

CAUSE NO. CR09-066

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
VS. § RUSK COUNTY, TEXAS
BLAINE KEITH MILAM § 4TH JUDICIAL DISTRICT

COURT'S CHARGE ON PUNISHMENT

LADIES AND GENTLEMEN OF THE JURY:

By your verdict returned in this case you have found the defendant, Blaine Keith Milam, guilty of the offense of Capital Murder, which was alleged to have been committed in Rusk County, Texas on or about the 2nd day of December, 2008. It is necessary, now, for you to determine from all the evidence in the case, answers to certain questions called "Special Issues" in this charge.

The Court instructs you in answering these "Special Issues" as follows:

I.

The mandatory punishment for capital murder of which you have found the defendant guilty is either death or confinement in the Institutional Division of the Texas Department of Criminal Justice for life.

II.

You are instructed that in answering Special Issue Number One, you shall answer "Yes" or "No."

The State has the burden of proving beyond a reasonable doubt that Special Issue Number One should be answered "Yes," and the burden of proof on this issue never shifts to the defendant.

In deliberating on Special Issue Number One, you shall consider all the evidence at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background and

character and the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

You may not answer Special Issue Number One "Yes" unless you agree unanimously.

You may not answer Special Issue Number One "No" unless ten (10) or more jurors agree. Members of the jury need not agree on what particular evidence supports a negative answer to Special Issue Number One.

It is not required that the State prove Special Issue Number One beyond all possible doubt; it is only required that the State's proof excludes all "reasonable doubt" concerning the defendant. You are instructed that if you return an affirmative finding, that is a "Yes" answer, to Special Issue Number One, then and only then, are you to answer Special Issue Number Two.

III.

You are instructed that in answering Special Issue Number Two, you shall answer "Yes" or "No".

The State has the burden of proving beyond a reasonable doubt that Special Issue Number Two should be answered "Yes," and the burden of proof on this issue never shifts to the defendant.

In deliberating on Special Issue Number Two you shall consider all the evidence at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background and character and the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

You may not answer Special Issue Number Two "Yes" unless you agree unanimously.

You may not answer Special Issue Number Two "No" unless ten (10) or more jurors agree. Members of the jury need not agree on what particular evidence supports a negative answer to Special Issue Number Two.

It is not required that the State prove Special Issue Number Two beyond all possible doubt; it is only required that the State's proof excludes all "reasonable doubt" concerning the defendant.

You are instructed that if you return an affirmative finding, that is a "Yes" answer, to Special Issue Number Two, then and only then, are you to answer Special Issue Number Three.

IV.

You are instructed that in answering Special Issue Number Three, you shall answer "Yes" or "No".

The Defendant has the burden of proving by a preponderance of the evidence that Special Issue Number Three should be answered "Yes," and the burden of proof on this issue never shifts to the State.

With respect to Special Issue Number Three, you are instructed that "mental retardation" means significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period, onset prior to the age of 18.

"Significantly sub-average general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age group mean for the tests used.

"Adaptive behavior" means the effectiveness with or degree to which a person meets standards of personal independence and social responsibility expected of the person's age and cultural

group.

In deliberating on Special Issue Number Three you shall consider all the evidence at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background and character and circumstances of the offense.

You may not answer Special Issue Number Three "Yes" unless ten (10) or more jurors agree. Members of the jury need not agree on what particular evidence supports an affirmative answer to Special Issue Number Three

You may not answer Special Issue Number Three "No" unless you agree unanimously.

It is required that the defendant prove Special Issue Number Three by a preponderance of the evidence. The phrase "preponderance of the evidence" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case.

You are instructed that if you return a negative finding, that is a "No" answer, to Special Issue Number Three, then and only then, are you to answer Special Issue Number Four.

V.

You are instructed that in answering Special Issue Number Four, you shall answer "Yes" or "No".

You may not answer Special Issue Number Four "No" unless you agree unanimously.

You may not answer Special Issue Number Four "Yes" unless ten (10) or more jurors agree.

Members of the jury need not agree on what particular evidence supports an affirmative answer to Special Issue Number Four.

In answering Special Issue Number Four you shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

VI.

You are instructed that if the jury returns an affirmative answer to Special Issue Number One, an affirmative answer to Special Issue Number Two, a negative answer to Special Issue Number Three, and a negative answer to Special Issue Number Four, the Court will sentence the defendant to death. Should you return a negative answer to Special Issue Number One, or a negative answer to Special Issue Number Two, or an affirmative answer to Special Issue Number Three, or an affirmative answer to Special Issue Number Four, the Court will sentence the defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for life.

VII.

You are instructed that 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 not be eligible for release on parole.

VIII.

You are further instructed that if there is any testimony before you in this case regarding the defendant's having committed offenses other than the offense alleged against him in this indictment, you cannot consider said testimony 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.

IX.

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.

X.

