

ORIGINAL

NO. F10-00056-RE

STATE OF TEXAS	§	IN THE CRIMINAL DISTRICT
V.	§	COURT NO. 5,
DONALD ANDREW BESS, JR.	§	DALLAS COUNTY, TEXAS

CHARGE OF THE COURT FOR THE PUNISHMENT PHASE

By your verdict in this case you have found Donald Andrew Bess, Jr. ("the Defendant") guilty of the offense of capital murder, alleged to have been committed on or about October 13, 1984, in Dallas County, Texas. It is now your duty to determine, from all the evidence in the case, answers to certain questions called Special Issues.

You are instructed that the punishment for the offense of capital murder is either death or confinement in the Institutional Division of the Texas Department of Criminal Justice for life.

Three Special Issues, numbered one, two and three, are included in this charge. You are instructed to answer these three Special Issues either "yes" or "no" in accordance with the instructions given in this charge. The Special Issues are as follows:

Special Issue No. 1: Do you find from the evidence beyond a reasonable doubt that the conduct of the Defendant, Donald Andrew Bess, Jr., that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result?

Special Issue No. 2: Do you find from the evidence beyond a reasonable doubt that there is a probability that the Defendant, Donald Andrew Bess, Jr., would commit criminal acts of violence that would constitute a continuing threat to society?

Special Issue No. 3: Do you find, 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, Donald Andrew Bess, Jr., that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed?

Instructions Regarding Special Issue Nos. 1 & 2

In deliberating on your answer to Special Issue No. 1 and Special Issue No. 2, you are instructed that the State has the burden of proving beyond a reasonable doubt that the answer to each issue is "yes."

If you do not find and believe from the evidence beyond a reasonable doubt that the answers to Special Issue No.1 and Special Issue No. 2 should be "yes," or if you have a reasonable doubt about either issue, then you shall answer that Special Issue "no."

You may not answer either issue "yes" unless the jury agrees unanimously, and you may not answer either issue "no" unless 10 or more members of the jury agree. The members of the jury need not agree on what particular evidence supports a "no" answer to either issue.

If you have answered "no" to either Special Issue, then you shall cease your deliberations. If you have answered "yes" to both Special Issue No. 1 and Special Issue No. 2, then you shall next consider Special Issue No. 3.

Instructions Regarding Special Issue No. 3

In deliberating on your answer to Special Issue No. 3, you are instructed that you may not answer Special Issue No. 3 "no" unless the jury agrees unanimously, and you may not answer Special Issue No. 3 "yes" unless 10 or more members of the jury agree.

The members of the jury need not agree on what particular evidence supports a "yes" answer to Special Issue No. 3.

In arriving at your answer, you shall consider mitigating evidence to be evidence that a juror might regard as reducing the Defendant's moral blameworthiness.

### General Instructions

You are instructed that if the jury answers "yes" to Special Issue No. 1 and Special Issue No. 2 and answers "no" to Special Issue No. 3, the Court shall sentence the Defendant to death.

If the jury answers "no" to Special Issue No. 1 or No. 2 or answers "yes" to Special Issue No. 3, then the Court shall sentence the Defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for life.

You are instructed that, during your deliberations, you are not to consider or discuss any possible action of the Board of Pardons and Paroles or how long the Defendant would be required to serve to satisfy a sentence of life imprisonment.

If the jury's answers to the Special Issues are unanimous, then the presiding juror may sign each special issue for the entire jury. If any answer or answers are not unanimous, but agreed to by at least 10 members of the jury, as set out above, then the 10 or more jurors who agree shall individually sign the Special Issue.

During your deliberations upon the Special Issues, you must not consider, discuss, nor relate any matters not in evidence before you. You shall not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

In arriving at the answers to the Special Issues, it will not be proper for you to fix the same by lot, chance, or any other method other than by a full, fair, and free exchange of the opinion of each individual juror.

You are not to be swayed by mere sentiment, conjecture, sympathy, passions, prejudices, public opinion, or public feeling in considering all the evidence before you and in answering the special issues.

In determining your answers to the Special Issues, you shall consider all the evidence admitted in this whole trial.

Evidence of Extraneous Offense

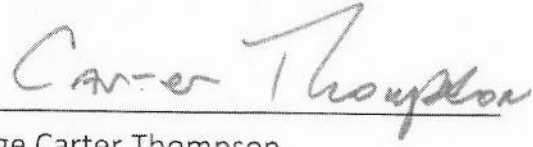
You are further instructed that if there is any evidence before you in this case regarding the Defendant having committed an offense or offenses other than the offense alleged against him in the indictment, you cannot consider this evidence for any purpose unless you find and believe beyond a reasonable 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.

Right to Testify

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 punishment phase of 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.

After the reading of this Charge, you shall not talk with anyone not of your jury. After the argument of counsel, you will retire 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.

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.

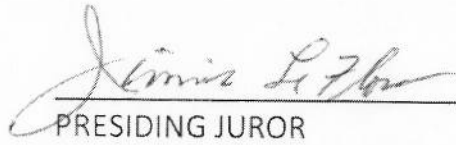
A handwritten signature in cursive script that reads "Carter Thompson". The signature is written in dark ink and is positioned above a horizontal line.

Judge Carter Thompson  
Criminal District Court No. 5  
Dallas County, Texas

**SPECIAL ISSUE NO. 1**

Do you find from the evidence beyond a reasonable doubt that the conduct of the Defendant, Donald Andrew Bess, Jr., that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result?

Answer: YES

  
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:

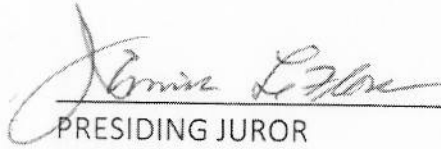
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If your answer to Special Issue No. 1 is "yes," you shall proceed to answer Special Issue No. 2. If your answer to Special Issue No. 1 is "no," you shall cease your deliberations.

**SPECIAL ISSUE NO. 2**

Do you find from the evidence beyond a reasonable doubt that there is a probability that the Defendant, Donald Andrew Bess, Jr., would commit criminal acts of violence that would constitute a continuing threat to society?

Answer: YES

  
\_\_\_\_\_  
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:

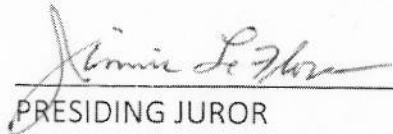
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If your answer to Special Issue No. 2 is "yes," you shall proceed to answer Special Issue No. 3. If your answer to Special Issue No. 2 is "no," you shall cease your deliberations.

**SPECIAL ISSUE NO. 3**

Do you find, 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, that there is a sufficient mitigating circumstance or circumstances to warrant that 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:

_____	_____
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