

DOCKET NO. 608648

IN RE MIGUEL VALDEZ	§	BEFORE THE
D/B/A LA KANTINA	§	
PERMIT NO. BG-268295 & BL-268296	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-6451)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 25th day of July, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert M. Brown II. The hearing convened on May 3, 2006, and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 23, 2006. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. **As of this date no exceptions have been filed.**

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Wine and Beer Retailer's Permit and Retail Dealer's Off-Premise License is hereby **SUSPENDED**.

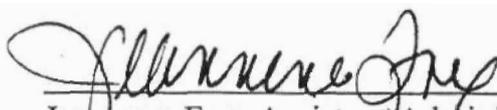
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$12,000.00 on or before the 6th day of **September, 2006**, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of sixty (60) days, beginning at 12:01 A.M. on the 13th day of **September, 2006**.

This Order will become final and enforceable on Aug 15, 2006, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 25th day of July, 2006.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JLK/yt

Robert M. Brown II
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE: (713) 812-1001

MIGUEL VALDEZ
LA KANTINA
RESPONDENT
103 Denver Blvd.
San Antonio, Texas 78210
CERTIFIED MAIL NO. 7001 2510 0000 7275 0357

Roland Gutierrez
ATTORNEY FOR RESPONDENT
RETURN RECEIPT REQUESTED
603 Urban Loop
San Antonio, Texas 78204
VIA FACSIMILE: (210) 225-5621

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCED

DOCKET NUMBER: 608648

REGISTER NUMBER:

NAME: MIGUEL VALDEZ

TRADENAME: LA KANTINA

ADDRESS: 103 Denver Blvd., San Antonio, Texas 78210

DATE DUE: September 6, 2006

PERMITS OR LICENSES: BG-268295 & BL-268296

AMOUNT OF PENALTY: \$12,000.00

Amount remitted \$ _____ Date remitted _____

If you wish to a pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 6th DAY OF September, 2005, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

P.O. Box 13127

Austin, Texas 78711

For Overnight Delivery: 5806 Mesa Drive, Austin, Texas, 78731

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address

P.O. Box No.

City

State

Zip Code

Area Code/Telephone No.

In June 2003, the case was initially assigned to former ALJ Cyrena Benson to be heard at the San Antonio office of State Office of Administrative Hearings (SOAH) on August 10, 2004. Although an agreed motion for a two week continuance was filed on August 9, 2004, no action on that motion or any other action can be found until August 26, 2005, when ALJ John H. Beeler ordered a status report from the parties. On November 1, 2005, ALJ Beeler reset the hearing for December 15, 2005, at the SOAH office in Austin. On December 13, 2005, ALJ Beeler granted motions for a change of venue and continuance that returned the venue to the San Antonio office of SOAH and reset the hearing to January 6, 2006. On January 5, 2006, the undersigned ALJ granted Respondent's unopposed motion for continuance and reset the case for February 24, 2006. On February 21, 2006, the undersigned ALJ granted TABC's motion for the services of an interpreter. On February 23, 2006, the undersigned ALJ granted TABC's unopposed motion for continuance and rest the case for May 3, 2006. On May 3, 2006, the undersigned ALJ convened the hearing at the SOAH office located at 10300 Heritage Boulevard, Suite 250, San Antonio, Texas. TABC was represented at the hearing by Judith L. Kennison, Staff attorney. Attorney Roland Gutierrez represented Respondent. Mary J. Lawer served as interpreter for Respondent during the hearing. The hearing concluded and the record closed on that same day.

II. DISCUSSION AND ANALYSIS

Respondent's permitted premises are located at 103 Denver Boulevard, San Antonio, Bexar County, Texas. Respondent holds a wine and beer retailer's on-premises permit BG-268295 and a retailer's on-premises late hours license BL-268296, issued by the TABC on August 30, 1991 and continuously renewed thereafter. The last renewals were on August 30, 2005.

