

CAUSE NO. 2015-DCR-2443-C

JUN 05 2018

THE STATE OF TEXAS

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IN THE DISTRICT COURT OF CAMERON COUNTY, TEXAS

v.

By  Deputy #27  
CAMERON COUNTY, TEXAS

GUSTAVO TIJERINA-SANDOVAL

197<sup>TH</sup> JUDICIAL DISTRICT

**CHARGE OF THE COURT ON PUNISHMENT**

**LADIES AND GENTLEMEN OF THE JURY:**

By your verdict in this case you have found the defendant Gustavo Tijerina Sandoval, Guilty of Capital Murder in Count I and Attempted Capital Murder in Count II of the indictment. It is necessary, now, for you to determine from all the evidence in the case, answers to certain questions called "Special Issues" as to punishment for the offense of Capital Murder. Further, you must also determine the punishment for the offense of Attempted Capital Murder. The Court instructs you further as follows:

**CAPITAL MURDER PUNISHMENT**

**I.**

You are instructed that the punishment for Capital Murder is either death or imprisonment in the Institutional Division of the Texas Department of Criminal Justice for life without the possibility of parole.

**II.**

In determining your answers to the Special Issues, submitted to you, you shall consider all the evidence submitted to you in this whole trial, which includes that phase of the trial wherein you were called upon to determine the guilt or innocence of the defendant, and this punishment phase of the trial wherein you are now called upon to determine the answers to Special Issues submitted to you by the Court. However, in this



punishment phase of trial you should not consider the instructions given you in the first phase (the guilt-innocence phase) of trial that relate to the law of parties and the responsibility of parties for the acts of others in determining what your answers to the Special Issues shall be.

### **III.**

It is necessary now for you to determine, from all the evidence in the case, the answers to certain Special Issues which are as follows:

**SPECIAL ISSUE NUMBER 1:** Whether there is a probability that the Defendant would commit criminal acts of violence that would constitute a continuing threat to society.

In deliberating on Special Issues Number 1 and Number 2, the jury shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character of the circumstances of the offense that mitigates for or mitigates against the imposition of the death penalty.

You may not answer Special Issues Number 1 "Yes" unless you agree unanimously

**SPECIAL ISSUE NUMBER 2:** Whether, 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, 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 if a jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment 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 possibility of parole.

You shall answer Special Issue Number 2 "Yes" or "No."

You are instructed that you may not answer Special Issue Number 2 "No" unless you agree unanimously.

You may not answer Special Issue Number 2 "Yes" unless ten (10) or more jurors agree.

Members of the jury need not agree on what particular evidence supports an affirmative finding on Special Issue Number 2.

In deliberating on Special Issue Number 2, you shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

If the jury returns an affirmative finding on each of the Special Issues Number 1 and a negative finding on Special Issue Number 2, the Court shall sentence the Defendant to death. If the jury returns a negative finding on either of Special Issues Number 1 or an affirmative finding to Special Issue Number 2, the Court shall sentence the Defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for life without the possibility of parole.

Please answer on the appropriate attached verdict form regarding punishment for the offense of Capital Murder and further consider the following instructions for the punishment for the offense of Attempted Capital Murder.

## **ATTEMPTED CAPITAL MURDER**

Punishment of the Defendant for the offense of Attempted Capital Murder at confinement in the Institutional Division of the Texas Department of Criminal Justice for not less than five (5) years nor more than ninety-nine (99) years or life. In addition thereto, a fine not to exceed \$10,000.00 may be assessed.

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 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, it is 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 or 30 years, whichever is less. Eligibility for parole does not guarantee that parole will be granted.

It cannot accurately be predicted how the parole law 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. 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 the 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.

The State has introduced evidence of extraneous crimes or bad acts other than the one charged in the indictment in this case. This evidence was admitted only for the purpose of assisting you, if it does, in determining the proper punishment for the offense for which you have found the defendant guilty. You cannot consider the testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other acts, if any, were committed.

The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant.

You are further instructed that in fixing the defendant's punishment, which you will show in your verdict, you may take into consideration all the facts shown by the evidence admitted before you in the full trial of this case and the law as submitted to you in this charge.

You are not to discuss among yourselves how long the accused would be required to serve the sentence that you impose. Such matters come within the exclusive jurisdiction

of the Board of Pardons and Paroles Division of the Texas Department of Criminal Justice and the Governor of the State of Texas, and must not be considered by you.

Your verdict must be by a unanimous vote of all members of the jury. In arriving at the amount of punishment to be assessed, it will not be proper for you to fix the same by lot, chance, any system of averages, or any other method than by a full, fair, and free exercise of the opinion of the individual jurors, and you must not refer to nor discuss any matter not in evidence before you.

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

No one has any authority to communicate with you except the officer who has you in charge. During your deliberations in this case, you must not consider, discuss, or relate any matters not in evidence before you. You should not consider or 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. After you have reached a unanimous verdict, the Presiding Juror will certify thereto by using the appropriate form attached to this charge and signing the same as Presiding Juror.

Following the arguments of counsel, you will retire to deliberate your verdict. When you have reached a verdict, you are to use the attached forms to indicate your answers to the Special Issues, and your presiding juror should sign the appropriate form to certify your verdict.

Signed this 5th day of June, 2018.

Magdalena Lopez  
JUDGE PRESIDING

FILED 11:31 o'clock 4 M  
ERIC GARZA - DISTRICT CLERK

JUN 05 2018

DISTRICT COURT OF CAMERON COUNTY, TEXAS  
By [Signature] Deputy #27

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Now, bearing in mind the foregoing instructions, you will answer the following Special Issues in the Verdict Form for Count I, Capital Murder and answer Verdict Form for Count II, Attempted Capital Murder:

**VERDICT FORM - COUNT I - CAPITAL MURDER**

**SPECIAL ISSUE NUMBER 1**

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?

In your verdict, you will answer "Yes" or "No."

Answer: We, the jury, unanimously find from the evidence beyond a reasonable doubt that the answer to Special Issue Number 1 is "Yes."

*Ramona Martinez Burjardo*  
PRESIDING JUROR



- OR -

Answer: We, the jury, because at least ten (10) jurors agree, find that the answer to Special Issue Number 1 is "No."

Jurors' Signatures:

Jurors' Printed Names:

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If your answer to Special Issues Number 1 is "Yes," then you will answer Special Issue Number 2; otherwise, you will not answer Special Issue Number 2.

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**SPECIAL ISSUE NUMBER 2**

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

In your verdict, you will answer "Yes" or "No."

Answer: We, the jury, because at least ten (10) jurors agree, find that the answer to Special Issue Number 2 is "Yes."

Jurors' Signatures:

Jurors' Printed Names:

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- OR -

Answer: We, the jury, unanimously find that the answer to Special Issue Number 2  
is "No."

*Ramona Martinez Guajardo*  
PRESIDING JUROR

