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NO. 14-CR-0694-H

STATE OF TEXAS VS. BRENDON GAYTAN

IN THE 347TH DISTRICT COURT
NUECES COUNTY, TEXAS

FILED

FEB 26 2015 1:50pm

ANNE LORENTZEN, CLERK
COUNTY & DISTRICT COURTS, NUECES COUNTY, TEXAS
BY:  DEPUTY

CHARGE OF THE COURT ON PUNISHMENT

LADIES AND GENTLEMEN OF THE JURY:

By your verdict in this case you have found the defendant, BRENDON GAYTAN, guilty of the offense of Counts 1 & 2: Capital Murder, which was alleged to have been committed on or about the 16th day of February, 2014, in Nueces County, Texas. It is necessary, now, for you to determine, from all the evidence in the case, answers to certain questions called "Special Issues," in these instructions. The court instructs you further as follows.

1.

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

2.

Three special issues, numbered one, two, and three, are included in this charge. You are instructed to answer the first two special issues either "yes" or "no" in accordance with the instructions given in this charge. Special issue three should be answered only if you have answered "yes" to both special issues one and two. If you have not answered "yes" to both special issues one and two, then

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you shall not proceed to answer special issue three.

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 issues one and two should be answered "yes."
- (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 either special issue one or two "yes" unless the jury agrees unanimously, and you may not answer either special issue one or two "no" 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 negative answer to either special issue one or two.

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

If you have answered either special issue one or two, or both, "no," then you shall cease your deliberations. If you have found beyond a reasonable doubt that the answers to both special issues one and two are "yes," then you shall next

consider special issue three.

In deliberating on your answer to special issue three, you are instructed as follows:

- (1) you may not answer special issue three "no" unless the jury agrees unanimously, and you may not answer special issue three "yes" unless 10 or more members of the jury agree;
- (2) the members of the jury need not agree on what particular evidence supports an affirmative finding on special issue three; and
- (3) in arriving at your answer, you shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

3.

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

4.

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.

5.

You are instructed that 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 never become eligible for release on parole,.

6.

After argument of Counsel, I will direct you to the Jury room to deliberate on your sentence in this case. Remember, your foreman presides over your deliberations, speaks for the Jury when communications with the Court are needed, and votes with the Jury on the issues before it, and reports the Jury's verdict on the form attached.

7.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed offenses or acts other than the offense

alleged against him in the indictment, you cannot consider said testimony, unless you first find and believe beyond a reasonable doubt that the defendant committed such other offense or acts, if any were committed, but if you do not so believe, or if you have a reasonable doubt thereof, you will not consider such testimony for any purpose.

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.

Do not arrive at your verdict by lot or chance. It must be based on the law in this charge and upon your consideration of the facts and circumstances shown by the evidence in this case. You may consider evidence admitted at both stages of this trial.

10.

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 is herein given you, and be governed thereby.

11.

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.

12.

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.

13.

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

DATE February 27, 2015


JUDGE PRESIDING

SPECIAL ISSUE NUMBER ONE

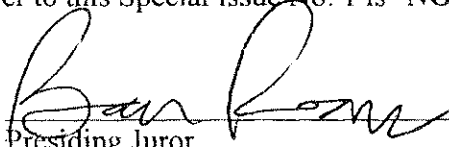
Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, BRENDON GAYTAN, would commit criminal acts of violence that would constitute a continuing threat to society?

Answer: We, the jury, unanimously find and determine beyond a reasonable doubt that the answer to this Special Issue No. 1 is "YES."

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

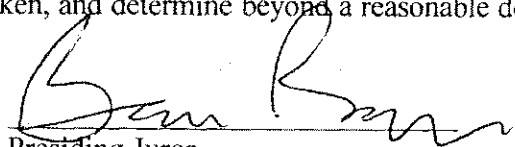
If your answer to this special issue is "no," and is not unanimous, then the 10 or more jurors who agree should sign individually below:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SPECIAL ISSUE NUMBER TWO

Do you find from the evidence beyond a reasonable doubt that the defendant, BRENDON GAYTAN, actually caused the deaths of the deceased, LILLYANNA VALENT and NEVAEH OLIVA, or did not actually cause the deaths of the deceased but intended to kill the deceased or another, or anticipated that a human life would be taken?

Answer: We, the jury, unanimously find that the defendant caused the deaths of the deceased, LILLYANNA VALENT and NEVAEH OLIVA, or intended to kill the deceased or another, or anticipated that a human life would be taken, and determine beyond a reasonable doubt that the answer to this Special Issue No. 2 is "YES."


Presiding Juror

OR

Answer: We, the Jury, because at least ten (10) jurors have a reasonable doubt as to whether the defendant caused the deaths of the deceased, LILLYANNA VALENT and NEVAEH OLIVA, or intended to kill the deceased or another, or anticipated that a human life would be taken, determine that the answer to this Special Issue No. 2 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:

IF YOUR ANSWERS TO BOTH SPECIAL ISSUE ONE AND SPECIAL ISSUE TWO ARE "YES," YOU SHALL PROCEED TO ANSWER SPECIAL ISSUE THREE.

IF EITHER OR BOTH OF YOUR ANSWERS TO SPECIAL ISSUE ONE AND SPECIAL ISSUE TWO ARE "NO," YOU SHALL CEASE YOUR DELIBERATIONS.

SPECIAL ISSUE NUMBER THREE

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. 3 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. 3 "YES."

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:

