

NO. 14-CR-1302-F

STATE OF TEXAS VS. DANIEL GARCIA  
IN THE 214TH DISTRICT COURT  
NUECES COUNTY, TEXAS

**FILED**

JUN 18 2015

**PUNISHMENT CHARGE**

ANNE SCRENTZEN, CLERK  
COUNTY DISTRICT CLERK, NUECES COUNTY, TEXAS  
311  
DEPUTY

**MEMBERS OF THE JURY:**

By your verdict, you have found the Defendant, DANIEL GARCIA guilty of COUNT 1: CAPITAL MURDER, a Capital Felony, and COUNT 2: AGGRAVATED ASSAULT, a Second Degree Felony, you will proceed now to assess punishment. In performing this task, you will be guided by these additional instructions.

1.

In addition as to Count 2, the state alleges for enhancement purposes that the defendant has previously been finally convicted of a felony, the prior conviction being on February 24, 2006 in Cause Number 05-CR-4314-B, in the 117<sup>th</sup> District Court of Nueces County, Texas, the defendant was convicted of the offense of Burglary of a Habitation. To this allegation the Defendant has pleaded true.

2.

**COUNT 1**

The mandatory punishment for capital murder is death or confinement in the penitentiary for life without parole.

3.

Two special issues, numbered one and two, are included in this charge pertaining to Count 1. You are instructed to answer the two special issues either “yes” or “no” in accordance with the instructions given in this charge.

In deliberating on your answers to both special issues one and two, you are instructed as follows:

- (1) The State has the burden of proving beyond a reasonable doubt that special issue one should be answered “yes” and special issue two should be answered “no.”
- (2) 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;
- (3) You may not answer special issue one “yes” or special issue two “no” unless the jury agrees unanimously, and you may not answer either special issue one “no” or special issue two “yes” unless 10 or more members of the jury agree; and
- (4) The members of the jury need not agree on what particular evidence supports a positive answer to special issue one or a negative answer to special issue two.

If you do not find and believe from the evidence beyond a reasonable doubt that the answer to special issue one should be “yes,” or if you have a reasonable doubt thereof, then you shall answer the special issue one “no.”

If you do not find and believe from the evidence beyond a reasonable doubt that the answer to special issue two should be “no”, or if you have a reasonable doubt thereof, then you shall answer the special issue two “yes.”

If you have answered special issue one “no,” then you shall cease your deliberations.

4.

You are further instructed that if the jury returns an affirmative finding on special issue one and a negative answer to special issue two, the Court shall sentence the defendant to death. If the jury returns a negative finding on special issue one or a positive finding on special issue two, the Court shall sentence the defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for life without parole.

5.

If the jury’s answers are unanimous to the special issues answered, then the presiding juror may sign each special issue for the entire jury. If any answer or answers are not unanimous, but agreed to by at least 10 members of the jury, as set out above, then the 10 or more jurors who agree shall individually sign the special

issue.

6.

## COUNT 2

An individual adjudged guilty of a felony of the second degree shall be punished by confinement in the Institutional Division of the Texas Department of Criminal Justice for any term of not less than 2 years or more than 20 years. In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.00.

If it be shown on the trial on any 2<sup>nd</sup> Degree felony that the Defendant has previously been convicted of a felony offense, an individual adjudged guilty of a felony of the second degree and enhanced by a prior felony offense shall be punished by confinement in the Institutional Division of the Texas Department of Criminal Justice for any term of not less than 5 years but not more than 99 years or Life. In addition to imprisonment, an individual adjudged guilty of a felony of the second degree enhanced by a prior felony may be punished by a fine not to exceed \$10,000.00.

7.

Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a

prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served equals one-half of the sentence imposed, without consideration of any good conduct time he may earn. If the defendant is sentenced to a term of less than four years, he must serve at least two years before he is eligible for parole. Eligibility for parole does not guarantee that parole will be granted.

It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant.

8.

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 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.

9.

You shall not arrive at your verdict by lot or chance. It must be based upon the law set out in this Charge and upon your consideration and discussion of the facts and circumstances established by the evidence admitted before you. On the issue of punishment, you may consider evidence admitted at both stages of the trial.

10.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given the testimony.

11.

You shall not discuss how long the Defendant will be required to serve the punishment you impose. Such matters come within the exclusive jurisdiction of the Texas Board of Pardons and Paroles.

12.

Any verdict reached must be unanimous. Verdict Forms applicable to this case are attached to the Charge. If a verdict is reached, it will be indicated by the Presiding Juror signing his or his name to the appropriate Verdict Form.

13.

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.

14.

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.

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

DATE: June 18<sup>th</sup>, 2015

  
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JOSE LONGORIA  
JUDGE PRESIDING



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NUECES COUNTY, TEXAS

COUNT 1

SPECIAL ISSUE NUMBER ONE

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, DANIEL GARCIA, 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 No. 1 is "YES."

*Reyana S. Rocha*  
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

If your answer to this special issue is "no," and is not unanimous, then the 10 or more jurors who agree should sign individually below:

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**SPECIAL ISSUE NUMBER TWO**

Do you find, 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?

**Answer:** We, the jury, unanimously find and determine beyond a reasonable doubt that the answer to this Special Issue No.2 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 No. 2 "YES."

\_\_\_\_\_  
Presiding Juror

If your answer to this special issue is "yes," and is not unanimous, then the 10 or more jurors who agree should sign individually below:

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COUNT 2

USE ONLY ONE FORM:

We, the Jury, having found the Defendant, DANIEL GARCIA, guilty of the offense of COUNT 2: AGGRAVATED ASSAULT, assess the Defendant's punishment at \_\_\_\_\_ (2 – 20) years confinement in the Institutional Division of the Texas Department of Criminal Justice and by a fine of \$ \_\_\_\_\_ (Not to exceed \$10,000) (If no fine is assessed, write "none.").

\_\_\_\_\_  
PRESIDING JUROR

OR

We, the Jury, having found the Defendant, DANIEL GARCIA, guilty of the offense of COUNT 2: AGGRAVATED ASSAULT, further find that the Defendant has previously been convicted of one felony as alleged by the state, assess the Defendant's punishment at 75 yr (5 – 99/life) years confinement in the Institutional Division of the Texas Department of Criminal Justice and by a fine of \$ 5000.00 (Not to exceed \$10,000) (If no fine is assessed, write "none.").

B.S. Roche  
PRESIDING JUROR