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| **STATE OF LOUISIANA** | **:** | **NUMBER 272,565; SECTION 1** |
| **VERSUS** | **:** | **FIRST JUDICIAL DISTRICT COURT** |
| **DEMARCUS CARTEZ JONES** | **:** | **CADDO PARISH, LOUISIANA** |

 **CHARGE TO THE JURY**

Ladies and Gentlemen of the Jury:

**DUTY TO FOLLOW THE LAW AS INSTRUCTED**

 Having heard the evidence and arguments of counsel, it is now my duty to instruct you on the law applicable to this case. It is your duty to follow these instructions in reaching your verdict. Although you are the sole judges of the law and the facts on the question of guilt, you have the duty to accept and apply the law as given by the court. You must decide the facts from the testimony and other evidence and apply the law to those facts in reaching your verdict.

 You must not single out any of these instructions and disregard others. I am prohibited from commenting on the evidence, or from giving any opinion as to what facts have or have not been proven. If I have given you the impression that I have an opinion regarding any fact in this case, you are to disregard that impression. Your determination of the facts must be based on evidence presented in open court. The evidence upon which you can base your determination consists of the testimony of the various witnesses, documents received in evidence and exhibits received in evidence in this case.

 It is incumbent on you, the jury, and the jury alone, to determine the weight and credibility of the evidence.

**STATEMENTS AND ARGUMENTS OF THE ATTORNEYS**

 The statements of the district attorneys and the defense lawyers are not to be considered by you as evidence. The opposing sides in this matter have argued their interpretation of the law, the facts they think have been proven from the evidence and from inferences based on that evidence, and on their conclusions from their interpretation of the law and the facts. These opposing viewpoints are presented to you in argument to assist you in your deliberations. However, the statements of the lawyers must be separated by you from evidence admitted in this case.

**DUTY NOT TO CONSIDER SYMPATHY, BIAS OR PREJUDICE**

 In making your decision, you are not to be influenced by sympathy, passion, prejudice, or public opinion. You are expected to reach a just verdict based solely on the law and the evidence.

**PRESUMPTION OF INNOCENCE; BURDEN OF PROOF**

 The fact that an accused stands before you charged with a crime creates no presumption against him. The charge is a mere accusation against him. It is not evidence of a defendant's guilt and you must not be influenced by it in considering the case.

 The indictment is nothing more than a written, formal accusation against a defendant charging him with a crime. You are not to consider the indictment as evidence against the defendant. The filing of an indictment creates no inference that the defendant is guilty.

 The defendant is presumed to be innocent until each element of the crime necessary to constitute his guilt is proven beyond a reasonable doubt. The defendant is not required to prove that he is innocent; thus, the defendant begins the trial with a clean slate. However, this does not mean that the state must prove beyond a reasonable doubt such facts that may be connected with the crime charged but that are not essential elements thereof. The state is not required to prove motive. It is incumbent on the State to prove his guilt beyond a reasonable doubt; and, until so proven, an accused is presumed to be innocent.

 The burden is upon the state to prove the defendant's guilt beyond a reasonable doubt. In considering the evidence, you must give the defendant the benefit of every reasonable doubt arising out of the evidence or out of the lack of evidence. If you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

**REASONABLE DOUBT**

 Proof beyond a reasonable doubt is a phrase that is almost self-explanatory. Reasonable doubt is doubt based upon reason and common sense, and is present if after listening to all of the evidence you cannot say you are firmly convinced of the truth of the charge. Reasonable doubt does not mean all possible doubt, but means doubt based upon a reason. If, after you have considered the State's evidence and the law applicable, there is doubt in your mind as to the guilt of the accused, which doubt is based upon reason, then the defendant is not guilty. However, "proof beyond a reasonable doubt" does not mean proof to an absolute certainty and does not mean proof beyond all doubt.

 In weighing the evidence, you may determine that two different reasonable conclusions may be drawn from the evidence. Whenever facts, testimony or other evidence are such that two different reasonable conclusions may be drawn therefrom, one conclusion favorable to him and one conclusion not favorable to him, it is your duty to draw the conclusion that is favorable to the defendant.

**EXCLUSIVE JUDGES OF FACT**

 You are the exclusive judges of the facts. You are to find from the evidence which facts have been proven and which facts have not been proven. For this purpose, you determine the credibility of the witnesses, accordingly, as you are impressed with their veracity.

