

STATE OF TEXAS	§	IN THE 282 <sup>ND</sup> JUDICIAL
V.	§	DISTRICT COURT,
JUAN LIZCANO	§	DALLAS COUNTY, TEXAS

CHARGE OF THE COURT FOR THE PUNISHMENT PHASE

By your verdict in this case you have found Juan Lizcano (“the Defendant”), guilty of the offense of capital murder, alleged to have been committed on or about November 13, 2005, in Dallas County, Texas. It is now your duty to determine, from all the evidence in the case, answers to certain questions called special issues.

You are instructed that the punishment for the offense of capital murder is either death or confinement in the Institutional Division of the Texas Department of Criminal Justice for life without parole.

Three special issues, numbered one, two and three, are included in this charge. You are instructed to answer these three special issues either “Yes” or “No” in accordance with the instructions given in this charge. The special issues are as follows:

Special Issue No. 1: Do you find by a preponderance of the evidence that the Defendant is a person with mental retardation?

Special Issue No. 2: Do you find from the evidence beyond a reasonable doubt that there is a probability that the Defendant, Juan Lizcano, would commit criminal acts of violence that would constitute a continuing threat to

society?

Special Issue No. 3: 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, Juan Lizcano, 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?

INSTRUCTIONS REGARDING SPECIAL ISSUE NO. 1

In deliberating on your answer to Special Issue No. 1, you are instructed that the Defendant, Juan Lizcano, has the burden of proving by a preponderance of the evidence that Special Issue No. 1 should be answered "Yes."

"Preponderance of the evidence" means the greater weight of the credible evidence.

"Mental retardation" is a disability characterized by: (1) significantly sub-average general intellectual functioning; (2) accompanied by related limitations in adaptive functioning; (3) the onset of which occurs prior to the age of 18.

- "Significantly subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the group mean for the tests used.

"Adaptive behavior" is defined as the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

You may not answer Special Issue No. 1 “Yes” or “No” unless the jury agrees unanimously. Members of the jury need not agree on what particular evidence supports a “Yes” answer to Special Issue No. 1.

If you have unanimously answered “Yes” to Special Issue No. 1, then you shall cease your deliberations. If you have unanimously answered “No” to Special Issue No. 1, then you shall next consider Special Issue No. 2.

#### INSTRUCTIONS REGARDING SPECIAL ISSUE NO. 2

In deliberating on your answer to Special Issue No. 2, you are instructed that the State has the burden of proving beyond a reasonable doubt that Special Issue No. 2 should be answered “Yes.”

If you do not find and believe from the evidence beyond a reasonable doubt that the answer to Special Issue No. 2 should be “Yes,” or if you have a reasonable doubt thereof, then you shall answer the special issue “No.”

You shall consider all evidence admitted during 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.

You may not answer Special Issue No. 2 “Yes” unless the jury agrees unanimously, and you may not answer Special Issue No. 2 “No” unless 10 or more members of the jury agree. The members of the jury need not agree on what particular evidence supports a negative answer to Special Issue No. 2.

If you have answered "No" to Special Issue No. 2, then you shall cease your deliberations. If you have answered "Yes" to Special Issue No. 2, then you shall next consider Special Issue No. 3.

INSTRUCTIONS REGARDING SPECIAL ISSUE NO. 3

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.

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

In deliberating on your answer to Special Issue No. 3, you are instructed that you may not answer Special Issue No. 3 "No" unless the jury agrees unanimously, and you may not answer Special Issue No. 3 "Yes" unless 10 or more members of the jury agree. The members of the jury need not agree on what particular evidence supports an affirmative answer to Special Issue No. 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.

INSTRUCTIONS REGARDING ALL SPECIAL ISSUES

You are instructed that if the jury answers "No" to Special Issues No. 1 and

No. 3 and answers "Yes" to Special Issue No. 2, the Court shall sentence the defendant to death.

If the jury answers "Yes" to Special Issue No. 1 or No. 3 or answers "No" to Special Issue No. 2, then the Court shall sentence the Defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for life without parole.

If the jury's answers to the Special Issues No. 2 and No. 3 are unanimous, 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.

During your deliberations upon the special issues, you must not consider, discuss, nor relate any matters not in evidence before you. You shall 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, it will not be proper for you to fix the same by lot, chance, or any other method other than by a full, fair, and free exchange of the opinion of each individual juror.

You are not to be swayed by mere sentiment, conjecture, sympathy, passions, prejudices, public opinion, or public feeling in considering all the evidence before you and in answering the special issues.

In determining your answers to the special issues, 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 the special issues submitted to you by the court.

#### GENERAL INSTRUCTIONS

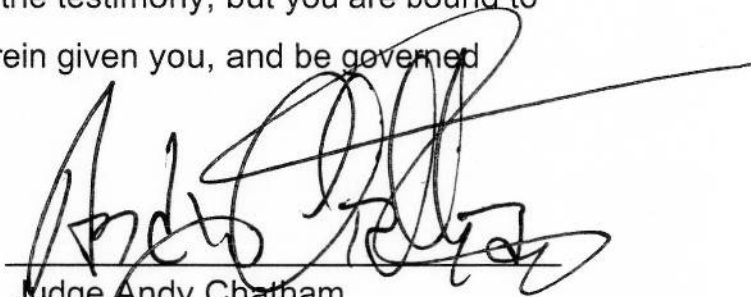
You are further instructed that if there is any evidence before you in this case regarding the Defendant having committed an offense or offenses other than the offense alleged against him in the indictment, you cannot consider this evidence for any purpose unless you find and believe beyond a reasonable 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.

You are further instructed the law allows the Defendant to testify in his own behalf at this phase of the trial, but a choice on his part not to do so is not a circumstance against him and no presumption can be indulged in by the jury for a choice on his part not to do so. You are instructed in this case not to consider, discuss or even refer to the choice on the part of the Defendant not to testify during your consideration of this case.

After the reading of this Charge, you shall not talk with anyone not of your jury. After the argument of counsel, you will retire to consider your answers to the special issues submitted to you. It is the duty of your presiding juror 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, 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.


A handwritten signature in black ink, appearing to read "Andy Chatham", written over a horizontal line.

Judge Andy Chatham  
282<sup>nd</sup> Judicial District Court  
Dallas County, Texas

**SPECIAL ISSUE NO. 1**

Do you find by a preponderance of the evidence that the Defendant, Juan Lizcano, is a person with mental retardation?

Answer: NO

  
\_\_\_\_\_  
PRESIDING JUROR

If your answer to Special Issue No. 1 is "No," you shall proceed to answer Special Issue No. 2.

If your answer to Special Issue No. 1 is "Yes," you shall cease your deliberations.



**SPECIAL ISSUE NO. 2**

Do you find from the evidence beyond a reasonable doubt that there is a probability that the Defendant, Juan Lizcano, 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 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 answer 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, 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: NO

\_\_\_\_\_  
PRESIDING JUROR

If your answer to this special issue is "Yes," and is not unanimous, then the 10 or more jurors who agree should sign individually below:

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