

NO. 2011-CR-5289

THE STATE OF TEXAS                   §                   IN THE DISTRICT COURT  
VS.                                       §                   175TH JUDICIAL DISTRICT  
MARK GONZALEZ                         §                   BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, Mark Gonzalez, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 28<sup>th</sup> day of May 2011, in Bexar County, Texas. The defendant has pleaded not guilty.

I.

Our law provides that a person commits the offense of murder if he intentionally or knowingly causes the death of an individual.

A person commits capital murder when such person murders a peace officer who is acting in the lawful discharge of an official duty and who the person knows is a peace officer.

II.

"Individual" means a human being who has been born and is alive.

"Peace officer" means sheriffs and their deputies.

"Deadly weapon" means a firearm.

"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.

### III.

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 a person commits an offense only if he voluntarily engages in conduct, including an act, omission, or possession. Conduct is not rendered involuntary merely because the person did not intend the results of his conduct.

Therefore, if you believe from the evidence beyond a reasonable doubt that on the occasion in question, the defendant, Mark Gonzalez, did cause the death of Kenneth Vann by shooting Kenneth Vann with a deadly weapon, namely, a firearm and Kenneth Vann was a peace officer acting in the lawful discharge of an official duty, as alleged in the indictment, but you further believe from the evidence, or you have a reasonable doubt thereof, that the shooting was a product of unconsciousness or semi-consciousness and was not the voluntary act or conduct of the defendant, you will find the defendant "Not Guilty."

You are instructed that under our law, voluntary intoxication does not constitute a defense to the commission of a crime. For the purpose of this law, intoxication means a disturbance of mental or physical capacity resulting from the voluntary introduction of any substance into the body.

IV.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 28<sup>th</sup> day of May, 2011, in Bexar County, Texas, the defendant, Mark Gonzalez, did intentionally or knowingly cause the death of an individual, namely: Kenneth Vann, by shooting Kenneth Vann with a deadly weapon, namely: a firearm, and Kenneth Vann was a peace officer acting in the lawful discharge of an official duty and Mark Gonzalez knew Kenneth Vann was a peace officer, then you will find the defendant guilty of capital murder as charged in the indictment.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the defendant not guilty.

Our law provides 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 or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

Written statements made by a witness to investigators or other officers or police reports made by officers and tendered by the prosecution to the defense for purposes of cross-examination are not part of the evidence unless introduced in evidence. Many times statements and reports may be marked with an exhibit number but are neither offered nor received in evidence. I can send only statements and reports received in evidence to the jury room.

The Grand Jury Indictment is not evidence of guilt. It is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence, nor can it be considered by you in determining whether the defendant is guilty or not guilty.

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 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."

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. Do not let bias, prejudice, or sympathy play any part in your deliberations.

During your deliberations, you must not communicate with or provide any information to anyone by any means 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 or 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, Tumblr, or Twitter, to communicate with anyone any information about this case or to conduct any research about this case until I accept your verdict.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given the testimony but the law of the case you must receive from the Court as contained in these instructions, and be governed thereby. You must disregard any comment or statement made by the Court during the trial or in these instructions which may seem to indicate an opinion with respect to any fact, item of evidence or verdict to be reached in this case. No such indication was or is intended.

After argument of counsel, you will retire to the jury room, select your own foreperson and proceed with your deliberations. After you have reached a unanimous verdict, the foreperson will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as foreperson. The forms are not intended to suggest to you what your verdict should be.

Your sole duty at this time is to determine whether the defendant is guilty under the indictment in this cause; and restrict your deliberations to the issue of whether the defendant is guilty or not guilty and nothing else. If the Jury wishes to communicate with the Court, the Foreperson shall reduce the communication to writing and have it submitted to the court by the bailiff.

Respectfully submitted,

*Mary Román*

Judge Mary Román  
175th Judicial District Court  
Bexar County, Texas

*OR  
Dennis Seavelle*

15 OCT 12 PM 12:55

FILED  
CLERK OF DISTRICT COURT  
BEXAR COUNTY

NO. 2011-CR-5289

THE STATE OF TEXAS                    §                    IN THE DISTRICT COURT  
VS.    §                    175TH JUDICIAL DISTRICT  
MARK GONZALEZ                           §                    BEXAR COUNTY, TEXAS

VERDICT FORM

We, the Jury, find the defendant, Mark Gonzalez, not guilty.

---

FOREPERSON

OR

We, the Jury, find the defendant, Mark Gonzalez, guilty of capital murder as charged in the indictment.

*J Ballard*

---

FOREPERSON

CEWAYNE BALLARD

Ladies and Gentlemen of the Jury:

Your jury includes two alternates. In order of selection, they are jurors:

Sandra Franklin and Martha Rubio.

The law now requires that the alternate jurors remain through the entirety of the trial process. The alternate jurors will accompany the jurors into the jury room. The alternate jurors will not participate in any deliberations or in any voting unless they are instructed to do so by this Court. The alternate jurors must attentively listen to all deliberations, as it is always uncertain if and when we might need to utilize one or both of them.