

IN THE 346TH DISTRICT COURT
OF EL PASO COUNTY, TEXAS

THE STATE OF TEXAS

VS.

FABIAN HERNANDEZ

§
§
§
§
§

No. 20060D05825

2006 NOV 03
[Signature]

CHARGE OF THE COURT- PUNISHMENT STAGE

LADIES AND GENTLEMEN OF THE JURY:

By your verdict returned in this case you have found the Defendant, FABIAN HERNANDEZ, guilty of the offense of Capital Murder, which was alleged to have been committed on or about the 3rd day of November, 2006, in El Paso 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 range of punishment for the offense of Capital Murder of which you found the Defendant guilty is death or confinement in the Texas Department of Criminal Justice, Institution Division, for life.

REGARDING SPECIAL ISSUE NUMBER ONE

The state must prove Special Issue No. 1 submitted to you beyond a reasonable doubt, it is not required that the State's proof excludes all doubt, and you shall return a special verdict of "YES" or "NO" on Special Issue No. 1.

In deliberating on Special Issue No. 1, you shall consider all the evidence at the guilt or innocence stage and the punishment stage of 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.

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.

All members of the jury need not agree on what particular evidence supports a "NO" answer to Special Issue No. 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 No. 1.

You are instructed that if you return a "YES" answer, to Special Issue No. 1, then and only then, are you to answer Special Issue No. 2.

REGARDING SPECIAL ISSUE NUMBER TWO

You are instructed that in answering Special Issue No. 2, you shall answer the issue "YES" or "NO".

You may not answer Special Issue No. 2 "NO" unless you agree unanimously, and you may not answer Special Issue No. 2 "YES" unless ten (10) or more of you agree to do so.

You need not agree on what particular evidence supports an affirmative finding on Special issue No. 2.

In answering Special Issue No. 2, you shall consider mitigating evidence to be evidence that a juror might regard as reducing the Defendant's moral blameworthiness. You shall also consider all of the evidence including the circumstances of the offense, the Defendant's character and background, and the personal moral culpability of the Defendant.

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 No. 2.

Should you return an affirmative finding on Special Issue No. 1 and a negative finding on Special Issue No. 2, the Court will sentence the Defendant to death. Should you return a negative finding on Special Issue No. 1, or should you return an affirmative finding on Special Issue No. 1 and an affirmative finding on Special Issue No. 2, the Court will sentence the Defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for life.

During your deliberations upon the following "Special Issues," you must not consider, discuss, nor relate any matters not in evidence before you. You should 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 Issue" 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 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."

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 the punishment stage of 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.

After the 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 counsel, you will retire and 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, the credibility of the witnesses, and the weight to be given to their testimony, but you are bound to receive the law from the Court, which has been given you and you are bound thereby.

You shall consider only the evidence and exhibits presented here in the courtroom through the witnesses who have testified. If you want to have the exhibits with you in the jury room for your deliberations, advise the bailiff. In deliberating on this case, you shall not talk to anyone except the members of the jury about it until you have been finally discharged from service on this jury.

If you want to communicate with the Court, explain what you want in writing and deliver your message, signed by your presiding juror, to the bailiff, who will deliver it to the Court. Do not orally explain to the bailiff what you want.

You are further instructed that in answering 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 this Charge. In answering the Special Issues, you may not refer to nor discuss any matter not in evidence before you.

No one has any authority to communicate with you except the bailiff who has you in charge. During your deliberations in this case, you must not consider, discuss, nor relate any matters not in

evidence before you. You should 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.

After you have reached a verdict, the Presiding Juror will certify thereto by using the appropriate form attached to this Charge and signing the same as Presiding Juror.

After you have arrived at your verdict, your Presiding Juror shall sign the attached form, which states the verdict you have reached. Then you will notify the bailiff.

MANNER OF DELIBERATIONS

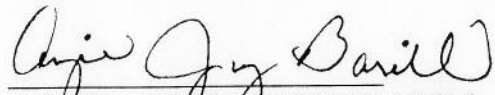
- a. In order to return a verdict, each juror must agree thereto.
- b. Jurors have a duty to consult with one another to deliberate with a view of reaching an agreement, if it can be done without abrogating individual judgment.
- c. Each juror must decide the case for themselves, but only after an impartial consideration of the evidence with their fellow jurors.
- d. In the course of deliberations, a juror should not hesitate to re-examine their own views and change their opinion if convinced it is erroneous.
- e. No juror should surrender their honest conviction as to the weight or effect of the evidence only because of the opinion of fellow jurors or for the mere purpose of returning a verdict.
- f. In arriving at your verdict, it will not be proper to fix the same by lot, chance, or any other method than by full, fair and free exercise of the opinion of the individual jurors under evidence admitted before you.
- g. Do not let bias or prejudice play any part in your deliberations.

These instructions are given to you because your conduct is subject to review, the same as that of the witnesses, parties, attorneys and the Judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The Presiding Juror or any other juror who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

After you have arrived at your verdict, you will notify the bailiff that you have reached your verdict.

Respectfully Submitted,



JUDGE ANGIE JUAREZ BARILL

346TH District Court 11-23-2009

IN THE 346TH DISTRICT COURT
OF EL PASO COUNTY, TEXAS

THE STATE OF TEXAS

VS.

FABIAN HERNANDEZ

§
§
§
§
§

NO. 20060D05825

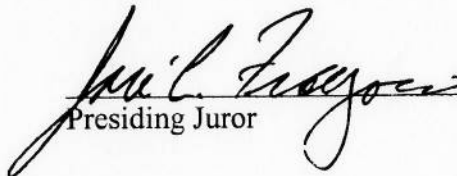
APR 24 2006
AM

SPECIAL ISSUE NUMBER ONE

Do you find from the evidence beyond a reasonable doubt that there is a probability that the Defendant, FABIAN HERNANDEZ, will commit criminal acts of violence that will constitute a continuing threat to society?

ANSWER

We, the Jury, unanimously find beyond a reasonable doubt that the answer to this Special Issue is "YES".


Presiding Juror

OR

We, the Jury, because at least ten (10) jurors have a reasonable doubt as to the probability that the Defendant, FABIAN HERNANDEZ, would commit criminal acts of violence that would constitute a continuing threat to society, determine that the answer to this Special Issue is "NO".

Presiding Juror

In the event that the jury has answered Special Issue No. 1 "YES", and only then, shall the jury answer Special Issue No. 2 to be found on the following page.

IN THE 346TH DISTRICT COURT
OF EL PASO COUNTY, TEXAS

THE STATE OF TEXAS

VS.

FABIAN HERNANDEZ

§
§
§
§
§

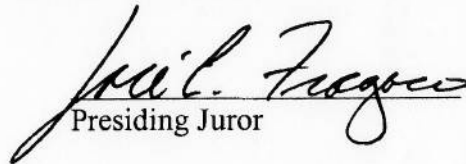
NO. 20060D05825

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 rather than a death sentence be imposed?

ANSWER

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


Presiding Juror

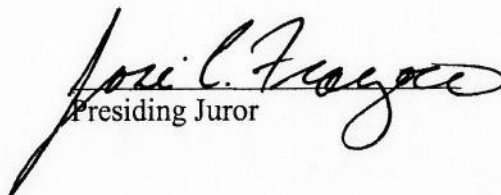
OR

We, the Jury, because at least ten (10) jurors find that there is a sufficient mitigating circumstance or circumstances to warrant a sentence of life imprisonment rather than a death sentence be imposed find that the answer to this Special Issue is "YES".

Presiding Juror

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.


Presiding Juror