

415

CAUSE NO. 1384794

THE STATE OF TEXAS § IN THE 337TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
OBEL CRUZ-GARCIA § JANUARY TERM, A. D., 2013

Members of the Jury:

By your verdict returned in this case you have found the defendant, Obel Cruz-Garcia, guilty of the offense of capital murder, which was alleged to have been committed on or about the 30th day of September, 1992, in Harris County, Texas. In order for the Court to assess the proper punishment, it is necessary now for you to determine, from all the evidence in the case, the answers to certain questions, called "Special Issues," in this charge. The Court instructs you in answering these "Special Issues" as follows:

The mandatory punishment for capital murder is death or confinement in the Texas Department of Criminal Justice, Institutional Division, for life.

In determining your answers to the questions, or special issues, submitted to you, you shall consider all the evidence submitted to you in this trial. You shall consider all evidence submitted to you during the trial as to the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

You are instructed that when you deliberate on the questions posed in the special issues, you are to consider all relevant mitigating circumstances, if any, supported by the evidence, whether presented by the State or the defendant.

The State must prove Special Issue No. 1 submitted to you beyond a reasonable doubt, and you shall return a Special Verdict of "YES" or "NO" on Special Issue No. 1.

In deliberating on Special Issue No. 1 you shall consider all the evidence admitted at the trial, including but not limited to evidence of the defendant's background, 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 or affirmative answer to Special Issue No.1.

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

It is not required that the State prove Special Issue No. 1 beyond all possible doubt; it is 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, and only then, are you to answer Special Issue No. 2.

The State must prove Special Issue No. 2 submitted to you beyond a reasonable doubt, and you shall return a Special Verdict of "YES" or "NO" on Special Issue No. 2.

In deliberating on Special Issue No. 2 you shall consider all the evidence admitted at the trial, including but not limited to evidence of the defendant's background, 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. 2 "YES" unless you agree unanimously.

You may not answer Special Issue No. 2 "NO" unless ten (10) or more jurors agree.

You need not agree on what particular evidence supports a negative or affirmative answer to Special Issue No. 2.

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

It is not required that the State prove Special Issue No. 2 beyond all possible doubt; it is 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, and only then, are you to answer Special Issue No. 3.

In deliberating on Special Issue No. 3 you shall consider all the evidence admitted at the trial, including but not limited to evidence of the defendant's background, character, or the

circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

You shall consider mitigating evidence to be evidence that you might regard as reducing the defendant's moral blameworthiness.

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.

You need not agree on what particular evidence supports a negative or affirmative answer to Special Issue No.3.

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

You are instructed that if you answer Special Issue No. 1, and Special Issue No. 2 "Yes", and you answer Special Issue No. 3 "No", the court shall sentence the Defendant to death. You are further instructed that if you answer Special Issue No. 1 or Special Issue No. 2 "No", or you answer Special Issue No. 3 "Yes", the court shall sentence the Defendant to the Texas Department of Criminal Justice Institutional Division for life.

You may consider evidence of an extraneous crime or bad act in assessing punishment even if the defendant has not yet been charged with or finally convicted of the crime or act. However, you may consider such evidence only if the extraneous crime or bad act has been shown by the State beyond a reasonable doubt to have been committed by the defendant or is one for which the defendant could be held criminally responsible.

The prosecution does not have to prove an extraneous crime or bad act beyond all possible doubt. The prosecution's proof must exclude all reasonable doubt concerning the extraneous crime or bad act.

Therefore, if you find and believe beyond a reasonable doubt that the defendant committed an extraneous crime or bad act or could be held criminally responsible for an extraneous crime or bad act, then you may consider such evidence in assessing the defendant's punishment. However, if you have a reasonable doubt that the defendant committed an extraneous crime or bad act or could be held criminally responsible for an extraneous crime or bad act, then you may not consider such evidence in assessing punishment.

You are further instructed that any evidence that any witness has been convicted in any case or cases was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the credibility of the witness and the weight to be given his or her testimony, and you will not consider the same for any other purpose.

Under the law applicable in this case, if the defendant is sentenced to imprisonment in the institutional division of the Texas Department of Criminal Justice for life, the defendant will become eligible for release on parole, but not until the actual time served by the defendant equals thirty-five (35) calendar years. It cannot accurately be predicted how the parole laws might be applied to this defendant if the defendant is sentenced to a term of imprisonment for life because the application of those laws will depend on decisions made by prison and parole authorities, but eligibility for parole does not guarantee that parole will be granted.