 It is your duty to determine the weight and credibility of the evidence. You may take into consideration the probability or improbability of the statements of the witnesses, their opportunities for knowledge of the facts to which they testify, their reliability in noting and remembering facts, their demeanor on the stand, the interest or lack of interest they have shown in the case, and every circumstance surrounding the giving of their testimony which may aid you in weighing their statements. If you believe that any witness in the case has willfully and deliberately testified falsely to any material fact for the purpose of deceiving you, then you are justified in disregarding the entire testimony of such witness as proving nothing and as not worthy of belief. You have the right to accept as true or reject as false the testimony of any witness, in whole or in part, as you are impressed with his or her truthfulness.

**IMPEACHMENT**

 The testimony of a witness may be discredited by showing that the witness will benefit in some way by the defendant's conviction or acquittal, that the witness is prejudiced or that the witness has any other reason or motive for not telling the truth.

 The testimony of a witness may be discredited by showing that the witness has been previously convicted of a crime. The conviction does not necessarily mean that the witness is not telling the truth. It is a circumstance you may consider along with all other evidence in deciding whether you believe any or all of the testimony of the witness.

 The testimony of a witness may be discredited by showing that the witness made a prior statement which contradicts or is inconsistent with his present testimony. The prior statement may also be considered by you for the truth of the matter contained therein.

**STATEMENT BY DEFENDANT**

 If the state offers evidence of a statement by the defendant, you must first determine whether the statement was in fact made. You must then consider whether the statement, if made, was accurately recorded or repeated.

 If you find that defendant made a statement, you must also determine the weight or value that the statement should be accorded, if any. In determining the weight or value to be accorded a statement made by a defendant, you should consider all the circumstances under which the statement was made. In making that determination, you should consider whether the statement was made freely and voluntarily, without the influence of fear, duress, threats, intimidation, inducement, or promises.

**FIFTH AMENDMENT**

 The accused is not required to testify and where the accused does not testify, you shall not consider this fact against him or permit it to raise any inference or presumption of guilt against him. You should consider, in determining guilt or innocence, only those facts testified to and brought out on trial of the case here in court.

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

 Evidence is either direct or circumstantial. Direct evidence is evidence which, if believed, proves a fact. Circumstantial or indirect evidence is evidence which, if believed, proves a fact and from that fact you may logically and reasonably conclude that another fact exists.

 You cannot find a defendant guilty solely on circumstantial evidence unless the facts proved by the evidence exclude every reasonable hypothesis of innocence.

**DUTY NOT TO GO BEYOND THE EVIDENCE TO SEEK DOUBT**

 You are prohibited by law and your oath from going beyond the evidence to find reasons to convict or seek doubts upon which to acquit the defendant, but must confine yourselves to a dispassionate consideration of the evidence. You must not resort to extraneous facts or circumstances in reaching your verdict. That is, you must not go beyond the evidence to find facts or circumstances upon which to convict or acquit, but must restrict yourselves to the evidence that you heard on the trial of this case, or lack of evidence. You may not consider evidence which you were instructed to disregard or to which an objection was sustained.

**EXPERT TESTIMONY**

 Experts are persons who are learned in a particular science and they are permitted to express their opinion upon scientific matters in issue. But such experts are not called into Court for the purpose of deciding the case. You, the jurors, are the ones who, in law, must bear the responsibility of deciding the case. The experts are merely witnesses and you have the right to either accept or reject their testimony and opinions in the same manner and for the same reasons for which you may accept or reject the testimony of other witnesses in this case.

**LA. R.S. 14:24 PRINCIPALS**

 All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals.

**THE CHARGE AND POSSIBLE VERDICTS**

 Ladies and Gentlemen, the defendant, Demarcus Cartez Jones, is charged as a principal to the crime of Second Degree Murder.

 Specifically, it is alleged by Grand Jury Indictment that on or about July 19, 2008 Demarcus Cartez Jones committed the second degree murder of Lonzell Armstrong.

 The possible verdicts you may render in this case are as follows:

1. Guilty as charged of Second Degree Murder; or
2. Guilty of Manslaughter; or
3. Guilty of Negligent Homicide; or

 4. Not Guilty.

 The statutes applicable to these verdicts are as follows:

**LA. R.S. 14:30.1 SECOND DEGREE MURDER**

 Second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm.

 Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

**RESPONSIVE, LESSER VERDICTS:**
 If you are not convinced that the defendant is guilty of the offense charged, you may find the defendant guilty of a lesser offense, if you are convinced beyond a reasonable doubt that the defendant is guilty of a lesser offense.

 The following definitions pertain to the possible responsive lesser verdicts:

**LA. R.S. 14:31 MANSLAUGHTER**

 Manslaughter is:

A homicide which would be murder under either Article 30 (first degree murder) or Article 30.l (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self- control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed.