A. Applicable Law

Pursuant to the TEX. ALCO. BEV. CODE ANN (CODE), TABC may suspend or cancel a permit in accordance with § 11.61(b)(2) of the CODE, if it is found that the permittee violated a provision of the CODE or TABC rules. The three CODE violations are: a breach of the peace on the permitted premises that was within the control of the permittee or its agents, servants, or employees and resulted from improper supervision of persons on the premises by the permittee or its agents,

servants, or employees in violation of §§ 61.71(a)(17) and 69.13 and 16 Texas Administrative Code (TAC) § 35.31(b); failure to promptly report to the TABC a breach of the peace on the permitted premises in violation of § 61.71(a)(31); and the sale or delivery an alcoholic beverage to an intoxicated person on the permitted premises by the Permittee or its agents, servants, or employees in violation of § 61.71(a)(6). Under TABC rule § 37.60(a) as a penalty guide, the definitions of simple and aggravated assaults are found in the Texas Penal Code, §§ 22.01(a) and 22.02(a), respectively. TABC has the burden to prove any violation by a preponderance of the evidence.

B. TABC Contention and Evidence

Staff specifically alleges that on November 2, 2003, Respondent engaged in an aggravated breach of the peace at his permitted premises, failed to report that or any breach of the peace, and Respondent's employee sold or delivered beer to an intoxicated person. Staff offered nine exhibits and called three San Antonio Police Department (SAPD) officers, Officer David Brinkman, Sgt. Arthur Lindley, and Detective April Titus; a TABC Agent, Tulita Harris; Respondent; and Respondent's girlfriend, Alma Rose Sepulveda de Chavez, as witnesses.

1. TABC Exhibits

Only eight of the Staff's nine exhibits were admitted as there was a sustained objection to TABC Exhibit 6 that purported to be a copy of a TABC citation issued to Respondent undated, unacknowledged, and without an appearance date other than "TBA." TABC Exhibit 1 is the first amended notice of hearing dated April 11, 2006. TABC Exhibit 2 consists of certified copies of Respondent's current permit and license and administrative record including an agreed order dated January 28, 1999, concerning a CODE violation for a sale of an alcoholic beverage to a minor on June 12, 1999, that suspended Respondent's permits for ten days or, alternatively, required payment of a civil penalty of \$1,500.00 *in lieu* of the suspension. TABC Exhibit 3 consists of copies of three pages of log entries covering a period between October 27, 2003, and December 1, 2003, kept by TABC to record reported complaints and breaches of the peace. TABC Exhibits 4 and 5 are the affidavits of Respondent and Ms. Sepulveda, respectively, each dated November 13, 2003, and described below in the summarized testimony of each.

TABC Exhibit 7 consisted of three series of photographs taken by SAPD personnel during the investigation of the murder of Richard Gomez: Exhibits 7A through I are nine color photographs taken in the front of house located at 103 Essex Street, San Antonio, Texas at 2:40 A.M. on November 2, 2003; Exhibits 7A1 through T1 consist of 23 color photographs taken inside and outside Respondent's permitted premises and environs on November 3, 2003; and Exhibits 7A2 through G2 consists of seven color photographs taken on November 11, 2003. Detective Titus describes relevant photographs below in the summary of her testimony.

TABC Exhibit 8 is a copy of the video tape from four surveillance cameras on Respondent's permitted premises on November 2 and 3, 2003. The four cameras record four separate areas: inside the main entrance to La Kantina; the bar area; the north parking lot outside the main entrance that opens on to Cherry Street; and the east parking lot next to the building that opens onto Denver Street. On agreement of counsel, approximately ten minutes of the video was relevant and viewed by the undersigned ALJ. In that ten minutes period, it is seen that Richard Gomez leaves the inside of the La Kantina and remains just outside the main door; Respondent remains inside and near the main doorway; when Mr. Gomez reenters, Respondent punches Mr. Gomez in the face and pursues him into and out of the parking lot accompanied by other individuals; contemporaneously, inside La Kantina, Ms. Sepulveda begins to close down the bar; about two minutes after leaving La Kantina, Respondent is again seen inside La Kantina; there is hurried activity in closing down and locking up the bar; Respondent and Ms. Sepulveda leave together and drive away as another vehicle drives away, too; and, afterwards, the parking lots are empty. Sgt Lindley describes the video below in the summary of his testimony.

