

NO. 2012-434,109

FILED

TIME 1:15 P.M.

THE STATE OF TEXAS

§ IN THE DISTRICT COURT

DATE May 20 2014

VS.

§ OF LUBBOCK COUNTY, TEXAS

Jim F. Arnell
JUDGE

BRIAN SUNIGA

§ 140TH JUDICIAL DISTRICT

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.

SPECIAL ISSUE NUMBER 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 are instructed that in answering Special Issue Number 2 only the conduct of the defendant can be considered, and that the instructions pertaining to the law of parties heretofore given you can not now be considered in answering this issue.

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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 or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

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 Number 3; otherwise, do not answer Special Issue Number 3.

SPECIAL ISSUE NUMBER 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 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 3 “Yes” or “No.”

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

You may not answer Special Issue Number 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 Number 3.

In deliberating on Special Issue Number 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 Number 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 Number 3, the Court shall sentence the Defendant to confinement in the Texas Department of Criminal Justice for life without parole.

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.

You may consider evidence of extraneous crimes or bad acts in assessing punishment even if the defendant has not yet been charged with or finally convicted of the crimes or bad acts. However, you may consider such evidence only if the extraneous crimes or bad acts have been shown by the State beyond a reasonable doubt to have been committed by the defendant or are ones for which the defendant could be held criminally responsible.

The prosecution does not have to prove extraneous crimes or bad acts beyond all possible doubt. The prosecution's proof must exclude all "reasonable doubt" concerning the extraneous crimes or bad acts.

Therefore, if you find and believe beyond a reasonable doubt that the defendant committed extraneous crimes or bad acts or could be held criminally responsible for extraneous crimes or bad acts, then you may consider such evidence in assessing the defendant's punishment. However, if you have a reasonable doubt that the defendant committed extraneous crimes or bad acts or could be held criminally responsible for extraneous crimes or bad acts, then you may not consider such evidence in assessing punishment.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a privilege accorded a defendant; and, in the event he elects not to testify, that fact cannot be taken as a circumstance against him.

In this case, the defendant has elected not to testify; and you are instructed that you cannot and must not refer or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him, nor will you refer to or discuss any matter not before you in evidence.

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.

You are further instructed that you are not to be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feelings in considering all of the evidence before you and in answering the Special Issues.

After reading of this charge, you shall not be permitted to separate from each other, nor shall you talk with anyone not of your jury. After argument of this charge, you shall be permitted to consider your answers to the Special Issues submitted to you. It is the duty of your presiding juror to preside in the jury room and vote with you on the answers to the Special Issues submitted.

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.


JUDGE PRESIDING

May 20, 2014

Now, bearing in mind the foregoing instructions, you will answer the following 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?

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 Number 1 is "Yes."

Rinda L. Franco

PRESIDING JUROR

- OR -

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

PRESIDING JUROR

SPECIAL ISSUE NUMBER 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 Number 2 is "Yes."

Linda L. Franco

PRESIDING JUROR

- OR -

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

PRESIDING JUROR

If your answers to Special Issues Number 1 and Number 2 are both "Yes," then you will answer Special Issue Number 3; otherwise, you will not answer Special Issue Number 3.

SPECIAL ISSUE NUMBER 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 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 3 is "Yes."

PRESIDING JUROR

- OR -

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

Linda L. Franco

PRESIDING JUROR

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.

Linda L. Franco

PRESIDING JUROR