

CAUSE NO. \_\_\_\_\_

THE STATE OF TEXAS  
VS.

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§

IN THE DISTRICT COURT  
\_\_\_\_ JUDICIAL DISTRICT  
\_\_\_\_\_ COUNTY, TEXAS

\_\_\_\_\_

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, [D], stands charged by indictment with the offense of murder, alleged to have been committed on or about [Date], in \_\_\_\_\_ County, Texas. To this charge, the defendant has pleaded not guilty.

1.

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

2.

"Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

"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.

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.

3.

Now, if you find from the evidence beyond a reasonable doubt that on or about [Date], in [County] County, Texas, the defendant, [D], did then and there intentionally and knowingly cause the death of an individual, namely, [V], by shooting [V] with a firearm, then you will find the defendant guilty of murder as charged in the indictment.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, then you will acquit the defendant and say by your verdict "Not Guilty."

4.

You are instructed that a person in lawful possession of land or tangible movable property is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property.

A person is justified in using deadly force against another to protect his land or tangible, movable property, and the possession thereof (1) If he would be justified in using force in the first place, as hereinabove set forth, (2) when and to the degree he reasonably believes the deadly force is immediately necessary, as viewed from his standpoint at the time, to prevent the other person's imminent commission of burglary

or theft during the nighttime, and (3) he reasonably believes that (a) his Land or property cannot be protected by any other means or (b) the use of force other than deadly force to protect his land or property would expose him or other persons to a substantial risk of death or serious bodily injury.

5.

You are instructed that it is your duty to consider the evidence of all relevant facts and circumstances surrounding the alleged killing and the previous relationship existing between the accused and the deceased, if any, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the alleged killing, and you should place yourselves in the position of the defendant at the time In question and view the circumstances from his viewpoint alone.

6.

You are further instructed that under our law a parson defending his habitation with deadly force against a person who is at the time of the use of force committing an offense of unlawful entry in the habitation of the person so defending is under no legal obligation to retreat irrespective of whether a reasonable person would have so acted.

7.

By the term "reasonable belief" as used herein is meant a belief that would be held by an ordinary and prudent man 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 person using it to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

You are further instructed that a person commits burglary if he enters a habitation with intent to commit a felony or theft, and such entry is without the effective consent of the owner.

The word "owner" here means a person who has title to the property, possession of the property, or a greater right to possession of the property than the person charged.

"Possession" means actual care, custody, control, or management of the property.

A "habitation" is a structure that is adapted for the overnight accommodation of persons.

"Theft" is the unlawful appropriation of the personal property of another, with the intent to deprive such person of said property.

"Appropriation" as used herein means to acquire or otherwise exercise control over personal property. Appropriation of property is unlawful if it is without the owner's effective consent.

"Deprive" means to withhold property from the owner permanently.

"Effective consent" means assent in fact, whether express or apparent. Consent is not effective if induced by force, threat, fraud, coercion, or deception.

"To steal" means to acquire property by theft.

8.

Now, if you find from the evidence beyond a reasonable doubt that on the occasion in question the defendant, Jose Luis Gonzalez, shot and killed Francisco Javier Anguiano, the deceased, but you further find from the evidence, or you have a reasonable doubt thereof, that at the time of the shooting, the defendant reasonably believed that the deceased was entering the defendant's habitation without the defendant's effective consent with the intent to commit the offense of theft of personal property from defendant's habitation, and that the defendant reasonably believed, viewing the circumstances from his standpoint alone, that deadly force was immediately necessary to prevent the deceased's imminent commission of burglary, and that the defendant further reasonably believed that his habitation could not, under the circumstances, be protected by any other means than deadly force, or, if it could be so protected by any other means, defendant reasonably believed from his standpoint at the time that the use of force other than deadly force to protect his premises would expose him or his family, or both, to a substantial risk of death or serious bodily injury, then the defendant would have the right in law to use deadly force immediately to the degree then necessary to protect his habitation, and, if you find the facts so to be, or if you have a reasonable doubt as to such matters, then you will resolve that doubt in defendant's favor and say by your verdict 'Not Guilty.'

9.

