as a party as defined above, did unlawfully then and there intentionally cause the death of Alejandro Hernandez, an individual, hereinafter called deceased, by shooting deceased with a firearm, a deadly weapon, and the defendant was then and there in the course of committing or attempting to commit the offense of robbery of said deceased then you will find the defendant guilty of capital murder as charged in the indictment.

Unless you so find or if you have a reasonable doubt thereof, then you will consider whether the defendant is guilty of the lesser included offense of murder.

MURDER

Now bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt, that on or about 21st day of May, 2017, in Dallas County, Texas, the defendant, did unlawfully then and there intentionally or knowingly caused the death of Alejandro Hernandez, an individual, hereinafter called deceased, by shooting deceased with a firearm, a deadly weapon, or

if you find from the evidence beyond a reasonable doubt, that on or about 21st day of May, 2017, in Dallas County, Texas, the defendant intended to cause serious bodily injury to Alejandro Hernandez and committed an act clearly dangerous to human life that caused the death of Alejandro Hernandez an individual, hereinafter called deceased, by shooting deceased with a

firearm, a deadly weapon, 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 will 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 guilty of either 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 a reasonable doubt as to whether the defendant is guilty of any offense defined in this charge, you will acquit the defendant and say by your verdict "not guilty."

SELF-DEFENSE

Under 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:

- (1) In response to verbal provocation alone; or
- (2) If the actor provoked the other's use or attempted use of unlawful force, unless:
 - a. The actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and
 - b. The other nevertheless continues or attempts to use unlawful force against the actor.

DEADLY FORCE IN DEFENSE OF PERSON AS APPLIES TO MURDER

A person is justified in using deadly force against another if he would be justified in using force against the other person as above stated, and when and to the degree he reasonably believes that deadly force is immediately necessary:

- (1) To protect himself against the other person's use or attempted use of unlawful deadly force; or
- (2) To prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

The term "deadly force" as used herein means force that is intended or known by the defendant to cause or, in the manner of its use or intended use, is capable of causing death or serious bodily injury.

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

The defendant's belief that the deadly force was immediately necessary is presumed to be reasonable if the defendant:

- (1) knew or had reason to believe that the person against whom the deadly force was used:
 - (A) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;
- (2) the defendant did not provoke the person against whom the force was used; and
- (3) the defendant was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

criminal activity at the time the deadly force is used is not required to retreat before using 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.

The presumption of reasonable belief applies unless the State proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist.

If the State fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed facts exist.

Even though the jury may find the presumed facts do not exist, the State must prove beyond a reasonable doubt each of the elements of the offense charged.

If the jury has a reasonable doubt as to whether the presumed facts exist, the presumption applies and the jury must consider the presumed facts to exist.

APPLICATION OF DEADLY FORCE IN DEFENSE OF PERSON AS APPLIES TO
MURDER

In determining the existence of real or apparent danger, you should consider all of the facts and circumstances in the case in evidence before you, and the words, acts and conduct, if any, of Alejandro Hernandez, at the time of and prior to the time of the alleged offense, 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 from his standpoint alone.

Now, if you find from the evidence beyond a reasonable doubt that the defendant, Brandon Demon Jordan, on or about the 21st day of May, 2017, in the County of Dallas and

State of Texas, the defendant, did unlawfully then and there intentionally or knowingly caused the death of Alejandro Hernandez, an individual, hereinafter called deceased, by shooting deceased with a firearm, a deadly weapon, but you further find from the words or conduct or both of Alejandro Hernandez, the defendant reasonably believed that his life or person was in danger and there created in his mind a reasonable expectation or fear of death or serious bodily injury from the use of unlawful deadly force at the hands of Alejandro Hernandez, and that acting under such apprehension, he reasonably believed that the use of deadly force on his part was immediately necessary to protect himself against Alejandro Hernandez's use or attempted use of unlawful deadly force or to prevent the imminent commission by Alejandro Hernandez of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery, and he shot the said Alejandro Hernandez with a firearm, a deadly weapon, then you should acquit the defendant on the grounds of self-defense; or if you have a reasonable doubt as to whether or not the defendant was acting in self-defense on the occasion and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict not guilty.

DEFENSE OF THIRD PERSON AS APPLIES TO MURDER

In regards to the offense of murder you are instructed that under our law a person is justified in using force against another to protect a third person if, under the circumstances as he reasonably believes them to be, such person would be justified in using force to protect himself against the unlawful force of another which he reasonably believes to be threatening the third person he seeks to protect, and he reasonably believes that his intervention is immediately necessary to protect the third person.