TABC Exhibit 9 is an overhead photograph of the Respondent's premises and surrounding streets and buildings of which TABC Exhibit 9-A is a black and white copy on which Officer Brinkman marked during his testimony as summarized below.

2. Testimony of Officer Brinkman

Officer Brinkman was one of the first police officer who responded to what later became a murder scene at 103 Essex Street, San Antonio, Texas. He arrived at approximately 2:08 A. M. which was four or five minutes after an emergency call. At that time, the victim was alive on the

porch in a pool of blood, but had been mortally stabbed six times in his torso. The victim's trail of blood lead back toward La Kantina. TABC Exhibit 9A indicates the victim's location at 103 Essex Street, the trail of blood from Essex Street to Cherry Street, continuing one block north on Cherry Street, and, then, to the center of Denver Boulevard in front of the south entrance to La Kantina at 103 Denver Boulevard. There was some blood droplets found at the main entrance door on the north side of La Kantina. When Officer Brinkman arrived at La Kantina sometime after 2:20 A.M., it was closed and locked up. Its parking lots were empty.

3. Testimony of Sgt. Lindley

Sgt. Lindley was the lead investigator into Mr. Gomez' murder. When asked, Respondent turned over to the police his clothing and shoes that he was wearing at La Kantina on November 2 to 3, 2003. TABC Exhibit 8 is a copy of the original video tape made at La Kantina on November 2 and 3, 2003, that Sgt Lindley requested and gave to TABC Agent Harris. The video tape simultaneously displays the inputs from four separate surveillance cameras. The surveillance tape shows Ms. Sepulveda tending bar, the actions of bar customers, and Respondent punching Mr. Gomez inside La Kantina. After punching Mr. Gomez, Respondent pursues him into the parking lot and out of any camera view. The date and time registered on the display is incorrect, but was correctable once the recorder's erroneous date and time were known. With the corrections, the dates and approximate times were given to following events on the tape: on November 2, 2003, at 11:03 P.M., Mr. Gomez is in La Kantina; on November 3, 2003, at 1:52 A.M., Respondent punches Mr. Gomez and pursues him out of La Kantina in to the parking lot; at 1:54 AM, Respondent returns to La Kantina and tells everyone its time to leave; at 1:55 A.M., a bar customer, Ruben Rodriguez, returns; and before 2:00 A.M., La Kantina is closed, everyone has left, and the parking lots are empty. Later, Mr. Gomez died at local hospital. The investigative report indicated that Respondent and three La Kantina customers, Mr. Rodriguez, and Dallio "Pique" Casias III, and Alejandro "Alex" Narvaez, acted in concert to beat and stab Mr. Gomez in order to rob Mr. Gomez. Murder charges were brought against Respondent and the three customers who neither worked for nor were related to Respondent. At sometime still later, Mr. Rodriguez pled guilty to the murder of Mr. Gomez. Afterward, charges were dismissed against Respondent. Mr. Rodriguez is related to the other two customers who were charged.

4. Testimony of Agent Harris

Agent Harris identified TABC Exhibit 3 as the logs for reported complaints and breaches of the peace that are taken in by telephone or fax transmission. The telephone and fax lines are accessible at all times to receive reports. There is no log entry of an incident that occurred on November 2 or 3, 2003, at La Kantina. On November 5, 2003, Agent Harris received a police report of Mr. Gomez' murder and contacted Respondent who gave a brief oral statement that day. Afterwards, she opened a TABC complaint of an aggravated breach on Respondent's permitted premises. On November 13, 2003, Mr. Valdez and Ms. Sepulveda, who with the assistance of an interpreter, gave affidavits that are marked as TABC Exhibits 4 and 5, respectively. While the date is correct on Respondent's affidavit, the hour is incorrect as to when Mr. Gomez started playing pool. TABC rules require that a breach be reported immediately, but its practice is to give some leeway so that a report can be called in during business hours. Respondent's premises include the parking lots, but not the roadways. TABC rules differentiate penalties for a breach of the peace on the premises between a simple assault and an aggravated assault. Aggravated assault involves serious personal injury or death. Penalties may vary due to circumstances.