 Whoever commits manslaughter shall be imprisoned at hard labor for not more than forty years.

**LA. R.S. 14:32 NEGLIGENT HOMICIDE**

 The crime of Negligent Homicide is defined in pertinent part in our law as follows:

1. Negligent homicide is the killing of a human being by criminal negligence.

 Criminal negligence exists when, although neither specific nor general criminal intent is present, there is such disregard of the interest of others that the offender’s conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.

Whoever commits the crime of negligent homicide shall be imprisoned with or

without hard labor for not more than five years, fined not more than five thousand dollars, or

both.

**LA. R.S. 14:20 JUSTIFICATION**

 The State must prove beyond a reasonable doubt that the defendant did not act in self- defense.

A homicide is justifiable when committed in self defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.

That danger need not have been real as long as the defendant believed that he was in actual danger.

Some factors that you should consider in determining whether the defendant had a reasonable belief that the killing was necessary are:

1) the excitement and confusion of the occasion

2) the possibility of preventing the danger by himself by using force less than killing.

AND

A homicide is justifiable when committed for the purpose of preventing a violent or forcible felony involving danger to life or great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary to prevent the violent or forcible felony.

The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life if he attempted to present the felony without the killing.

 It is justifiable to use force or violence or to kill in the defense of another person when it is reasonably apparent that the person attacked could have justifiably used such means himself, and when it is reasonably believed that such intervention is necessary to protect the other person.

**LA. R.S. 14:21**

A person who is in aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.

In determining whether the defendant was the aggressor, or that he brought on the difficulty you must reject his claim of self-defense unless you find:

1) that he withdrew from the conflict;

2) that his withdrawal was in good faith;

3) that he withdrew in a manner that put his adversary on notice that he wished to withdraw and discontinue the conflict.

**FLIGHT**

If you find that the defendant fled immediately after a crime was committed or after he was accused of a crime, the flight alone is not sufficient to prove that the defendant is guilty. However, flight may be considered along with all other evidence. You must decide whether such flight was due to consciousness of guilt or to other reasons unrelated to guilt.

**LA. R.S. 14:l0 CRIMINAL INTENT**

 Criminal intent has been referred to in this case. The law of Louisiana provides:

 Criminal intent may be specific or general:

1. Specific criminal intent is that state of mind which exists when the circumstances

 indicate that the offender actively desired the prescribed criminal consequences to

 follow his act or failure to act.

 2. General criminal intent is present whenever there is specific intent, and also, when

 the circumstances indicate that the offender in the ordinary course of human

 experience, must have adverted to the prescribed criminal consequences as reasonably

 certain to result from his act or failure to act.

 Although intent is a question of fact, it need not be proven as a fact, and may be inferred from the circumstances of the case. Intent need not be proven by direct evidence. It is not possible to look into a person's mind and discover his intention. It may be inferred from the circumstances.

 The intent need not have existed for any material length of time. It is sufficient if it was in the mind of the accused at the time of the commission of the act. You may consider all of the evidence in the case which you believe bears on the question of intent of the defendant in order to reach a conclusion as to any criminal intent.

**DUTY TO DELIBERATE WITH VIEW TOWARD REACHING A VERDICT**

 Each juror, having in view the oath he has taken, and his duty and responsibility thereunder, should have his own mind convinced beyond a reasonable doubt, upon all the evidence, before he can conscientiously consent to a verdict of guilty or not guilty.

 However, this does not preclude the jurors from discussing the evidence in the case so as to assist each other in arriving at the true facts in the case.

 When you enter the jury room, it is your duty to consult with one another, to consider each other's views, and to discuss the evidence with the objective of reaching a just verdict, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but only after discussion and impartial consideration of the case with your fellow jurors.

 I will hand you a typewritten list of the forms of the possible verdicts you may render in this case. You will select your own foreman, whose duty it will be to conduct your deliberations, write and sign the verdict on the back of the list of responsive verdicts, and speak for you when you return into court.

 You need not be unanimous in your verdict. Ten of twelve jurors must agree on any verdict you render in this case.

 When you have reached a verdict, the foreman should write it on the back of the list of responsive verdicts handed you, date it, sign it and return it into open court.

 The case is now yours to decide.

November 30, 2012 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 SCOTT CRICHTON

 DISTRICT JUDGE

ATTORNEYS AND REPRESENTATIVES:

Geya Prudhomme, Assistant District Attorney

Kelvin Rodgers, Assistant District Attorney

Joe Clark, Counsel for Demarcus Cartez Jones