

CAUSE NO. B-15,717

MAY 12 2008

THE STATE OF TEXAS

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IN THE DISTRICT COURT OF

VS.

HENDERSON COUNTY, Texas
District Clerk, Henderson County, Texas
By Debra Anne Baker Deputy

RANDALL WAYNE MAYS

392ND JUDICIAL DISTRICT
SITTING FOR THE
173RD JUDICIAL DISTRICT

COURT'S CHARGE ON PUNISHMENT

MEMBERS OF THE JURY:

You have found the Defendant, Randall Wayne Mays, guilty of the offense of Capital Murder. You are instructed that a sentence of imprisonment without parole in the Institutional Division of the Texas Department of Criminal Justice or a sentence of death is mandatory upon conviction of Capital Murder. In order for the Court to assess the proper punishment, certain special issues are submitted to you. Before answering these special issues, you will consider the following instructions:

I.

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

In deliberating on the special issues presented herein, 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 circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

II.

SPECIAL ISSUE NUMBER 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?

The answer shall be "Yes" or "No."

The State 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".

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

The jury may not answer Special Issue Number 1 "No" unless ten or more jurors agree. The jurors need not agree on what particular evidence supports a "No" answer. If any juror has a reasonable doubt as to the answer to Special Issue Number 1, the juror shall vote "No" as to Special Issue Number 1.

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

III.

SPECIAL ISSUE NUMBER 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 from the evidence 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?

The jury shall consider mitigating evidence to be evidence that a juror might regard as reducing the Defendant's moral blameworthiness.

The jury will answer Special Issue Number 2 "Yes" or "No." The jury may only answer Special Issue Number 2 "No" if they unanimously agree, and the jury may not answer Special Issue Number 2 "Yes" unless ten or more jurors agree.

If the jury returns an answer of "Yes" to Special Issue Number 1, and an answer of "No" to Special Issue Number 2, the Court shall sentence the Defendant to death. If the jury returns an answer of "No" to Special Issue Number 1, or an answer of "Yes" to Special Issue Number 2, the Court shall sentence the Defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for life imprisonment without parole. A Defendant sentenced to confinement for life imprisonment without parole is ineligible for release from the Department on parole.

IV.

In a criminal case the law permits a Defendant to testify in his own behalf but he is not compelled to do so, and the same law provides that the fact that a Defendant does not testify shall not be considered as a circumstance against him. You will, therefore, not consider the fact that the Defendant did not testify as a circumstance against him; and you will not, in your retirement to consider your verdict, allude to, comment on, consider, or in any manner refer to the fact that the Defendant has not testified.

V.

You are instructed that if there is any evidence before you regarding the Defendant's having committed offenses, wrongs, or acts other than the offense for which he has been convicted in this case, you cannot consider said evidence for any purpose unless you find and

believe beyond a reasonable doubt that the Defendant committed such offenses, wrongs or acts, if any were committed, and even then you may only consider the same in determining the appropriate answer to the special issues presented in this charge, and for no other purpose.

VI.

It is your duty to consult with one another and to deliberate in an effort to answer the special issues based on these instructions. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of answering the special issues.

VII.

You are the exclusive judges of the facts proven, if any, 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 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 nor 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 anything not in evidence.

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

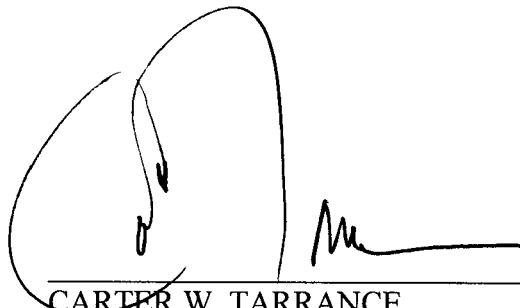
any other juror anything he or she may have heard regarding the case or any witness therein, from any other source than the witness stand.

VIII.

When you have arrived at your answers to each of the special issues, if any, you shall use the attached forms provided at the end of these instructions.

Should the jury desire to have any or all of the admitted exhibits delivered to the jury for your deliberations, your foreperson shall so notify the Court in writing and the requested exhibits will be delivered.

Any further communication with the Court must be in writing signed by your foreperson through the bailiff. Do not attempt to talk to the bailiff, the attorneys or the Court regarding any question you may have concerning the trial of the case.

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a series of loops and a horizontal line extending to the right.

CARTER W. TARRANCE
Judge Presiding

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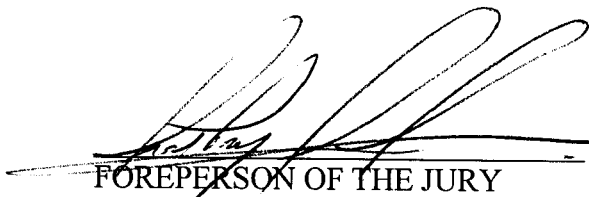
ANSWERS TO SPECIAL ISSUES

SPECIAL ISSUE NUMBER 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?

ANSWER:

We, the Jury, unanimously find and determine beyond a reasonable doubt that the answer to Special Issue Number 1 is "Yes."


FOREPERSON OF THE JURY

- OR -

We, the Jury, because at least ten (10) jurors have a reasonable doubt as to the matter inquired about in Special Issue Number 1, find and determine that the answer to Special Issue Number 1 is "No."

FOREPERSON OF THE JURY

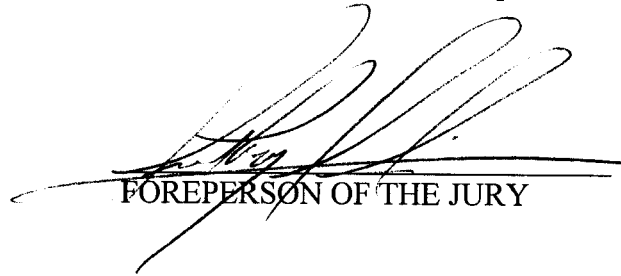
If your answer to Special Issue Number 1 is unanimously "Yes," then you will answer Special Issue Number 2; otherwise, you will not answer Special Issue Number 2.

SPECIAL ISSUE NUMBER 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 from the evidence 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?

ANSWER:

We, the Jury, unanimously find and determine that the answer to Special Issue Number 2 is "No."


FOREPERSON OF THE JURY

- OR -

We, the Jury, because at least ten (10) jurors agree that the answer this Special Issue Number 2 is "Yes", find and determine that the answer to Special Issue Number 2 is "Yes."

FOREPERSON OF THE JURY