

T FILED
AS A WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

CAUSE NO. 1195088D

JAN 26 2012

TIME 9:40am
BY SS DEPUTY

THE STATE OF TEXAS § IN THE CRIMINAL DISTRICT COURT
VS. § NUMBER FOUR OF
KWAME A. ROCKWELL § TARRANT COUNTY, TEXAS

COURT'S CHARGE ON PUNISHMENT

MEMBERS OF THE JURY:

The Defendant, KWAME A. ROCKWELL, has been found guilty by you of the offense of Capital Murder, and you will no longer concern yourselves with the guilt of the Defendant. You are instructed that a sentence of imprisonment in the Texas Department of Criminal Justice for life without parole, or a sentence of death is mandatory upon conviction of capital murder. In order for punishment to be assessed, certain special issues are submitted to you. Before answering these special issues, if you can do so, you will consider the following instructions:

I.

In arriving at the answers to the special issues submitted, if you can do so, 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 are instructed that in considering the special issues, you may take into consideration all the facts shown by the evidence admitted before you in the full trial of this case and the law as submitted to you in the charge.

II.

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

In the event you have a reasonable doubt as to whether the answer to Special Issues Numbers 1 and 2 should be "Yes" after considering all the evidence before you, if any, and these instructions, you will answer Special Issues Numbers 1 and 2 "No".

The jury may not answer Special Issues Numbers 1 and 2 "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 the above Special Issue, the juror shall vote "No" as to that issue. The jury may not discuss or consider the effect of failure of the jury to agree on the answer to an issue.

If the jury answers Special Issue Number 1 "Yes", then you shall answer Special Issue Number 2; otherwise, do not answer Special Issue Number 2. If the jury answers Special Issue Number 2 "Yes", then you shall answer Special Issue Number 3; otherwise, do not answer Special Issue Number 3.

In deliberating on the issues submitted, 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.

III.

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 "YES" OR "NO" in the space provided on Page 7 of the Charge.

IV.

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?

ANSWER "YES" OR "NO" in the space provided on Page 8 of the Charge.

V.

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 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 "YES" OR "NO" in the space provided on Page 9 of the Charge.

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 3 "Yes" or "No." The jury may only answer Special Issue Number 3 "No" if they unanimously agree, and the jury may not answer this issue "Yes" unless ten or more jurors agree.

If the jury returns an affirmative finding on each of 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 Special Issue 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 imprisonment without parole.

A Defendant sentenced to confinement for life imprisonment without parole is ineligible for release from the Texas Department of Criminal Justice on parole.

VI.

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.

VII.

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, if any, to the special issues presented in this charge, and for no other purpose.

It is not required that the prosecution prove such offenses, wrongs, or acts beyond all possible doubt; it is required that the prosecution's proof excludes all "reasonable doubt" concerning the Defendant's conduct.

In the event you have a reasonable doubt as to whether the Defendant committed such offenses, wrongs or acts after considering all the evidence before you, and these instructions, you will disregard such evidence.

VIII.

It is your duty to consult with one another and to deliberate in an effort to answer the special issues based on these instructions if you can do so. 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, and if doing so would not do violence to your own conscience. 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.

You have been permitted to take notes during the testimony in this case. In the event you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

IX.

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 law books or 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.

X.

When you have arrived at your answers to the special issues, if you can do so, 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.


ELIZABETH BERRY, JUDGE PRESIDING
Criminal District Court Number Four
Tarrant County, Texas

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 this Special Issue, find and determine that the answer to this Special Issue is "No."

FOREPERSON OF THE JURY

FILED
THOMAS A WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

JAN 27 2012
TIME 3:31pm
BY SS DEPUTY

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?

ANSWER "YES" OR "NO".

ANSWER:

We, the Jury, unanimously find and determine beyond a reasonable doubt that the answer to Special Issue Number 2 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 this Special Issue, find and determine that the answer to this Special Issue is "No."

FOREPERSON OF THE JURY

FILED
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JAN 27 2012

TIME 3:36 PM
BY SS DEPUTY

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 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 3 is "No."


FOREPERSON OF THE JURY

- OR -

We, the Jury, because at least ten (10) jurors agree that the answer this Special Issue Number 3 is "Yes", find and determine that the answer to this Special Issue is "Yes."

FOREPERSON OF THE JURY

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