

NO. 416-82415-07

THE STATE OF TEXAS

V.

RAUL CORTEZ

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§

IN THE 416th JUDICIAL

DISTRICT COURT OF

COLLIN COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

By the verdict returned in this case you have found the defendant, Raul Cortez, guilty of the offense of capital murder as charged in the indictment. It is now your duty to determine, from all the evidence in this case, the answers to certain questions called "Special Issues" in this charge. The Court instructs you in answering these "Special Issues" as follows:

1.

The mandatory punishment for the offense of capital murder of which you have found the defendant guilty is either death or confinement in the Institutional Division of the Texas Department of Criminal Justice for life.

2.

You are instructed that in answering Special Issue No. 1, you shall answer "Yes" or "No".

The State has the burden of proving beyond a reasonable doubt that Special Issue No. 1 should be answered "Yes," and the burden of proof on this issue never shifts to the defendant.

In deliberating on Special Issue No. 1 you shall consider all the evidence at the guilt or

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innocence stage and the punishment stage, including evidence of the defendant's background and 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 No. 1 "Yes" unless you agree unanimously.

You may not answer Special Issue No. 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 No. 1.

You are further instructed that you are not to be swayed by mere conjecture, passion, prejudice, public opinion, or public feeling in considering all of the evidence before you and in answering Special Issue No. 1.

It is not required that the State prove Special Issue No. 1 beyond all possible doubt; it is only required that the State's proof excludes all "reasonable doubt" concerning the defendant.

You are instructed that if you return an affirmative finding, that is a "Yes" answer, to Special Issue No. 1, then and only then, are you to answer Special Issue No. 2.

3.

You are instructed that in answering Special Issue No. 2, you shall answer "Yes" or "No".

The State has the burden of proving beyond a reasonable doubt that Special Issue No. 2 should be answered "Yes," and the burden of proof on this issue never shifts to the defendant.

In deliberating on Special Issue No. 2 you shall consider all the evidence at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background and 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 No. 2 “Yes” unless you agree unanimously.

You may not answer Special Issue No. 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 Issue No. 2.

You are further instructed that you are not to be swayed by mere conjecture, passion, prejudice, public opinion, or public feeling in considering all of the evidence before you and in answering Special Issue No. 2.

It is not required that the State prove Special Issue No. 2 beyond all possible doubt; it is only required that the State’s proof excludes all “reasonable doubt” concerning the defendant.

You are instructed that if you return an affirmative finding, that is a “Yes” answer, to Special Issue No. 2, then and only then, are you to answer Special Issue No. 3.

4.

You are instructed that in answering Special Issue No. 3, you shall answer “Yes” or “Nó”.

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 answer to Special Issue No. 3.

In answering Special Issue No. 3 you shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant’s moral blameworthiness.

You are again instructed that you are not to be swayed by mere conjecture, passion, prejudice, public opinion or public feeling in considering all of the evidence before you in answering Special

Issue No. 3.

5.

You are instructed that if the jury returns an affirmative answer to Special Issue No. 1, an affirmative answer to Special Issue No. 2, and a negative answer to Special Issue No. 3, the Court will sentence the defendant to death. Should you return a negative answer to Special Issue No. 1, or a negative answer to Special Issue No. 2, or an affirmative answer to Special Issue No. 3, the Court will sentence the defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for life.

6.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed offenses other than the offense alleged against him in the indictment in this case, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offenses, if any were committed, and even then you may only consider the same in determining the answers to the Special Issues.

7.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a right afforded to a defendant, and in the event he elects not to testify, that fact cannot be taken as a circumstance against him. In the punishment phase of the trial, 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 the defendant.

8.

At times throughout the trial the Court has been called upon to pass on the question of whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them.

9.

You are instructed that any statements of counsel made during the course of the trial or during argument not supported by the evidence, or statements of law made by counsel not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

10.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, and no juror is permitted to communicate to any other juror anything he might have heard regarding the case from any source other than the witness stand.

11.

You are instructed that certain evidence was admitted before you regarding the impact of the charged offense on family members of the victim. You are instructed that such evidence may only be considered by you, if at all, in deliberating your answer to Special Issue No. 3, and you will not consider the same for any other purpose.

12.

After argument of Counsel, you will retire to begin your deliberations. It is the duty of your presiding juror to preside at your deliberations and to vote with you in arriving at a verdict.

In deliberating on this case you are not to refer to any matter or issue not in evidence before you, nor talk about this case to anyone not of your jury.

After you have retired to consider your verdict, no one has any authority to communicate with you except the officer who has you in charge. You may communicate with the Court in writing, signed by your presiding juror, through the officer who has you in charge. Do not attempt to talk with the officer, the attorneys, or the Court concerning any questions you may have.

If you as jurors disagree as to the testimony of any witnesses, you may, upon applying to the Court through your presiding juror, request to have read the Court Reporter's notes on that portion of the witness's testimony in dispute. If you desire to hear any portion of the testimony of any witness, you must certify through your presiding juror that you are in disagreement as to the testimony of the witness, and you should request that part of the testimony on the point in dispute, and only that point which is in dispute.

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

You are instructed that your answers to the Special Issues shall be arrived at by due deliberation and not by drawing lots or by any other method of chance.



Webb Biard, Judge
416th Judicial District Court
Collin County, Texas

SPECIAL ISSUE NO. 1

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

ANSWER: YES



Warren Kassel
Presiding Juror

If your answer to this Special Issue is "No", and is not unanimous, then the 10 or more jurors who agree should sign individually below.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

IF YOUR ANSWER TO SPECIAL ISSUE NO. 1 IS "YES", YOU SHALL PROCEED TO SPECIAL ISSUE NO. 2. IF YOUR ANSWER TO SPECIAL ISSUE NO. 1 IS "NO"; YOU SHALL CEASE YOUR DELIBERATIONS.

SPECIAL ISSUE NO. 2

Do you find from the evidence beyond a reasonable doubt that the defendant, Raul Cortez, actually caused the death of Austin York or did not actually cause the death of Austin York but intended to kill Austin York or another or anticipated that a human life would be taken?

ANSWER: YES

Warren Kassel
Presiding Juror

If your answer to this Special Issue is "No", and is not unanimous, then the 10 or more jurors who agree should sign individually below.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

IF YOUR ANSWER TO SPECIAL ISSUE NO. 2 IS "YES", YOU SHALL PROCEED TO SPECIAL ISSUE NO. 3. IF YOUR ANSWER TO SPECIAL ISSUE NO. 2 IS "NO"; YOU SHALL CEASE YOUR DELIBERATIONS.

SPECIAL ISSUE NO. 3

Do you find from the evidence, 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, Raul Cortez, that there is a sufficient mitigating circumstance or circumstances to warrant a sentence of life imprisonment rather than a death sentence be imposed?

ANSWER: NO



Presiding Juror

If your answer to this Special Issue is "Yes", and is not unanimous, then the 10 or more jurors who agree should sign individually below.

