

NO. 2008-CR-5920

THE STATE OF TEXAS                   §            IN THE DISTRICT COURT  
VS.                                       §            186TH JUDICIAL DISTRICT  
JOE ESTRADA                           §            BEXAR COUNTY, TEXAS

CHARGE OF THE COURT ON PUNISHMENT

MEMBERS OF THE JURY:

By your verdict returned in this case, you have found the defendant, Joe Estrada, guilty of capital murder, as alleged in the indictment.

You are instructed that a sentence of life without parole in the Texas Department of Criminal Justice or death is mandatory upon conviction of a capital felony.

It now becomes your duty to consider all the evidence in this case and determine the answers to certain questions which will be set forth for your consideration. The questions will be termed "Issues" in this charge, and must be answered "Yes" or "No"; the punishment to be assessed the defendant will be assessed based on your answers to these issues.

You are further instructed that in answering the Issues submitted to you, the jury must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feelings.

You are instructed that the State must prove Issue No. 1 beyond a reasonable doubt.

In deliberating upon Issue No. 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.

The jury may not answer Issue No. 1 "Yes" unless there is unanimous agreement of the individual jurors upon that answer.

The jury may not answer Issue No. 1 "No" unless ten (10) or more jurors agree upon that answer.

In determining the answer Issue No. 1 you are instructed that you need not agree on what particular evidence supports a negative answer to the issue.

**Issue No. 1 is:**

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Joe Estrada, 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 the answer to Issue No. 1 is "Yes."

**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,  
answer Issue No. 1 "No."

You are instructed that if you return a verdict of "No" to Issue No. 1 then you shall cease your deliberations.

You are further instructed that if you return a verdict of "Yes" to Issue No. 1, only then are you to answer Issue No. 2, and your answer to Issue No. 2 shall be "yes" or "no."

In deliberating upon Issue 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.

The jury may not answer Issue No. 2 "No" unless there is unanimous agreement of the individual jurors upon that answer.

The jury may not answer Issue No. 2 "Yes" unless ten (10) or more jurors agree on that answer.

In determining the answer to Issue No. 2 you are instructed that you need not agree on what particular evidence supports an affirmative finding on the issue and shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

**Issue No. 2 is:**

State whether, taking into consideration all 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 are sufficient mitigating circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

**Answer:** We, the jury, unanimously find and determine that the answer to Issue No. 2 is "No."

OR

**Answer:** We, the jury, because at least ten (10) jurors find that there is a sufficient mitigating circumstance or are sufficient mitigating circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, answer to Issue No. 2 is "Yes."

If there is any evidence before you that the defendant may have committed any offense or act of misconduct other than the offense of which you have convicted him, you are instructed that you may consider this evidence in determining the answers to the Issues in the case at hand, but you may only consider the evidence if you first find beyond a reasonable doubt that the defendant committed such other offense or act of misconduct, if any. In the event you have a reasonable doubt as to whether any other such offense or act of misconduct was committed, or as to whether the defendant was involved in such other offense or act of misconduct, then you will wholly disregard the evidence, if any, which may relate to any such matter.

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 or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever.

You are instructed that if you answer that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment in the institutional division of the Texas Department of Criminal Justice for life without parole.

If the defendant is sentenced to confinement for life without parole, he is ineligible for release from the department on parole.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the testimony, but you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

Respectfully submitted,

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Judge Dick Alcalá  
Judge Presiding  
By Assignment

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VERDICT FORM

**ISSUE NO. 1:**

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Joe Estrada, 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 Issue No. 1 is "Yes."

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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 Issue No. 1 is "No."

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PRESIDING JUROR

If you have answered Issue No. 1 "Yes," then answer the following Issue No. 2.

**ISSUE NO. 2:**

Taking into consideration all the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, is there a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed?

**Answer:** We, the jury, unanimously find and determine that the answer to Issue No. 2 is "No."

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PRESIDING JUROR

OR

**Answer:** We, the jury, because at least ten (10) jurors taking into consideration all the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, find and determine that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death

sentence be imposed, answer Issue No. 2 "Yes."

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PRESIDING JUROR

We, the Jury, return in open court the above answers as our answers to the Issues submitted to us, and the same is our verdict in this case.

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PRESIDING JUROR