You may consider the existence of the parole law. However, you are not to consider the manner in which the parole law may be applied to this particular defendant.

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

During your deliberations upon the "Special Issues," you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

In arriving at the answers to the "Special 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 exchange of the opinion of each individual juror.

After the reading of this charge, you shall not be permitted to separate from each other, nor shall you talk with anyone not of your jury. After argument of counsel, you will retire and consider your answers to the "Special Issues" submitted to you. It is the duty of your foreman to preside in the jury room and vote with you on the answers to the "Special Issues" submitted.

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

FILED

Chris Daniel
District Clerk

JUL 18 2013

Time: 3:05pm

Harris County, Texas

By: [Signature]

Deputy

Renee Magee

Renee Magee, Judge
337th District Court
Harris County, TEXAS

CAUSE NO. 1384794

THE STATE OF TEXAS § IN THE 337TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
OBEL CRUZ-GARCIA § JANUARY TERM, A. D., 2013

The Special Issues, with forms for your answers, are as follow:

SPECIAL ISSUE NO. 1

Do you find from the evidence beyond a reasonable doubt there is a probability that the defendant, Obel Cruz-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 is "Yes."

FILED
Chris Daniel
District Clerk
JUL 10 2013
Time: 4:30pm
By: [Signature]

[Signature]
Foreman of the Jury

OR

We, the jury, because at least ten (10) jurors have a reasonable doubt as to the matter inquired about in this Special Issue, find and determine that the answer to this Special Issue is "No."

Foreman of the Jury

SPECIAL ISSUE NO. 2

Do you find from the evidence beyond a reasonable doubt that Obel Cruz-Garcia, the defendant himself, actually caused the death of Angelo Garcia, Jr., on the occasion in question, or if he did not actually cause the death of Angelo Garcia, Jr., that he intended to kill Angelo Garcia, Jr., or that he anticipated that a human life would be taken?

ANSWER

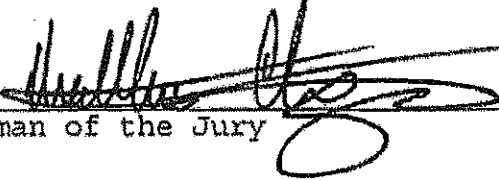
We, the jury, unanimously find and determine beyond a reasonable doubt that the answer to this Special Issue is "YES."

FILED

Chris Daniel
District Clerk

JUL 19 2013

Time _____
Ev _____
H. 302
Harris County, Texas
Dally



Foreman of the Jury

OR

We, the jury, because at least ten (10) jurors have a reasonable doubt that Obel Cruz-Garcia, the defendant himself, actually caused the death of Angelo Garcia, Jr., on the occasion in question, or that he intended to kill Angelo Garcia, Jr., or that he anticipated that a human life would be taken, determine that the answer to this Special Issue is "NO."

Foreman of the Jury

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In the event that the jury has answered "Special Issues" number 1, number 2 in the affirmative, and only then, shall the jury answer "Special Issue" number 3.

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, 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 "Special Issue" that you shall answer the issue "Yes" or "No."

You may not answer this issue "No" unless you agree unanimously, and you may not answer this issue "Yes" unless ten (10) or more of you agree to do so.

ANSWER

We, the jury, unanimously find and determine that the answer to this Special Issue is "No."

FILED

Chris Daniel
District Clerk

JUL 19 2013

Time: 4:00pm
Harris County, Texas
By: [Signature]
Deputy

[Signature]
Foreman of the Jury

OR

We, the jury, because at least ten (10) jurors agree that there is sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed, find that the answer to this Special Issue is "Yes."

Foreman of the Jury

After the jury has answered each of the Special Issues under the conditions and instructions outlined above, the Foreman should sign the verdict form below.

VERDICT

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

FILED

Chris Daniel
District Clerk

JUL 19 2013

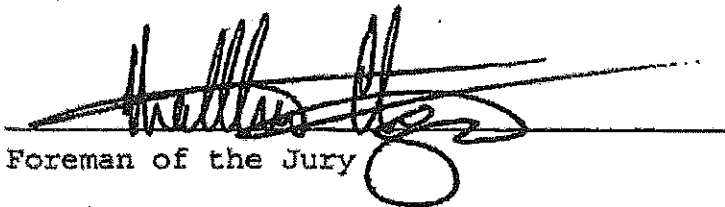
4:30 pm

Harris County, Texas

Time: _____

By _____

PW
Deputy


Foreman of the Jury