

THE STATE OF TEXAS

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IN THE 19th JUDICIAL

V.

DISTRICT COURT OF

RICKEY DONNELL CUMMINGS

McLENNAN COUNTY, TEXAS

CHARGE OF THE COURT
(PUNISHMENT PHASE)

LADIES AND GENTLEMEN OF THE JURY:

By the verdict returned in this case you have found the Defendant, Rickey Donnell Cummings, guilty of the offense of Capital Murder as charged in the indictment. It is now your duty to determine, from all the evidence in this case, the answers to certain questions called "Special Issues" in this charge. The Court instructs you in answering these "Special Issues" as follows:

1.

The mandatory punishment for the offense of 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 without parole.

2.

You are instructed that in answering Special Issue No. 1, you shall answer "Yes" or "No".



Charge

FILED
7 Day of Nov, 2012
at 8:33 o'clock A M

Charge of the Court; State of Texas v. Rickey Donnell Cummings - Page 1

KAREN C. MATKIN
DISTRICT CLERK
McLennan County, Texas
By Royal Howard
Deputy

Verdict

7th FILED
Day of Nov, 2012
at 2:11 o'clock P M

KAREN C. MATKIN
DISTRICT CLERK
McLennan County, Texas
By Suzanne Bruns
Deputy

The State has the burden of proving beyond a reasonable doubt that Special Issue No. 1 should be answered "Yes".

In deliberating on Special Issue No. 1 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 or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

You may not answer Special Issue No. 1 "Yes" unless you agree unanimously.

You may not answer Special Issue No. 1 "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 No. 1.

You are further instructed that you are not to be swayed by mere conjecture, passion, prejudice, public opinion, or public feeling in considering all of the evidence before you and in answering Special Issue No. 1.

It is not required that the State prove Special Issue No. 1 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 No. 1, then and only then, are you to answer Special Issue No. 2.

3.

You are instructed that in answering Special Issue No. 2, you shall answer "Yes" or "No".

The State has the burden of proving beyond a reasonable doubt that Special Issue No. 2 should be answered "Yes".

You may not answer Special Issue No. 2 "Yes" unless you agree unanimously.

You may not answer Special Issue No. 2 "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 No. 2.

You are further instructed that you are not to be swayed by mere conjecture, passion, prejudice, public opinion, or public feeling in considering all of the evidence before you and in answering Special Issue No. 2.

It is not required that the State prove Special Issue No. 2 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 No. 2, then and only then, are you to answer Special Issue No. 3.

4.

You are instructed that in answering Special Issue No. 3, you shall answer "Yes" or "No".

You may not answer Special Issue No. 3 "No" unless you agree unanimously.

You may not answer Special Issue No. 3 "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 No. 3.

In answering Special Issue No. 3 you shall consider mitigating evidence to be evidence that a juror might regard as reducing the Defendant's moral blameworthiness.

You are again instructed that you are not to be swayed by mere conjecture, passion, prejudice, public opinion or public feeling in considering all of the evidence before you in answering Special Issue No. 3.

5.

You are instructed that if the jury returns an affirmative answer to Special Issue No. 1, an affirmative answer to Special Issue No. 2, and a negative answer to Special Issue No. 3, the Court will sentence the Defendant to death. Should you return a negative answer to Special Issue No. 1, or a negative answer to Special Issue No. 2, or an affirmative answer to Special Issue No. 3, the Court will sentence the Defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for Life without parole. A Defendant sentenced to Life without parole is ineligible for release on parole .

6.

You are 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 the indictment in this case, 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. It is not necessary that all of you agree that the Defendant committed these other crimes or acts, but unless you, as an individual juror, believe

beyond a reasonable doubt that the Defendant committed such acts, you may not consider this evidence for any purpose.

7.

Our law provides that a Defendant may testify in his own behalf if he elects to do so. This, however, is a right afforded to a Defendant, and in the event he elects not to testify, that fact cannot be taken as a circumstance against him. In this case, the Defendant has elected not to testify in the punishment phase, 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 the Defendant.

