

CERTIFIED COPY
CAUSE NO. 03-CR-457-B

FILED 9:13 O'CLOCK A M
AURORA DE LA GARZA, CLERK

JUL 29 2010

DISTRICT COURT OF CAMERON COUNTY, TEXAS
IN THE 138TH JUDICIAL DEPUTY

DISTRICT COURT OF

CAMERON COUNTY, TEXAS

THE STATE OF TEXAS

v.

JOHN ALLEN RUBIO

CHARGE OF COURT ON PUNISHMENT

LADIES AND GENTLEMEN OF THE JURY:

By your verdict in this case you have found the defendant, John Allen Rubio, guilty of four counts of capital murder. It is necessary, now, for you to determine from all the evidence in the case, answers to certain questions called "Special Issues" as to each count. The Court instructs you further as follows:

I.

You are instructed that the punishment for capital murder is either death or confinement in the Institutional Division of the Texas Department of Criminal Justice for life.

II.

In determining your answers to the Special Issues, submitted to you, you shall consider all the evidence submitted to you in this whole trial, which includes that phase of the trial wherein you were called upon to determine the guilt or innocence of the defendant, and this punishment phase of the trial wherein you are now called upon to determine the answers to Special Issues submitted to you by the Court. However, in this punishment phase of trial you should not consider the instructions given you in the first phase (the guilt-innocence phase) of trial

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that relate to the law of parties and the responsibility of parties for the acts of others in determining what your answers to the Special Issues shall be.

III.

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 NO. 1: Whether there is a probability that the Defendant would commit criminal acts of violence that would constitute a continuing threat to society.

SPECIAL ISSUE NO. 2: Whether the Defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that a human life would be taken.

You shall answer Special Issues Number 1 and Number 2 "Yes" or "No."

The prosecution has the burden of proving that the answers to both Special Issues Number 1 and Number 2 should be "Yes," and it must do so by proving a "Yes" answer to each of the Special Issues Number 1 and Number 2 beyond a reasonable doubt, and if it fails to do so, you must answer Special Issues Number 1 and Number 2 "No."

In deliberating on Special Issues Number 1 and Number 2, 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 of the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

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You may not answer Special Issues Number 1 or Number 2 "Yes" unless you agree unanimously.

You may not answer Special Issues Number 1 or Number 2 "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 Issues Number 1 or Number 2.

If the jury answers each of the Special Issues Number 1 and Number 2 "Yes," then you shall answer the following Special Issue No. 3; otherwise, do not answer Special Issue No. 3.

SPECIAL ISSUE NO. 3: 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 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 rather than a death sentence be imposed, the Court will sentence the defendant to imprisonment in the Institutional Division of the Texas Department of Criminal Justice for life.

Under the law applicable in this case, if the defendant is sentenced to imprisonment in the Institutional Division of the Texas Department of Criminal Justice for life, the defendant will become eligible for release on parole, but not until the actual time served by the defendant equals 40 years, without consideration of any good conduct time. It cannot accurately be predicted how

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the parole laws might be applied to this defendant if the defendant is sentenced to a term of imprisonment for life because the application of those laws will depend on decisions made by prison and parole authorities, but eligibility for parole does not guarantee that parole will be granted.

You shall answer Special Issue No. 3 "Yes" or "No."

You are instructed that you may not answer Special Issue No. 3 "No" unless you agree unanimously.

You may not answer Special Issue No. 3 "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 No. 3.

In deliberating on Special Issue No. 3, 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 each of the Special Issues Number 1 and Number 2 and a negative finding on Special Issue No. 3, the Court shall sentence the Defendant to death. If the jury returns a negative finding on either of Special Issues Number 1 or Number 2, or an affirmative finding to Special Issue No. 3, the Court shall sentence the Defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for life.

IV.

You are instructed that if there is any testimony before you in this case regarding the defendant having committed offenses or acts other than the

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offense alleged against him in the indictment, you cannot consider said testimony, unless you first find and believe beyond a reasonable doubt, as that term has been defined, that the defendant committed such other offenses or acts, if any were committed, but if you do not so believe, or if you have a reasonable doubt thereof, you will not consider such testimony for any purpose.

V.

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

VI.

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.


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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 the 29th day of July, 2010.



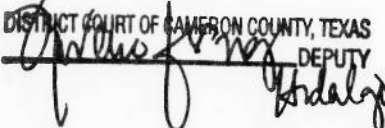
HON. NOE GONZÁLEZ
JUDGE PRESIDING
138TH JUDICIAL DISTRICT

Now, bearing in mind the foregoing instructions, you will answer the following Special Issues for all four counts:



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DISTRICT COURT OF CAMERON COUNTY, TEXAS

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CAUSE NO. 03-CR-457-B

JUL 29 2010

DISTRICT COURT OF CAMERON COUNTY, TEXAS
Optimus J. Perry DEPUTY

THE STATE OF TEXAS

IN THE 138TH JUDICIAL

v.