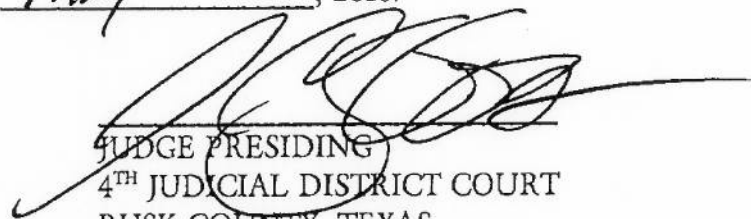
After argument of Counsel, you will retire to begin your deliberations. It is the duty of your presiding juror to preside at your deliberations and to vote with you in arriving at a verdict. During your deliberations upon the following special issues, you must not consider, discuss, nor relate any matters 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.

After you have retired to consider your verdict, no one has any authority to communicate with you except the officer who has you in charge. You may communicate with the Court in writing, signed by your presiding juror, through the officer who has you in charge. Do not attempt to talk with the officer, the attorneys, or the Court concerning any questions you may have.

You are instructed that your answers to the Special Issues shall be arrived at by due deliberation and not by drawing lots or by any other method of chance.

You are the exclusive judges of the facts proved and 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.

SIGNED this 27 day of May, 2010.


JUDGE PRESIDING
4TH JUDICIAL DISTRICT COURT
RUSK COUNTY, TEXAS

FILED
In the District Court of
Rusk County, Texas
on this the 27 day of MAY 20 10
at 8:54 o'clock A M.
By Jean Hodges CLERK
[Signature] Deputy

CAUSE NO. CR09-066

THE STATE OF TEXAS

§ IN THE DISTRICT COURT OF

VS.

§ RUSK COUNTY, TEXAS

BLAINE KEITH MILAM

§ 4TH JUDICIAL DISTRICT

SPECIAL ISSUE NUMBER ONE

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Blaine Keith Milam, 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."

FILED
In the District Court of
Rusk County, Texas
on this the 27 day of MAY 20 10
at 10:23 o'clock P M.
JEAN HODGES CLERK
By Ang B Deputy


PRESIDING JUROR

OR

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 Number One is "No."

PRESIDING JUROR

IF YOUR ANSWER TO SPECIAL ISSUE NUMBER ONE IS "YES," YOU SHALL PROCEED TO SPECIAL ISSUE NUMBER TWO. IF YOUR ANSWER TO SPECIAL ISSUE NUMBER ONE IS "NO," YOU SHALL CEASE YOUR DELIBERATIONS.

SPECIAL ISSUE NUMBER TWO

Do you find from the evidence beyond a reasonable doubt that the defendant, Blaine Keith Milam, actually caused the death of Amora Bain Carson or did not actually cause the death of Amora Bain Carson but intended to kill Amora Bain Carson or another or anticipated that a human life would be taken?

ANSWER

We, the jury, unanimously find and determine beyond a reasonable doubt that the answer to

this Special Issue is "Yes."

FILED
In the District Court of
Rusk County, Texas
on this the 27 day of MAY 20 10
at 10:23 o'clock P M.
JEAN HODGES, CLERK
By [Signature] Deputy

[Signature]
PRESIDING JUROR

OR

We, the jury, because at least ten (10) jurors have a reasonable doubt that the defendant, Blaine Keith Milam, actually caused the death of Amora Bain Carson or intended to kill Amora Bain Carson or another or anticipated that a human life would be taken, determine that the answer to this Special Issue Number Two is "No."

PRESIDING JUROR

IF YOUR ANSWER TO SPECIAL ISSUE NUMBER TWO IS "YES," YOU SHALL PROCEED TO SPECIAL ISSUE NUMBER THREE. IF YOUR ANSWER TO SPECIAL ISSUE NUMBER TWO IS "NO," YOU SHALL CEASE YOUR DELIBERATIONS.

SPECIAL ISSUE NUMBER THREE

Do you find, by a preponderance of the evidence, that the defendant, Blaine Keith Milam, is a person with mental retardation?

ANSWER

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

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Rusk County, Texas
on this the 27 day of MAY 20 10
at 10.23 o'clock P M.
JEAN HODGES, CLERK
By [Signature] Deputy

[Signature]
PRESIDING JUROR

OR

We, the jury, because at least ten (10) jurors find, by a preponderance of the evidence, that the defendant is a person with mental retardation, answer this Special Issue Number Three "Yes."

PRESIDING JUROR

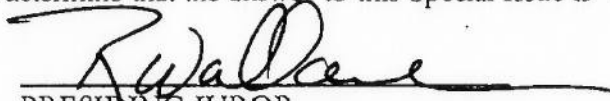
IF YOUR ANSWER TO SPECIAL ISSUE NUMBER THREE IS "NO," YOU SHALL PROCEED TO SPECIAL ISSUE NUMBER FOUR. IF YOUR ANSWER TO SPECIAL ISSUE NUMBER THREE IS "YES," YOU SHALL CEASE YOUR DELIBERATIONS.

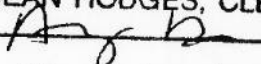
SPECIAL ISSUE NUMBER FOUR

Do you find from the evidence, 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, Blaine Keith Milam, that there is a sufficient mitigating circumstance or circumstances to warrant a sentence of life imprisonment rather than a death sentence be imposed?

ANSWER

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


PRESIDING JUROR

FILED
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on this the 27 day of May 20 10
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JEAN HODGES, CLERK
By  Deputy

OR

We, the jury, because at least ten (10) jurors find that 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 Number Four "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