8.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, and no juror is permitted to communicate to any other juror anything he might have heard regarding the case from any source other than the witness stand.

In deliberating on this case you are not to refer to any matter or issue not in evidence before you; nor talk about this case to anyone not of your jury.

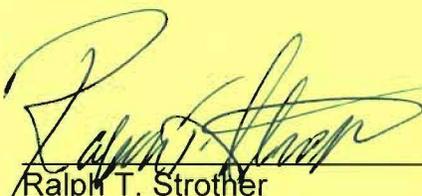
You are instructed that your answers to the Special Issues shall be arrived at by due deliberation and not by drawing lots or by any other method of chance.

You are the exclusive judges of the facts proved, 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.

During trial it was permissible for you to take notes. You may carry those notes to the jury room for your personal use during deliberation on the court's charge. You may not share these notes with other jurors; however, you may discuss the contents of your notes. Your personal recollection of the evidence takes precedence over any notes you have taken. A juror may not rely on the notes of another juror.

Certain testimony will be read back to you by the Court reporter if you request. To request that testimony be read back to you, you must follow these rules. The Court will allow testimony to be read back to the jury only if the jury, in a writing signed by the presiding juror, (1) states that it is requesting that testimony be read back, (2) states that it has a disagreement about a specific statement of a witness or a particular point in dispute, and (3) identifies the name of the witness who made the statement. The Court will then have the Court reporter read back only that part of the statement that is in disagreement.

You shall have this written charge with you when you go to the jury room.



Ralph T. Strother
Presiding Judge of the
19th Judicial District Court
McLennan County, Texas

READ TO THE JURY ON
November 7, 2012 AT
_____ P.M.

SPECIAL ISSUE NO. 1

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

ANSWER: yes


Presiding Juror

If your answer to this Special Issue is "No", and is not unanimous, then the ten (10) or more jurors who agree should sign individually below.

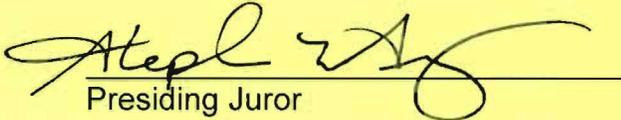
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IF YOUR ANSWER TO SPECIAL ISSUE NO. 1 IS "YES", YOU SHALL PROCEED TO SPECIAL ISSUE NO. 2. IF YOUR ANSWER TO SPECIAL ISSUE NO. 1 IS "NO"; YOU SHALL CEASE YOUR DELIBERATIONS.

SPECIAL ISSUE NO. 2

Do you find from the evidence beyond a reasonable doubt that the Defendant, Rickey Donnell Cummings, actually caused the deaths of Tyus Sneed and Keenan Hubert or did not actually cause the deaths of Tyus Sneed and Keenan Hubert but intended to kill Tyus Sneed and Keenan Hubert or another or anticipated that a human life would be taken?

ANSWER: yes


Presiding Juror

If your answer to this Special Issue is "No", and is not unanimous, then the ten (10) or more jurors who agree should sign individually below.

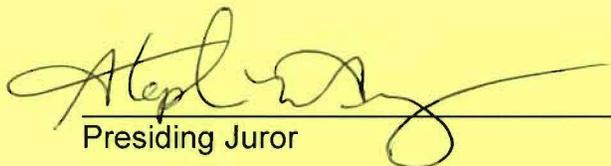
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IF YOUR ANSWER TO SPECIAL ISSUE NO. 2 IS "YES", YOU SHALL PROCEED TO SPECIAL ISSUE NO. 3. IF YOUR ANSWER TO SPECIAL ISSUE NO. 2 IS "NO"; YOU SHALL CEASE YOUR DELIBERATIONS.

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

ANSWER: NO



Presiding Juror

If your answer to this Special Issue is "Yes", and is not unanimous, then the ten (10) or more jurors who agree should sign individually below.

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VERDICT RECEIVED ON
November 7, 2012 AT
_____.M.