A person is justified in using deadly force against another to protect a third person if, under the circumstances as he reasonably believes them to be, such person would be justified in using force to protect himself against another which he reasonably believes to be threatening the third person he seeks to protect, and when and to the degree the person reasonably believes deadly force is immediately necessary to:

- A) protect the third person against the other's use or attempted use of unlawful deadly force; or
- B) prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

and he reasonably believes that his intervention is immediately necessary to protect the third person.

The defendant's belief that the deadly force was immediately necessary is presumed to be reasonable if the defendant:

- (1) knew or had reason to believe that the person against whom the deadly force was used:
 - (A) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;
- (2) the defendant and third person did not provoke the person against whom the force was used; and
- (3) the defendant and third person were not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

“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.

The presumption of reasonable belief applies unless the State proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist.

If the State fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed facts exist.

Even though the jury may find the presumed fact does not exist, the State must prove beyond a reasonable doubt each of the elements of the offense charged.

If the jury has a reasonable doubt as to whether the presumed facts exist, the presumption applies and the jury must consider the presumed facts to exist.

APPLICATION OF DEFENSE OF THIRD PERSON TO MURDER

Therefore, if you find from the evidence beyond a reasonable doubt that on or about May 21, 2017, the defendant, Brandon Demon Jordan, did then and there intentionally or knowingly cause the death of Alejandro Hernandez, as alleged in the indictment, but you further find from the evidence, or you have a reasonable doubt thereof, that, viewed from the standpoint of the defendant at the time, from the words, or conduct, or both, of Alejandro Hernandez, the defendant reasonably believed that the life or person of Brittany Pollard was in danger and there was created in the defendant's mind a reasonable expectation or fear of Brittany Pollard's death or serious bodily injury from the use of unlawful force at the hands of Alejandro Hernandez and that acting under such apprehension and reasonably believing that the use of deadly force, by his intervention, on his part was immediately necessary to protect Brittany Pollard against Alejandro Hernandez's use or attempted use of unlawful deadly force or to prevent the imminent commission by Alejandro Hernandez of aggravated kidnapping, murder, sexual assault,

aggravated sexual assault, robbery, or aggravated robbery, then you will find the defendant "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 Brittany Pollard 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 deadly force actually used by him was immediately necessary to protect Brittany Pollard against Alejandro Hernandez's use or attempted use of unlawful deadly force or prevent Alejandro Hernandez's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery, then you should find against the defendant on the issue of defense of a third person.

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. You are not to be concerned with the reasons for such rulings and are not to draw any 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 neither determines what weight should be given such evidence nor passes 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.

As you determine the facts, you must consider only the evidence presented during the trial, including the sworn testimony of the witnesses and the exhibits. Remember that any

statements, objections, or arguments made by the lawyers are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

EXTRANEOUS CONDUCT

You are instructed that if there is any testimony before you in this case regarding the defendant having committed an offense, if any, other than the offense, if any, alleged in the indictment in this case, you cannot consider said 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 the same in determining the intent and motive of the defendant, if any, alleged in the indictment in this case, and for no other purpose.

PRESUMPTION OF INNOCENCE

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 the defendant 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 the 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

BURDEN OF PROOF

The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant. 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. If the State fails to meet its burden, 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.

CONCLUDING INSTRUCTIONS

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, and no juror is permitted to communicate to any other juror anything he may have heard regarding the case 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. Further, you shall not talk about this case to anyone not of your jury.

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 and to follow the law from the Court.

After you have retired to consider your verdict, no one has any authority to communicate with you except the bailiff who has you in their charge. You may communicate with this Court in writing, signed by your foreperson, through the bailiff who has you in their 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 foreperson. It is the duty of your foreperson to preside at your deliberations and to vote with you

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THE STATE OF TEXAS § IN THE CRIMINAL DISTRICT
V. § COURT NUMBER TWO OF
BRANDON DEMON JORDAN § DALLAS COUNTY, TEXAS

VERDICT FORMS (CHOOSE ONLY ONE)

We, the jury, unanimously find the defendant not guilty.

PRESIDING JUROR

PRINTED NAME

-OR-

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



PRESIDING JUROR
GRAHAM PEARCE

PRINTED NAME

-OR-

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

PRESIDING JUROR

PRINTED NAME