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OFFICE OF
COURT ADMINISTRATION

CAUSE NO. 09-02136-CRF-272

THE STATE OF TEXAS

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IN THE DISTRICT COURT

VS.

BRAZOS COUNTY, TEXAS

JOHN DARRELL THUESEN

272ND JUDICIAL DISTRICT

FILED
DC
At 11 o'clock a M
MAY 28 2010
MARC HAMLIN, DIST. CLERK
Brazos County, Texas
By [Signature] Deputy

COURT'S CHARGE ON PUNISHMENT

MEMBERS OF THE JURY:

You have found the Defendant guilty of the offense of capital murder. You are instructed that the Defendant shall be punished by confinement in the Texas Department of Criminal Justice for life without parole, or by death. It is necessary now for you to determine, from all the evidence in the case, the answers to certain Special Issues which are as follows:

SPECIAL ISSUE NUMBER 1: Whether there is a probability that the Defendant would commit criminal acts of violence that would constitute a continuing threat to society.

You shall answer Special Issue Number 1 "Yes" or "No."

The prosecution has the burden of proving that the answer to Special Issue Number 1 should be "Yes," and it must do so by proving a "Yes" answer to Special Issue Number 1 beyond a reasonable doubt, and if it fails to do so, you must answer Special Issue Number 1 "No."

It is not required that the prosecution prove Special Issue Number 1 beyond all possible doubt; it is required that the prosecution's proof excludes all reasonable doubt concerning Special Issue Number 1.

In the event you have a reasonable doubt as to Special Issue Number 1 after considering all the evidence before you, and these instructions, you will answer Special Issue Number 1 "No."

In deliberating on Special Issue Number 1, the jury shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

You may not answer Special Issue Number 1 "Yes" unless you agree unanimously.

You may not answer Special Issue Number 1 "No" unless ten (10) or more jurors agree.

Members of the jury need not agree on what particular evidence supports a negative answer to Special Issue Number 1.

If the jury answers Special Issue Number 1 "Yes," then you shall answer the following Special Issue Number 2; otherwise, do not answer Special Issue Number 2.

SPECIAL ISSUE NUMBER 2: Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient

mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

You are instructed that if a jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the Court will sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole.

Under the law applicable in this case, if the defendant is sentenced to confinement for life without parole in the Texas Department of Criminal Justice, the defendant will be ineligible for release from the department on parole.

You shall answer Special Issue Number 2 "Yes" or "No."

You are instructed that you may not answer Special Issue Number 2 "No" unless you agree unanimously.

You may not answer Special Issue Number 2 "Yes" unless ten (10) or more jurors agree.

Members of the jury need not agree on what particular evidence supports an affirmative finding on Special Issue Number 2.

In deliberating on Special Issue Number 2, you shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

If the jury returns an affirmative finding on Special Issue Number 1, and a negative finding on Special Issue Number 2, the Court shall sentence the Defendant to death. If the jury returns a negative finding on Special Issue Number 1 or an

affirmative finding to Special Issue Number 2 the Court shall sentence the Defendant to confinement in the Texas Department of Criminal Justice for life without parole.

You are instructed that the defendant may testify in his own behalf if he chooses to do so, but if he elects not to do so, that fact cannot be taken by you as a circumstance against him nor prejudice him in any way. The defendant has elected not to testify in this punishment phase of the trial, and you are instructed that you cannot and must not refer to or allude to that fact during your deliberations or take it into consideration for any purpose whatsoever.

You are the exclusive judges of the facts proven, of the credibility of the witnesses, and of the weight to be given their testimony, but you are bound to receive the law from the Court which is herein given and be governed thereby.

In arriving at the answers to the above issues, it will not be proper for you to fix the same by lot, chance, or any other method than a full, fair, and free exercise of the opinion of the individual jurors.

In deliberating on this case, you shall consider the charge as a whole and you must not refer to or discuss any matters not in evidence before you.

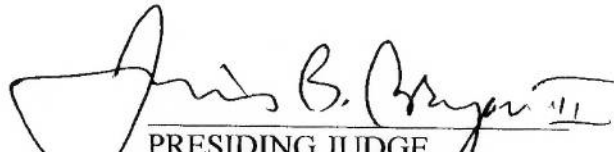
You must not consider or mention any personal knowledge or information you may have about any facts or person connected with this case which is not shown by the evidence. You shall not consult law books or anything not in evidence in this case.

Any further communication must be in writing signed by your presiding juror through the bailiff to the Court, except as to your personal needs which may be

communicated orally to the bailiff in charge. Do not attempt to talk to the bailiff, the attorneys or the Court regarding any questions you may have concerning the trial of the case.

After argument of counsel, you will retire to the jury room to deliberate. When you have reached a verdict, you may use the attached forms to indicate your answers to the Special Issues, and your presiding juror should sign the appropriate form certifying to your verdict.

Signed on May 27, 2010


PRESIDING JUDGE
272nd Judicial District Court

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VS.

BRAZOS COUNTY, TEXAS

JOHN DARRELL THUESEN

272ND JUDICIAL DISTRICT

SPECIAL ISSUE NO. 2

Taking into consideration all of the evidence, including the circumstances of the offense, the Defendant's character and background, and the personal moral culpability of the Defendant, do you find that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed?

In your verdict, you will answer "Yes" or "No."

Answer: We, the jury, because at least ten (10) jurors agree, find that the answer to Special Issue Number 2 is "Yes."

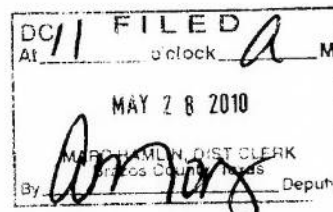
PRESIDING JUROR

- OR -

Answer: We, the jury, unanimously find that the answer to Special Issue Number 2 is "No."

Gordon A. Byrd
PRESIDING JUROR

After the jury has answered each of the Special Issues under the conditions and instructions outlined above, the Presiding Juror should sign the verdict form to be found on the last page of this charge.



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272ND JUDICIAL DISTRICT

VERDICT

We, the jury, return in open court, the above answers to the "Special Issues" submitted to us, and the same is our verdict in this case.

Gordon A. Rynildsen
PRESIDING JUROR