5. Testimony of Detective Titus

On November 3, 2003, Detective Titus began investigating Mr. Gomez' murder. She canvassed the crime scene at 103 Essex Street and surrounding environs including La Kantina. She identified copies of the photographs in TABC Exhibit 7 and the procedures that resulted in the 36 photographs. TABC Exhibit 7M1 is a photograph of blood on the padlock on the north entrance door of La Kantina; however, the source and identity of blood is unknown. There were blood droplets found in the eastside parking lot of La Kantina and the bus stop area on Denver Boulevard; however, the source and identity are unknown. The other photographs showed blood at the house and porch at 103 Essex Street, the trail of blood leading to the center of Denver Boulevard. Later that same day, Respondent turned over the original surveillance tape to her. The interior of La Kantina was in disarray as if there was a hurried departure with money on the floor, cigarettes left to burn out, and, generally, a mess. There was no blood found inside La Kantina. It is the practice for Respondent and his employees to clean-up La Kantina before opening rather than doing so when it closes.

6. Testimony and Affidavit of Respondent

With the services of Ms. Lawer and after being called to testify, Respondent refused to testify claiming his Fifth Amendment right against self-incrimination on the advice of counsel. His affidavit dated November 13, 2003, is part of the record as TABC Exhibit 4. It states that unspecified customers told Respondent that Mr. Gomez was a troublemaker and should be watched. After awhile, Respondent "told him to leave" or, "(i)f you don't want to leave, just don't come inside." When Gomez reentered, Respondent hit him in the face with a fist. Respondent, Mr. Rodriguez, and Mr. Casias chased around the outside of La Kantina to Denver Boulevard and half a block down Cherry Street. Respondent hit him two or three times. Mr. Rodriguez hit him. Mr. Casias pushed him. Mr. Gomez followed Respondent and the other two assailants back toward La Kantina. Mr. Gomez said he was going to call the police. Respondent went inside La Kantina and told everyone to leave. It was time to close the bar. It was nearly 2:00 A.M. Respondent opined that Mr. Rodriguez could have stabbed Mr. Gomez twice, but he did not see a knife.

7. Testimony and Affidavit of Ms. Sepulveda

With the services of Ms. Lawer, Ms. Sepulveda testified. She lives with Respondent, but has never been married to him. She worked at the La Kantina on November 2, 2003, and into the early morning of the following day. She did not know Mr. Gomez. On November 2, 2003, Mr. Gomez arrived at La Kantina around 10:00 P.M. About half an hour later, he started drinking beer once he found a partner that would play pool with him. Later, he found another person with whom to play pool. Up until about midnight, she served Mr. Gomez between four and six 16-ounce Budweiser beers that he may have shared with his pool partners. She does not remember exactly how many beers were served or whether any beer was served to him after midnight. After his last partner left, Mr. Gomez started looking for him in La Kantina. He stumbled and bumped into chairs and customers while doing so. He tried to use the emergency door that opens on to Denver Boulevard, but Ms. Sepulveda stopped him. He was bothersome to the other customers. A female customer asked Ms. Sepulveda to tell Mr. Gomez to leave. He seemed a little drunk, but not completely out of it. She told that customer that she or Respondent would handle the matter. On November 3, 2003, sometime after 1:00 A.M., Respondent told Mr. Gomez to leave. Mr. Gomez left, but stayed outside the front entrance to La Kantina. The clock in La Kantina runs fast by about 20 or so minutes in order to close the bar and get everyone out by 2:00 A.M. When she was closing up,

Respondent came in the emergency door from Denver Boulevard. Mr. Rodriguez, another customer, and Mr. Gomez were in the middle of Denver Boulevard. Mr. Gomez said that he was going to call the police. She continued to close up the bar. She and Respondent left together. She saw Mr. Gomez on Denver Boulevard as they drove out of the parking lot. A short time later while they drove up to their home, Respondent told her he had hit Mr. Gomez. She did not report the incident to the TABC.

Her affidavit dated November 13, 2003, is part of the record as TABC Exhibit 5 and repeats much of her live testimony. She served Mr. Gomez four to six 16-ounce Budweiser beers. The clock was 15 minutes fast. She turned off the lights and music. When she closed the blinds, she saw Respondent walking back to La Kantina followed by a person called "Angel," Mr. Rodriguez, and Mr. Casias in that order. Mr. Gomez walked back, too. She did not know who stabbed Mr. Gomez or when. She did not know why Respondent hit Mr. Gomez. Although she should have called the police, she did not.

