

NO. 04-CR-3453-C

STATE OF TEXAS VS. JOHN HENRY RAMIREZ, JR.

IN THE 94TH DISTRICT COURT
NUECES COUNTY, TEXAS

CHARGE OF THE COURT ON PUNISHMENT

LADIES AND GENTLEMEN OF THE JURY:

By your verdict in this case you have found the defendant, JOHN HENRY RAMIREZ, JR., guilty of the offense of Capital Murder, which was alleged to have been committed on or about the 19th day of July, 2004, in Nueces County, Texas. It is necessary, now, for you to determine, from all the evidence in the case, answers to certain questions called "Special Issues," in these instructions. The court instructs you further as follows.

1.

The mandatory punishment for capital murder is death or confinement in the penitentiary for life.

2.

You are instructed that the defendant may testify in his own behalf if he elects to do so, but if he chooses not to do so, that fact cannot be taken 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

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you cannot and must not refer to nor allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against the defendant.

3.

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.

4.

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 there is clear proof 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."

5.

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, the Court will sentence the defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for life.

6.

Under the law applicable in this case, if the defendant is sentenced to imprisonment in the institutional division of the Texas Department of Criminal Justice for life, the defendant will become eligible for release on parole, but not until the actual time served by the defendant equals forty (40) years, without consideration of any good conduct time. Eligibility for parole does not guarantee that parole will be granted. It cannot accurately be predicted how the parole laws might be applied to this defendant if the defendant is sentenced to a term of imprisonment for life because the application of those laws will depend on decisions made by prison and parole authorities.

7.

In determining your answers to the questions, or special issues, submitted to you, you shall consider all the evidence submitted to you in this whole trial, which includes that phase of the trial wherein you were called upon to determine the guilt or innocence of the defendant, and this punishment phase of trial wherein you are now called upon to determine the answers to Special Issues submitted to you by the court.

8.

You shall consider all evidence submitted to you during the whole trial as to defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

9.

Voluntary intoxication may be considered as a mitigating factor.

10.

The burden of proof in Special Issue No. 1 rests upon the State, and it must prove the affirmative of such issue beyond a reasonable doubt.

You are instructed that you may not answer Special Issue No. 1 "Yes" unless all jurors agree to such answer. Further, you may not answer this Special Issue "No" unless ten (10) or more jurors agree. It is not necessary that members of the jury agree on what particular evidence supports a negative answer--that is, an answer of "No"--to Special Issue No. 1.


11.

Special Issue No. 1, with forms for answers, is as follows:

Special Issue No. 1

Is there a probability that the defendant, JOHN HENRY RAMIREZ, JR. 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 this Special Issue is "YES."



Presiding Juror

OR

Answer: We, the Jury, because at least ten (10) jurors have a reasonable doubt as to the probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society, determine that the answer to this Special Issue No. 1 is "No."

Presiding Juror

In the event the jury is unable to agree upon an answer to Special Issue No. 1 under the conditions and instructions outlined above, the Presiding Juror will not sign either form of answer to the Special Issue.

12.

You are further instructed that if the jury makes an affirmative finding to Special Issue No. 1 -- that is, an answer of "Yes," then the jury shall answer Special Issue No. 2 below.

You will answer this Special Issue No. 2 "Yes" or "No."

You may not answer the Issue "No" unless all jurors agree to such answer and you may not answer such issue "Yes" unless ten (10) or more jurors agree to such answer.

The jury, however, need not agree on what particular evidence supports an affirmative finding on this Special Issue.

You are instructed that the term "mitigating evidence," as used herein, means evidence that a juror might regard as reducing the defendant's moral blameworthiness.


13.

Special Issue No. 2, with forms for answer, is as follows:

Special Issue No. 2

Whether, 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, 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 and determine beyond a reasonable doubt that the answer to this Special Issue is "No."



Presiding Juror

OR

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

Presiding Juror

In the event that the jury is unable to agree to an answer to this Special Issue under the conditions and instructions given herein, the Presiding Juror will not sign either form of answer to the Special Issue.

14.

During the deliberations, the jury may not communicate with anyone except the Court or the officer in charge of the jury; separate for any purpose without permission of the Court; discuss the case except with each other in the privacy of the jury room; or consider or discuss matters not in evidence including personal knowledge of information about any fact or person connected with the case.


15.

Communications to the Court must be in writing. Written communications from the jury will be delivered to the Court by the officer in charge of the jury.

16.

After the arguments of counsel, the jury will go to the jury room to begin its deliberations.

FILED: 12/18/08
DATE



BOBBY GALVAN
JUDGE PRESIDING