

ORIGINAL

NO. 04-9000606

THE STATE OF TEXAS

IN THE 167TH DISTRICT

VS.

COURT OF

ALBERTO GARCIA

TRAVIS COUNTY, TEXAS

CHARGE ON PUNISHMENT

Ladies and Gentlemen of the Jury:

The defendant, Alberto Garcia, has been found guilty by you of the offense of capital murder. You are instructed that a sentence of life or death is mandatory on conviction for capital murder. In order for the court to assess the proper punishment, three questions or issues are submitted to you. Before answering these issues, you will consider the following instructions:

I.

The State has the burden to prove beyond a reasonable doubt that the answer to issues one and two submitted to the jury should be "yes". The jury may not answer issues one and two "yes" unless the jury agrees unanimously on such answer. The jury may not answer issue three "no" unless the jury agrees unanimously on such answer. The jurors need not agree on what particular evidence supports an answer.

II.

The jury may not answer issue one or two "no" unless ten or more jurors agree. If any juror has a reasonable doubt as to the answer to issues one and two, the juror shall vote "no" as to that issue. The jury may not answer issue number three "yes" unless ten or more jurors agree. The jurors need not agree on what particular evidence supports an answer.

The jury may not discuss or consider the effect of failure of the jury to agree on the answer to an issue.

III.

In answering the issues hereinafter submitted, you may consider all of the evidence admitted during the first phase of the trial, before your verdict of guilty, as well as all of the evidence admitted during the second phase of the trial.

IV.

In arriving at the answers to the issues 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 opinion of each individual juror.

SEP 04 2008

at 11:00 a.m.
Amalia Rodriguez-Mendoza, Clerk

V.

You are instructed that there is testimony before you in this case regarding the defendant having committed other acts or participated in other transactions other than the offense alleged against him in the indictment in this case. You cannot consider such other acts or transactions unless you first find and believe beyond a reasonable doubt that the defendant committed such acts or participated in such transactions to the extent that he could be held criminally responsible, but if you do not so believe, or if you have a reasonable doubt thereof, you will not consider such testimony for any purpose.

You are further instructed that a person is criminally responsible for an offense committed by the conduct of another if acting with intent to promote or assist the commission of the offense he solicits, encourages, directs aids, or attempts to aid the other person to commit the offense.

VI.

In a criminal case the law permits a defendant to testify in his own behalf but, he is not compelled to do so and the same law provides that the fact that a defendant does not testify shall not be considered as a circumstance against him. You will, therefore, not consider that the defendant did not testify as a circumstance against him; and you will not during your deliberations allude to, comment on, or in any manner refer to the fact that the defendant has not testified.

VII.

After the reading of this charge, you shall not be permitted to separate from each other without permission of the court, nor shall you talk with anyone not of your jury. After argument of counsel, you will retire and consider your answers to the issues submitted to you. It is the duty of your foreperson to preside in the jury room and vote with you on the answers to the issues submitted.


JUDGE PRESIDING

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VERDICT

ISSUE NO. 1.

Do you find from the evidence beyond a reasonable doubt that the conduct of the defendant that caused the deaths of Eleazar Hinojosa and John Parrish was committed deliberately and with reasonable expectation that the deaths of Eleazar Hinojosa and John Parrish would result?

Answer "Yes" or "No"

Answer: Yes

ISSUE NO. 2

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?

Answer "Yes" or "No"

Answer: No

Filed In The District Court
of Travis County, Texas

SEP 05 2008

at 10:30 AM.
Amalia Rodriguez-Mendoza, Clerk

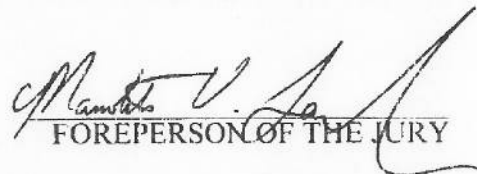
ISSUE NO. 3

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, that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed?

You are instructed that in answering this issue, you shall answer the issue "Yes" or "No." You may not answer the issue "No" unless the jury unanimously agree, and you may not answer the issue "Yes" unless ten or more jurors agree. The jury shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

Answer: _____

We, the jury, having answered the foregoing issues, return the same into Court as our verdict.


FOREPERSON OF THE JURY

Questions 9/4/08

① What if one of the jurors refuses to participate in the discussion?

Martha U. Sanchez

SEP 04 2008

at 4:00 P.M.
Amalia Rodriguez-Mendoza, Clerk

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TRAVIS COUNTY, TEXAS

SUPPLEMENTAL CHARGE ON PUNISHMENT

I regret that all the law permits me to do in response to your question number two is to refer you to the court's charge and ask that you rely on that and the evidence in arriving at your verdict.

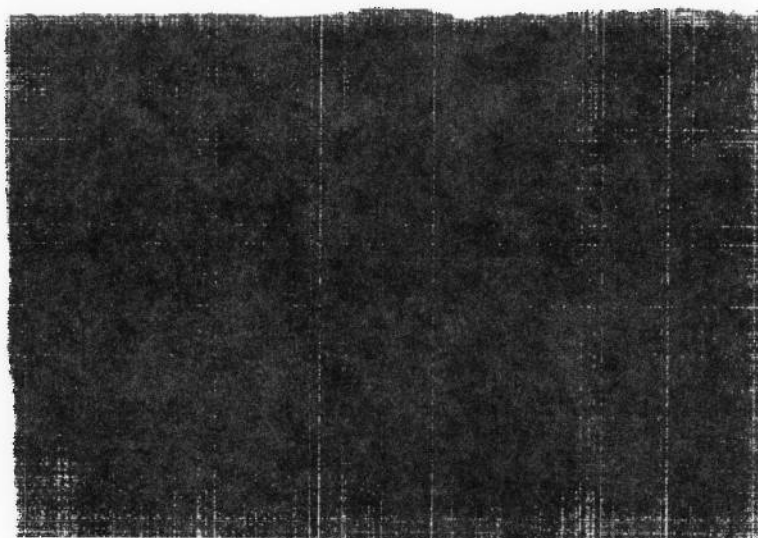


JUDGE PRESIDING

Filed in The District Court
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Amalia Rodriguez-Mendoza, Clerk



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TRAVIS COUNTY, TEXAS

SUPPLEMENTAL CHARGE ON PUNISHMENT

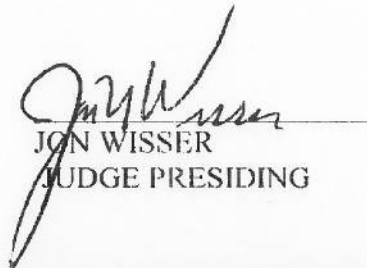
Ladies and Gentlemen of the Jury:

You are instructed that if you have answered questions No. 1 and No. 2 "yes" you should proceed to question No. 3. If you have answered either questions No. 1 or No. 2 "no" you do not have to consider and answer question No. 3.

Filed in The District Court
of Travis County, Texas

SEP 04 2008

at 4:00 P.M.
Amalia Rodriguez-Mendoza, Clerk


JON WISSER
JUDGE PRESIDING