C. Respondent's Contention and Evidence

No evidence was presented by Respondent. Respondent invoked the Fifth Amendment and refused to testify. While Respondent's counsel stipulated that Respondent committed a simple assault of Mr. Gomez, he argues that the actual stabbing of the Mr. Gomez cannot be proven to have taken place on the premises or that Respondent had any part in or knowledge of the stabbing.

D. Analysis

The evidence was based on English and Spanish translations, times that were approximated and unsynchronized, and affidavits that recorded answers to unrecorded questions. Nonetheless, it is undisputed Respondent is the person who holds the TABC permit and license for doing business as La Kantina; was present at his permitted premises on the night of November 2, 2003, and into the early morning of November 3, 2003, when it closed; assaulted Mr. Gomez in La Kantina; and subsequently failed to initiate a report to TABC that he had done so. It is also without dispute that Mr. Gomez died of stab wounds inflicted by Mr. Rodriguez and that both had been customers of La Kantina that evening of November 2, 2003, and into the early morning of the next day.

As to an aggravated breach of the peace, there was no evidence on how, at what time, or where Mr. Rodriguez stabbed Mr. Gomez. The evidence presented was insufficient to establish what time, where, or whether Respondent was present when Mr. Rodriguez stabbed Mr. Gomez.

As to the failure to report the breach, official notice is taken that November 2, 2003, was a Sunday, and November 3, 2003, was a Monday. There is sufficient evidence that neither Respondent nor his employees initiated a report to TABC either immediately after the incident or anytime prior to TABC Agent Harris contacting Respondent on November 5, 2003.

As to the sale or delivery by Respondent's employee of an alcoholic beverage to an intoxicated person on Respondent's premises, while there is sufficient evidence that Mr. Gomez was intoxicated evidenced by the amount of beer served him, his loss of balance, bothersome behaviors, and Ms. Sepulveda's observations, there is insufficient evidence that Ms. Sepulveda served Mr. Gomez any additional alcohol beverage after that point.

III. RECOMMENDATION

The undersigned ALJ recommends that only the Staff's allegations of a simple breach of the peace on the premises and failure to report that breach of the peace be sustained. Although the basis for a suspension and a penalty is a simple assault, it was an inexplicable assault by Respondent on an intoxicated man without warning on Respondent's premises in the presence of customers and employees further aggravated by his continued assault and pursuit of the man off the premises and on to public roadways. In addition, Respondent did not stop two customers from joining him in assaulting the same man. Afterward, he neither reported to the police nor TABC his or his customers' assault. The ameliorating facts are that Respondent cooperated with TABC and has no adverse administrative record since 1999. For those reasons, the undersigned ALJ recommends that Respondent's permit and license be suspended for a period of 60 days, or alternatively, be assessed a civil penalty of \$12,000.00 *in lieu* of the suspension.

IV. FINDINGS OF FACT

1. Miguel Valdez (Respondent) doing business as (d/b/a) La Kantina holds a Wine and Beer Retailer's Permit BG-268295 and Retailer Dealer's On-Premises Late Hour License BL-268296 issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 103 Denver Boulevard, San Antonio, Bexar County, Texas.
2. On the evening of November 2, 2003, Respondent was at La Kantina along with his girlfriend, Alma Rose Sepulveda de Chavez, who acted as the bartender.
3. On that same evening between 10:00 and 11:00 P.M., Richard Gomez came into La Kantina.
4. About a half hour later when Mr. Gomez found a partner to play pool with him, Ms. Sepulveda began serving 16-ounce Budweiser beers to Mr. Gomez.
5. Ms. Sepulveda served Mr. Gomez four to six beers over the next hour and half or so during which time Mr. Gomez played pool with his first partner and, then, a second partner.
6. When Mr. Gomez' began looking for his second pool partner inside La Kantina, he stumbled, bumped into chairs and customers, attempted to use the emergency door, and made himself bothersome to customers and Ms. Sepulveda by doing so.
7. At that time, Mr. Gomez was intoxicated.
8. On November 3, 2003, sometime after 1:30 A.M., Respondent asked Mr. Gomez to leave.
9. Mr. Gomez left the inside of the La Kantina, but remained outside the main entrance door and on the La Kantina premises.
10. Respondent stationed himself inside La Kantina facing and watching the main entrance door.
11. Around 1:52 A.M., when Mr. Gomez reentered La Kantina, Respondent punched him in the face with a fist.
12. Respondent pursued Mr. Gomez into the parking lot, onto Denver Boulevard, and half way down Cherry Street during which time he hit Mr. Gomez once or twice more.
13. Contemporaneously, La Kantina customers, Ruben Rodriguez and Dallio "Pique" Casias III, left La Kantina and pursued Mr. Gomez along with Respondent.
14. Mr. Rodriguez hit Mr. Gomez twice.