DISTRICT COURT OF

JOHN ALLEN RUBIO

CAMERON COUNTY, TEXAS

VERDICT FORM – COUNT I

SPECIAL ISSUE NO. 1

Do you find from the evidence beyond a reasonable doubt that there is a probability that the Defendant would commit criminal acts of violence that would constitute a continuing threat to society?

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

Answer: We, the jury, unanimously find from the evidence beyond a reasonable doubt that the answer to Special Issue No. 1 is "Yes."

Malcolm L. Perry
PRESIDING JUROR

- OR -

Answer: We, the jury, because at least ten (10) jurors agree, find that the answer to Special Issue No. 1 is "No."

PRESIDING JUROR

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VERDICT FORM – COUNT I (CONTINUING)

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DISTRICT COURT OF CAMERON COUNTY, TEXAS
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SPECIAL ISSUE NO. 2

Do you find from the evidence beyond a reasonable doubt that the Defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that a human life would be taken?

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

Answer: We, the jury, unanimously find from the evidence beyond a reasonable doubt that the answer to Special Issue No. 2 is "Yes."

[Signature]

PRESIDING JUROR

- OR -

Answer: We, the jury, because at least ten (10) jurors agree, find that the answer to Special Issue No. 2 is "No."

PRESIDING JUROR

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VERDICT FORM – COUNT I (CONTINUING)

DISTRICT COURT OF CAMERON COUNTY, TEXAS
[Signature]
DEPUTY

If your answers to Special Issues Number 1 and Number 2 are both "Yes," then you will answer Special Issue No. 3; otherwise, you will not answer Special Issue No. 3.

SPECIAL ISSUE NO. 3

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 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 No. 3 is "Yes."

PRESIDING JUROR

- OR -

Answer: We, the jury, unanimously find that the answer to Special Issue No. 3 is "No."

[Signature]

PRESIDING JUROR

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CAUSE NO. 03-CR-457-B

JUL 29 2010

DISTRICT COURT OF CAMERON COUNTY, TEXAS
DEPUTY

IN THE 138TH JUDICIAL

THE STATE OF TEXAS

v.

JOHN ALLEN RUBIO

DISTRICT COURT OF

CAMERON COUNTY, TEXAS

VERDICT FORM - COUNT II

SPECIAL ISSUE NO. 1

Do you find from the evidence beyond a reasonable doubt that there is a probability that the Defendant would commit criminal acts of violence that would constitute a continuing threat to society?

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

Answer: We, the jury, unanimously find from the evidence beyond a reasonable doubt that the answer to Special Issue No. 1 is "Yes."

Mark R. Lewis

PRESIDING JUROR

- OR -

Answer: We, the jury, because at least ten (10) jurors agree, find that the answer to Special Issue No. 1 is "No."

PRESIDING JUROR

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VERDICT FORM – COUNT II (CONTINUING)

JUL 29 2010

DISTRICT COURT OF CAMERON COUNTY, TEXAS
[Signature] DEPUTY

SPECIAL ISSUE NO. 2

Do you find from the evidence beyond a reasonable doubt that the Defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that a human life would be taken?

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

Answer: We, the jury, unanimously find from the evidence beyond a reasonable doubt that the answer to Special Issue No. 2 is "Yes."

[Signature]
PRESIDING JUROR

- OR -

Answer: We, the jury, because at least ten (10) jurors agree, find that the answer to Special Issue No. 2 is "No."

PRESIDING JUROR

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VERDICT FORM – COUNT II (CONTINUING)

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DISTRICT COURT OF CAMERON COUNTY, TEXAS
[Signature] DEPUTY

If your answers to Special Issues Number 1 and Number 2 are both "Yes," then you will answer Special Issue No. 3; otherwise, you will not answer Special Issue No. 3.

SPECIAL ISSUE NO. 3

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 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 No. 3 is "Yes."

PRESIDING JUROR

- OR -

Answer: We, the jury, unanimously find that the answer to Special Issue No. 3 is "No."

M. L. Perry

PRESIDING JUROR

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CAUSE NO. 03-CR-457-B

DISTRICT COURT OF CAMERON COUNTY, TEXAS
[Signature] DEPUTY

THE STATE OF TEXAS

IN THE 138TH JUDICIAL

v.

