

NO. 24,087

ORIGINAL

THE STATE OF TEXAS

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IN THE DISTRICT COURT

VS.

LEON COUNTY, TEXAS

JERRY DUANE MARTIN

278TH JUDICIAL DISTRICT

COURT'S PUNISHMENT CHARGE

LADIES AND GENTLEMEN OF THE JURY:

You have found the Defendant guilty of the offense of capital murder. As a result of that finding of guilt, and in order for the Court to assess a proper punishment, it is now necessary for you to determine from all of the evidence in this case the answers to certain questions, called Special Issues. With regard to your considering these Special Issues, the Court instructs you as follows:

The mandatory punishment for capital murder is death or confinement in the institutional division of the Texas Department of Criminal Justice for life without the possibility of parole.

In deliberating on Special Issue Number 1 submitted in this charge, the jury shall consider all evidence admitted during this trial, 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.

The burden of proof in answering Special Issue Number 1 rests upon the State and never shifts to the defendant. Special Issue Number 1 submitted must be proved by the State beyond a reasonable doubt; therefore, before Special Issue Number 1 may be

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LeAnn Flowers
District Clerk, Leon County, Texas

answered "YES", all jurors must be convinced by the evidence beyond a reasonable doubt that the answer to such special issue should be "YES".

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 when considering Special Issue Number 1 and Special Issue Number 2.

If the jury unanimously determines (and only if such determination is unanimous) that the State has proved Special Issue Number 1 beyond a reasonable doubt, that is the State has proved beyond a reasonable doubt that there is a probability that the defendant, JERRY DUANE MARTIN, would commit criminal acts of violence that would constitute a continuing threat to society, then the Jury Foreman will so record the Jury's answer of "YES" to Special Issue Number 1 by signing his or her name to the finding reflecting such answer on the form provided for that purpose.

You are further instructed that if any juror, after considering the evidence and these instructions, has a reasonable doubt as to whether the answer to Special Issue Number 1 should be answered "YES", then such juror should vote "NO" to Special Issue Number 1 in the jury's deliberation.

If ten (10) jurors or more vote "NO" to Special Issue Number 1, then the answer of the Jury shall be "NO" to that issue, and the Jury Foreman will so record the Jury's answer of "NO" by signing his or her name to the finding reflecting such answer on the form for that purpose.

If in answering Special Issue Number 1 the vote of the jurors is not unanimously

“YES” or not at least ten (10) in favor of an answer of “NO”, then there shall be no answer for that Special Issue and the Jury Foreman should not sign his or her name to any answer form for that Special Issue Number 1.

The burden of proof in answering Special Issue Number 1 rests upon the State throughout the trial, and never shifts to the defendant.

With respect to any and all issues in this trial, the law does not require a defendant to produce any evidence at all and the defendant has no burden of proof as to any issue in the trial of this case.

It is not required that the prosecution prove a “YES” answer to Special Issue Number 1 beyond all possible doubt; it is required that the prosecution’s proof excludes all “reasonable doubt” concerning a “YES” answer to Special Issue Number 1.

You are further instructed that if the jury unanimously returns a “YES” finding to Special Issue Number 1 the jury shall consider Special Issue Number 2. If, however, the jury returns a “NO” answer to Special Issue Number 1 or if the jury has not answered Special Issue Number 1; then, under the court’s instructions in this charge, do not consider Special Issue Number 2.

If the jury has answered Special Issue Number 1 “YES” then the jury shall consider Special Issue Number 2.

Before Special Issue Number 2 may be answered “NO”, all jurors must be convinced that the answer to such issue should be “NO”. If the jury unanimously determines (and only if such determination is unanimous) that the answer to Special Issue Number 2 is “NO”, then the Jury Foreman will so record the Jury’s answer to

Special Issue Number 2 by signing his or her name to the finding reflecting such answer on the form provided for that purpose.

If ten (10) jurors or more vote "YES" to Special Issue Number 2 then the answer of the Jury shall be "YES" to that issue, and the Jury Foreman will so record the Jury's answer by signing his or her name to the finding reflecting such an answer on the form attached for that purpose.

If in considering Special Issue Number 2 the vote of the jurors is not unanimously "NO" or not at least ten (10) in favor of an answer of "YES", then there shall be no answer for that Special Issue and the Jury Foreman should not sign his or her name to any answer form for that Special Issue Number 2.

Members of the jury need not agree on what particular evidence supports a "YES" answer to Special Issue Number 2.

In deliberating on Special Issue Number 2 submitted in this charge, the jury shall consider all evidence admitted at trial, 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, in determining whether or not there is sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

The jury is instructed to consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness. Further, the jury is instructed to consider mitigating evidence to be any evidence that a juror might regard that serves as a basis for a sentence less than death.

You are instructed under the law applicable in this case, if the jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment without the possibility of parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment in the institutional division of the Texas Department of Criminal Justice for life without the possibility of parole.

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 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, nor will you refer to or discuss any matter not before you in evidence.

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

At times throughout the trial, the Court has been called upon to determine whether 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. Whether offered evidence is admissible is purely a question of law. In admitting

evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it determine the credibility of the witnesses. As to the offer of evidence that has been rejected by the Court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

Specifically, the Court has sustained objections and given you explicit instructions to disregard irrelevant, improper, and inadmissible questions, answers, and evidence in this trial. You are reminded of the instruction of the court given you in this trial and you are instructed to carefully follow those instructions in your deliberations. You are to deliberate only on the evidence that is properly before you in this trial and to give this case individual deliberation based on only the evidence admitted before you in this trial.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion upon any matter of fact in this case, and if you have observed anything which you have or may interpret as the Court's opinion upon any matter of fact in the case, you must wholly disregard it.

You are further 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.

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

It is not permissible of you, under any circumstances, in considering the Special Issues, to decide the same by lot, or by straws, or by any other method of chance. Deciding a case by lot, or by any method of chance, is not permissible, and you are instructed in this case that you must not consider any proposition of this character, but the answers to the Special Issues must be determined and agreed upon by each juror on the facts of the case, as testified to by the witnesses, and the law as given in the Charge of the Court.

You are the exclusive judges of the facts provided, 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.

The opinion of each juror is to be respected. No juror shall bully, harass, or intimidate another juror for any reason. Should any juror feel that he or she is being bullied, harassed, or intimidated, he or she is to inform the court by passing a note to the bailiff who will immediately deliver such note to the court. The person chosen as foreperson is charged with the responsibility to ensure that the opinion of each juror is to be respected and that no juror is bullied, harassed, or intimidated.

After you have retired to begin your deliberations, no one has any authority to communicate with you except the officer or bailiff who has you in charge. You may communicate with this Court in writing, signed by your Presiding Juror, through the officer or bailiff who has you 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 you have arrived at your verdict, you may use the appropriate verdict form or forms attached hereto by having your Presiding Juror sign the particular form or forms that conform to your verdict.


PRESIDING JUDGE

The Special Issues are as follows:

SPECIAL ISSUE NUMBER 1

Is there a probability that the Defendant, JERRY DUANE MARTIN, would commit criminal acts of violence that would constitute a continuing threat to society?

ANSWER TO SPECIAL ISSUE NUMBER 1:

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


Foreman

We, the Jury, because at least ten (10) jurors do not find or have a reasonable doubt as to the matter inquired about in this Special Issue Number 1, find and determine that the answer to this Special Issue Number 1 is "NO".

Foreman

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, is there sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed?

ANSWER TO SPECIAL ISSUE NUMBER 2

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



Foreman

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

Foreman