15. Mr. Casias pushed Mr. Gomez.
16. About two minutes later, Respondent returned toward La Kantina followed by Mr. Rodriguez, Mr. Casias, and Mr. Gomez, in that order.
17. At one point, Mr. Gomez stood in the middle of Denver Boulevard and said that he was going to call the police.
18. Respondent entered La Kantina using the emergency door and told everyone to leave and that the bar was closing up.
19. Sometime earlier, Ms. Sepulveda began closing up the bar by turning off the music and lights and shutting the blinds near the emergency door.
20. In a hurried manner, the remaining customers left while Respondent and Ms. Sepulveda closed down the bar and locked up.
21. Around 2:00 A.M., Respondent and Ms. Sepulveda drove out of the parking lot at La Kantina and on to their home.
22. Around 2:05 A.M., Officer Brinkman responded to an emergency call at 103 Essex Street, a block from La Kantina, where he found Mr. Gomez alive on the front porch, but in a pool of blood from six mortal stab wounds.
23. There was a trail of blood from the front porch where Mr. Gomez was found that led to the next block and the middle of Denver Boulevard in front of La Kantina.
24. After the police investigation, Respondent and three customers of La Kantina, Mr. Rodriguez, Mr. Casias, and Alejandro "Alex" Narvaez, were charged with murder.
25. After Mr. Rodriguez pled and was found guilty of the murder of Mr. Gomez, the charge against Respondent was dismissed.
26. On August 23, 2005, TABC Staff issued an amended notice of hearing notifying all parties that a hearing would be held concerning this enforcement action and informing the parties of the time, place, and nature of the hearing, of the legal authority and jurisdiction under which the hearing was to be held, giving reference to the particular sections of the statutes and rules involved, and including a short, plain statement of the matters asserted.
27. A hearing in this matter was conducted and closed on May 3, 2006, at the State Office of Administrative Hearings, 10300 Heritage Boulevard, Suite 250, San Antonio, Texas, before the undersigned Administrative Law Judge (ALJ) with TABC represented by Staff Attorney, Judith Kennison, and Respondent represented by counsel, Roland Gutierrez.

V. CONCLUSIONS OF LAW

1. ABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. (CODE) ch. 5, Subch. B.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. chs. 2001 and 2003.
3. Respondent received adequate notice of the proceedings and hearing as required by TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based on the Findings of Fact, Respondent caused a simple breach of the peace at his permitted premises in violation of § 69.13 of CODE on November 3, 2003.
5. Based on the Findings of Fact, Respondent and his employee failed to report in a timely manner as required the above breach of the peace to TABC in violation of § 67.71(a)(31) of CODE.
6. Based on the Findings of Fact, there was insufficient evidence to prove by a preponderance of the evidence that Respondent or his employee sold or serve an alcohol beverage to an intoxicated person on Respondent's permitted premises on November 2 or 3, 2003.
7. Based on the Findings of Fact and above Conclusions of Law, Respondent's Wine and Beer Permit BG-268295 and Mixed Beverage Late Hours License BL-268296, issued by TABC should be suspended for a period of 60 days, or, alternatively, assessed a civil penalty of \$12,000.00 *in lieu* of the suspension.

SIGNED: June 23, 2006.



ROBERT M. BROWN II
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS