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CAUSE NO. 19FC-1013C

OFFICE OF
COURT ADMINISTRATION

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 94TH JUDICIAL DISTRICT
GARY DAVID GREEN § NUECES COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, Gary David Green, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about October 2, 2013, in Upton County, Texas. The defendant has pleaded not guilty. You are instructed that the law applicable to the case is as follows:

1.

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.

2.

"Individual" means a human being who is alive.

"Peace officer" means marshals or police of an incorporated city, town or village, sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code.

FILED

JUN 17 2019

ANNE LORENZEN, CLERK
COUNTY & DISTRICT COURTS, NUECES COUNTY, TEXAS
BY _____ DEPUTY

(10:13 AM)

"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.

3.

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.

4.

Now, if you find from the evidence beyond a reasonable doubt that on or about October 2, 2013, in Upton County, Texas, the defendant, Gary David Green, did intentionally or knowingly cause the death of an individual, namely, Billy Kennedy, Jr., by shooting Billy Kennedy, Jr. with a firearm and the said Billy Kennedy, Jr. was a peace officer who was acting in the lawful discharge of an official duty, to-wit: investigating a stolen vehicle, and Gary David Green knew Billy Kennedy, Jr. 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 or videotaped statements made by a witness to investigators or other officers or police reports made by officers may be tendered by the prosecution to the defense for purposes of cross-examination. 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.

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 to communicate with anyone any information about this case or to conduct any research about this case until I accept your verdict.

You are instructed that the statements of counsel made during the course of the trial or during the argument, if not supported by evidence, or statements of law made by counsel, if not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

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 is intended.

You are instructed that 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 passing upon whether the defendant is guilty or 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.

You are instructed that you are not to let bias, prejudice, or sympathy play any part in reaching a verdict in this case.

After argument of counsel, you will retire to the jury room, select your own presiding juror and proceed with your deliberations. After you have reached a unanimous verdict the presiding juror will certify thereto by filling in the appropriate forms attached to this charge and signing his or her name as presiding juror.

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 the law from the Court which is herein given to you and be governed by that law.

In order to return a verdict, each juror must agree to that verdict, but jurors have a duty to consult each other and to deliberate with a view to reaching unanimous agreement, if that can be done without violence to individual judgment.

Each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors.

In the course of deliberations, a juror should not hesitate to re-examine his own views and change his opinion if convinced it is erroneous. However, no juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.

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.

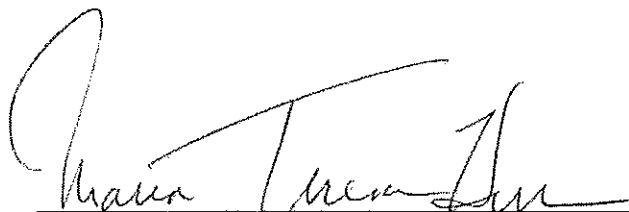
It is not required that the prosecution prove guilt beyond all possible doubt; it is required that the prosecution's proof excludes all "reasonable doubt" concerning the defendant's guilt.

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."

Suitable forms for your verdict are attached to the charge for your convenience if you care to use them, but they are not intended to suggest to you in any way what your verdict should be, and you may or may not, as you see fit, make use of them. At any rate, your verdict must be in writing and signed by your presiding juror. Your only duty at this time is to determine whether the defendant is guilty or not guilty under the indictment in this cause, and you must restrict your deliberations to the issue of whether the defendant is guilty or not guilty and nothing else. After you have retired to the jury room, no one has any authority to communicate with you except the officer who has you in charge. Do not attempt to talk to

the officer, or anyone else concerning any question you may have; instead address your question to the Court in writing. If you want to communicate with the Court, notify the bailiff. Any communication relative to the case must be written, prepared by the presiding juror, and submitted to the Court through the bailiff.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Maria Teresa Herr". The signature is written in dark ink and is positioned above a horizontal line.

Judge Maria Teresa Herr
Judge Presiding
By Assignment

NO. 13-10-W040-CAM

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § UPTON COUNTY, TEXAS
GARY DAVID GREEN § 112TH JUDICIAL DISTRICT

VERDICT FORM

We, the Jury, find the defendant, Gary David Green, not guilty.

PRESIDING JUROR

OR

VERDICT FORM

We, the Jury, find the defendant, Gary David Green, guilty of capital murder as charged in the indictment.

Jettie M Powers

PRESIDING JUROR
Jettie M Powers

STATE OF TEXAS
COUNTY OF NUECES

The above and foregoing is a true and correct copy as the same appears on file and is recorded in the appropriate records of Nueces County, Texas.

Thereby certified on _____

OCT 10 2019



ANNE LORENTZEN
NUECES COUNTY DISTRICT CLERK
CLERK OF THE DISTRICT AND COUNTY COURTS AT LAW