

NO. 1108359D

THE STATE OF TEXAS
VS.
ERICK DANIEL DAVILA

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IN CRIMINAL DISTRICT COURT
NUMBER ONE IN AND FOR
TARRANT COUNTY, TEXAS

COURT'S CHARGE

MEMBERS OF THE JURY:

You have found the defendant, Erick Daniel Davila, guilty of the offense of capital murder. You are instructed that the defendant shall be punished by imprisonment in the institutional division of the Texas Department of Criminal Justice for life without parole or by death. In order for the Court to assess the proper punishment, the Court submits two issues to you.

ISSUE NUMBER 1: Whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.

You shall answer Issue Number 1 either "yes" or "no". The prosecution has the burden of proving that the answer to Issue Number 1 should be "yes" beyond a reasonable doubt, and if it fails to do so you must answer Issue Number 1 "no".

In deliberating on Issue Number 1, you shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, 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 Issue Number 1 "yes" unless you agree unanimously. You may not answer Issue Number 1 "no" unless 10 or more jurors agree. The members of the jury need not agree on what particular evidence supports a negative answer to Issue Number 1.

If the jury answers Issue Number 1 "yes", then you shall answer Issue Number 2, otherwise, do not answer Issue Number 2.

ISSUE NUMBER 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 sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed.

You shall answer Issue Number 2 either "yes" or "no". You are instructed that you may not answer Issue Number 2 "no" unless you agree unanimously. You may not answer Issue Number 2 "yes" unless ten or more jurors agree. The members of the jury need not agree on what particular evidence supports an affirmative finding on Issue Number 2. You shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

FILED
THOMAS A WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

FEB 26 2009

TIME 10:15 AM
BY [Signature] DEPUTY [Signature]

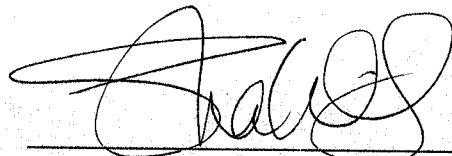
If the defendant is sentenced to confinement for life without parole, he is ineligible for release from the institutional division of the Texas Department of Criminal Justice on parole.

You are instructed that our law provides that a defendant may testify in his own behalf if he chooses to do so. This, however, is a privilege accorded to a defendant, and in the event he chooses not to testify, that fact cannot be taken as a circumstance against him. Erick Daniel Davila has chosen 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 him.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

Occasionally, during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the court and request that the court read the portion of disputed testimony to you from the official transcript. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts. The dispute must be settled by the official transcript, for it is the official transcript, rather than any juror's notes, upon which you must base your determination of the facts and ultimately, your verdict in this case.

After argument of counsel, you will retire to the jury room to deliberate. Any further communication must be in writing signed by your foreman through the bailiff to the Court. When you have reached a decision, you will use the attached forms to indicate your answers to the Issues. Your foreman should sign the Certification attesting to your special verdicts reflected in your answers to the Issues.



JUDGE SHAREN WILSON
Criminal District Court No. 1
Tarrant County, Texas

Now, bearing in mind the foregoing instructions, you will answer the following issues:

ISSUE NUMBER 1

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society?

In your special verdict, you will answer "yes" or "no". **Answer:** Yes

If your answer to Issue Number 1 is "yes" then you will answer Issue Number 2; otherwise, you will not answer Issue Number 2.

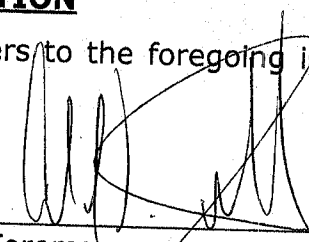
ISSUE NUMBER 2

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, 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?

In your special verdict, you will answer "yes" or "no". **Answer:** No

CERTIFICATION

We, the jury, having agreed upon the answers to the foregoing issues, return the same into court as our verdict.



Foreman

FILED
THOMAS A WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS
FEB 27 2009
TIME _____
BY 1133
DEPUTY