If you should find from the evidence, or you have a reasonable doubt thereof, that the defendant, on the occasion in question, was lawfully exercising the right of defense of his habitation from the commission of the offenses of burglary, or theft therein during nighttime, and that, while so doing, it reasonably appeared to the defendant, and he reasonably believed, that it was necessary to exercise the right of self-defense or the right of defense of his family from the use of deadly force by [V], the deceased, then you will find the defendant not guilty of Murder. In any event, the defendant would have no obligation to retreat to avoid the necessity of using deadly force against another while in the lawful protection of his family or property under such circumstances.

10.

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.

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 force is immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force, and if a reasonable person in defendant's situation would not have retreated.

When a person is attacked with unlawful deadly force, or he reasonably believes he 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 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 from such attack or attempted attack. 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 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 against the use or attempted use of unlawful deadly force by his assailants.

11.

You are instructed that it is your duty to consider the evidence of all relevant facts and circumstances surrounding the alleged killing and the previous relationship existing between the accused and the deceased 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. You will also consider evidence of the previous relationship, if any, existing between the accused and any other person, or persons, with the deceased at the

time in question and any conduct, words, or both of such parties with the deceased at that time. In considering all the foregoing, you should place yourselves in the defendant's position and view the circumstances from his standpoint alone, at the time in question.

12.

Now, if you find from the evidence beyond a reasonable doubt that the defendant, [D], did kill [V] by shooting him with a firearm, as alleged, 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 deceased or other persons with him, or any of them, it reasonably appeared to defendant that his life or person was in danger and there was 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 deceased or other persons with the deceased, or any of them, and that acting under such apprehension and reasonably believing that the use of deadly force on his part was immediately necessary to protect himself against [V]'s use or attempted use of unlawful deadly force or against the use or attempted use of unlawful deadly force by those persons with the deceased, he shot the deceased, and that a reasonable person in defendant's situation would not have retreated, then you will find the defendant not guilty of Murder.

13.

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 issue 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.

14.

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 of the evidence in the case.

15.

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.

16.

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 must be governed by you shall receive in these written instructions.

17.

After you retire to the jury room, you should select one of your members as your Presiding Juror. 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 Presiding Juror.

18.

No one has any authority to communicate with you except the officer who has you in charge. 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.

19.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, or any witness therein, and no juror is permitted to communicate to any other juror anything he or she may have heard regarding the case or any witness therein, from any source other than the witness stand.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial. Occasionally, during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the Court and request that the Court read the portion of disputed testimony to you from the official transcript. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts. The dispute must be settled by the official transcript, for it is the official transcript, rather than any juror's notes, upon which you must base your determination of the facts and, ultimately, your verdict in this case.

21.

After argument of counsel, you will retire to the jury room and select one of your members as your Presiding Juror. It is the duty of the Presiding Juror:

- (a) to preside at your deliberations and to vote with you in arriving at a verdict;
- (b) to read this charge to the members of the jury;
- (c) to write out and hand to the bailiff any communications concerning the case which you desire to have delivered to the Judge; and
- (d) to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;

Your verdict must be unanimous, and after you have arrived at your verdict, the Presiding Juror will certify thereto by using the forms attached hereto by writing "Guilty" or "Not Guilty" where indicated on each form as it conforms to your verdict and signing his or her name as Presiding Juror.

22.

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

23.

After you have retired, you may communicate with this court in writing through the officer who has you in charge. Do not attempt to talk to the officer who has you in

charge, or the attorneys, or the court, or anyone else concerning any question you may have. After you have reached a unanimous verdict, the Presiding Juror will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as Presiding Juror. You may now retire to consider your verdict.

FILED:

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Date and Time Filed

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[Judge Name]  
\_\_\_\_\_ District Court Judge

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\_\_\_\_ JUDICIAL DISTRICT  
\_\_\_\_ COUNTY, TEXAS

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VERDICT OF THE JURY

We the Jury, find the Defendant, \_\_\_\_\_,

\_\_\_\_\_ (“Guilty” or “Not Guilty”) of the offense of MURDER, a first  
degree felony offense, as charged in Count I of the indictment.

\_\_\_\_\_

PRESIDING JUROR

\_\_\_\_\_

Date and Time