DISTRICT COURT OF

JOHN ALLEN RUBIO

CAMERON COUNTY, TEXAS

VERDICT FORM - COUNT III

SPECIAL ISSUE NO. 1

Do you find from the evidence beyond a reasonable doubt that there is a probability that the Defendant would commit criminal acts of violence that would constitute a continuing threat to society?

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

Answer: We, the jury, unanimously find from the evidence beyond a reasonable doubt that the answer to Special Issue No. 1 is "Yes."

Mark R. Perry
PRESIDING JUROR

- OR -

Answer: We, the jury, because at least ten (10) jurors agree, find that the answer to Special Issue No. 1 is "No."

PRESIDING JUROR

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VERDICT FORM – COUNT III (CONTINUING)

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JUL 29 2010

DISTRICT COURT OF CAMERON COUNTY, TEXAS
[Signature] DEPUTY

SPECIAL ISSUE NO. 2

Do you find from the evidence beyond a reasonable doubt that the Defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that a human life would be taken?

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

Answer: We, the jury, unanimously find from the evidence beyond a reasonable doubt that the answer to Special Issue No. 2 is "Yes."

M. R. [Signature]
PRESIDING JUROR

- OR -

Answer: We, the jury, because at least ten (10) jurors agree, find that the answer to Special Issue No. 2 is "No."

PRESIDING JUROR

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JUL 29 2010

VERDICT FORM – COUNT III (CONTINUING)

DISTRICT COURT OF CAMERON COUNTY, TEXAS
[Signature] DEPUTY

If your answers to Special Issues Number 1 and Number 2 are both "Yes," then you will answer Special Issue No. 3; otherwise, you will not answer Special Issue No. 3.

SPECIAL ISSUE NO. 3

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 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 No. 3 is "Yes."

PRESIDING JUROR

- OR -

Answer: We, the jury, unanimously find that the answer to Special Issue No. 3 is "No."

Mark R. Perry

PRESIDING JUROR

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JUL 29 2010

CAUSE NO. 03-CR-457-B

DISTRICT COURT OF CAMERON COUNTY, TEXAS
DEPUTY

THE STATE OF TEXAS

IN THE 138TH JUDICIAL

v.

DISTRICT COURT OF

JOHN ALLEN RUBIO

CAMERON COUNTY, TEXAS

VERDICT FORM - COUNT IV

SPECIAL ISSUE NO. 1

Do you find from the evidence beyond a reasonable doubt that there is a probability that the Defendant would commit criminal acts of violence that would constitute a continuing threat to society?

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

Answer: We, the jury, unanimously find from the evidence beyond a reasonable doubt that the answer to Special Issue No. 1 is "Yes."

M. R. Perry
PRESIDING JUROR

- OR -

Answer: We, the jury, because at least ten (10) jurors agree, find that the answer to Special Issue No. 1 is "No."

PRESIDING JUROR

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VERDICT FORM – COUNT IV (CONTINUING)

DISTRICT COURT OF CAMERON COUNTY, TEXAS
[Signature]
DEPUTY

SPECIAL ISSUE NO. 2

Do you find from the evidence beyond a reasonable doubt that the Defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that a human life would be taken?

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

Answer: We, the jury, unanimously find from the evidence beyond a reasonable doubt that the answer to Special Issue No. 2 is "Yes."

Mich L. Lopez

PRESIDING JUROR

- OR -

Answer: We, the jury, because at least ten (10) jurors agree, find that the answer to Special Issue No. 2 is "No."

[Signature]

PRESIDING JUROR

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VERDICT FORM - COUNT IV (CONTINUING)

JUL 29 2010

DISTRICT COURT OF CAMERON COUNTY, TEXAS
DEPUTY

If your answers to Special Issues Number 1 and Number 2 are both Yes, then you will answer Special Issue No. 3; otherwise, you will not answer Special Issue No. 3.

SPECIAL ISSUE NO. 3

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 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 No. 3 is "Yes."

PRESIDING JUROR

- OR -

Answer: We, the jury, unanimously find that the answer to Special Issue No. 3 is "No."

Mark R Perry

PRESIDING JUROR

CERTIFIED COPY
CAUSE NO. 03-CR-457-B

JUL 29 2010

DISTRICT COURT OF CAMERON COUNTY, TEXAS
IN THE 1ST JUDICIAL DISTRICT DEPUTY

THE STATE OF TEXAS

v.

JOHN ALLEN RUBIO

;
;
;
;
;

DISTRICT COURT OF

CAMERON COUNTY, TEXAS

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.

M. R. Perry
PRESIDING JUROR



A TRUE COPY I CERTIFY
AURORA DE LA GARZA, CLERK
DISTRICT COURT CAMERON COUNTY, TEXAS
DATE 8/2/10

BY Aurora De La Garza
DEPUTY