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FILED

THE STATE OF TEXAS

§ IN THE DISTRICT COURT
TIME 9:50 A.M.

VS.

§ OF LUBBOCK COUNTY, TEXAS
DATE 4-1, 2008

ROSENDO RODRIGUEZ III

§ 140TH JUDICIAL DISTRICT
Jim E. Jarnell
JIM E. JARNELL, JUDGE

COURT'S CHARGE ON PUNISHMENT

MEMBERS OF THE JURY:

By verdicts returned in Count I, Paragraph I and Paragraph II in this case you have found the defendant, ROSENDO RODRIGUEZ III, guilty of the offense of capital murder, which was alleged to have been committed on or about September 13, 2005, in Lubbock County, Texas. In order for the Court to assess the proper punishment, it is necessary now for you to determine, from all the evidence in the case, the answers to certain questions, called "Special Issues," in this charge. The court instructs you in answering these "Special Issues" as follows:

The mandatory punishment for the offense of capital murder of which you have found the defendant guilty is by confinement in the Correctional Institutions Division of the Texas Department of Criminal Justice for life without parole, or by death.

You are instructed that when you deliberate on the questions posed in the special issues, you are to consider all relevant mitigating circumstances, if any, by the evidence presented by the State or the defendant. A mitigating circumstance may include, but is

not limited to, any aspect of the defendant's character, background, personal moral culpability, or circumstances of the crime which you believe could make a death sentence inappropriate in this case. If you find that there are any, thereafter give effect and consideration to them in assessing the defendant's personal culpability at the time you answer the special issue. If you determine, when giving effect to the mitigating evidence, if any, that a life without parole sentence, as reflected by a negative finding to the issue under consideration, rather than a death sentence is an appropriate response to the personal culpability of the defendant, a negative finding should be given to that special issue under consideration.

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."

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

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

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.

You are instructed that in answering Special Issue Number 2, you shall answer the issue "Yes" or "No." 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 of you agree to do so. You need not to agree on what particular evidence supports an affirmative finding on Special Issue Number 2.

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

You are again instructed that you are not to be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling in considering all of the evidence before you in answering Special Issue Number 2.

Should you return an affirmative finding on Special Issue Number 1 and a negative finding on Special Issue Number 2, the Court will sentence the defendant to death. Should you return a negative finding on Special Issue Number 1 or an affirmative finding to Special Issue Number 2, the Court will sentence the defendant to confinement in the Correctional Institutions Division of 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 "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.

You may consider evidence of an extraneous crime or bad acts in determining the answers to the Special Issues even if the defendant has not yet been charged with or finally convicted of the crime or bad act.

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 trial, and you are instructed that you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever.

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.

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 Foreman of the Jury 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 Foreman of the Jury 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 Foreman of the Jury should sign the appropriate form certifying to your verdict.

The above and foregoing is the Charge in this case, and the same is hereby certified by the Court, this the 1 day of ~~March~~ ^{April}, 2008.


JUDGE PRESIDING



I, Barbara Sucsy, District Clerk, in and for Lubbock County, Texas, do hereby certify this to be a true and correct copy of a like instrument now on file in this office.

This 8 day of March, 2008 Deputy
Clerk of District Court, Lubbock County, Texas pg 5 of 5

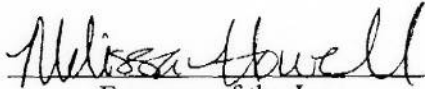
Special Issue Number 1

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."


Foreman of the Jury

OR

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

Foreman of the Jury

In the event that the jury has answered "Special Issue" Number 1 in the affirmative, and only then, shall the jury answer "Special Issue" Number 2 to be found following.

Special Issue Number Two

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."

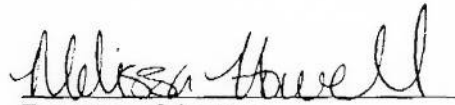
Answer

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

Foreman of the Jury

OR


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



Foreman of the Jury

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.



Foreman of the Jury