

CAUSE NO. 241-1251-08

THE STATE OF TEXAS

§

IN THE 241st JUDICIAL DISTRICT COURT OF

VS.

§

CLERK 241st JUD. DIST. COURT OF SMITH COUNTY, TEXAS

DEMONTRELL MILLER

§

SMITH COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

By your verdict returned in this case you have found the defendant, DEMONTRELL MILLER, guilty of the offense of Capital Murder, which was alleged to have been committed on or about the 1st day of June, 2008, in Smith County, Texas. It is necessary, now, for you to determine, from all of the evidence in the case, the answers to certain questions, called "Special Issues," in this charge.

The Court has received and accepted your verdict finding the defendant guilty of Capital Murder as charged in the Indictment. You shall no longer concern yourselves with the innocence or guilt of the Defendant, and you shall now limit your deliberations under all the evidence and law in this case to answering certain issues, called "special issues" in this Court's charge. The Court instructs you further, as follows:

1.

The mandatory punishment for capital murder is death or confinement in the institutional division of the Texas Department of Criminal Justice for life without the possibility of parole.

2.

In deliberating on Special Issue No. 1 and Special Issue No. 2 submitted in this charge, the jury shall consider all evidence admitted at the guilt or innocence stage and the punishment stage of

this trial, 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.

The burden of proof in answering Special Issue No. 1 rests upon the State and never shifts to the defendant. Special Issue No. 1 must be proved by the State beyond a reasonable doubt; therefore, before Special Issue No. 1 may be answered "Yes," all jurors must be convinced by the evidence beyond a reasonable doubt that the answer to such special issue should be "Yes."

If the jury unanimously determines (and only if such determination is unanimous) that the State has proved Special Issue No. 1 beyond a reasonable doubt, that is the State has proved beyond a reasonable doubt that there is a probability that the defendant, DEMONTRELL MILLER, would commit criminal acts of violence that would constitute a continuing threat to society, then the Jury Foreman will so record the Jury's answer of "Yes" to Special Issue No. 1 by signing his or her name to the finding reflecting such answer on the form provided for that purpose.

You are further instructed that if any juror, after considering the evidence and these instructions, has a reasonable doubt as to whether the answer to Special Issue No. 1 should be answered "Yes," then such juror should vote "No" to Special Issue No. 1 in the jury's deliberations.

If ten (10) jurors or more vote "No" to Special Issue No. 1, then the answer of the Jury shall be "No" to that issue, and the Jury Foreman will so record the Jury's answer of "No" by signing his or her name to the finding reflecting such answer on the form for that purpose.

If in answering Special Issue No. 1 the vote of the jurors is not unanimously "Yes" or not at least ten (10) in favor of an answer of "No," then there shall be no answer for that Special Issue and the Jury Foreman should not sign his or her name to any answer form for that Special Issue No. 1.

Members of the jury need not agree on what particular evidence supports a negative answer to Special Issue No. 1.

3.

The burden of proof in answering Special Issue No. 1 rests upon the State throughout the trial, and never shifts to the defendant.

The fact that a person has been arrested, confined, or indicted for, or otherwise charged with the offense gives rise to no inference at his trial.

With respect to any and all issues in this trial, the law does not require a defendant to produce any evidence at all and the defendant has no burden of proof as to any issue in the trial of this case.

It is not required that the prosecution prove an affirmative answer to Special Issue No. 1 beyond all possible doubt; it is required that the prosecution's proof excludes all "reasonable doubt" concerning an affirmative answer to Special Issue No. 1.

4.

You are further instructed that if the jury unanimously returns an affirmative finding to Special Issue No. 1, the jury shall answer Special Issue No. 2. If, however, the jury returns a negative answer to Special Issue No. 1; or if the jury has not answered Special Issue No. 1; then, under the court's instructions in this charge, do not answer Special Issue No. 2.

If the jury has answered Special Issue No. 1 "Yes", then the jury shall answer Special Issue No. 2 either "Yes" or "No."

Before Special Issue No. 2 may be answered "No," all jurors must be convinced that the answer to such issue should be "No." If the jury unanimously determines (and only if such

determination is unanimous) that the answer to Special Issue No. 2 is "No," then the Jury Foreman will so record the Jury's answer to Special Issue No. 2 by signing his or her name to the finding reflecting such answer on the form provided for that purpose.

If ten (10) jurors or more vote "Yes" to Special Issue No. 2, then the answer of the Jury shall be "Yes" to that issue, and the Jury Foreman will so record the Jury's answer by signing his or her name to the finding reflecting such answer on the form for that purpose.

If in answering Special Issue No. 2 the vote of the jurors is not unanimously "No" or not at least ten (10) in favor of an answer of "Yes," then there shall be no answer for that Special Issue and the Jury Foreman should not sign his or her name to any answer form for that Special Issue No. 2.

Members of the jury need not agree on what particular evidence supports an affirmative answer to Special Issue No. 2.

In deliberating on Special Issue No. 2 submitted in this charge, the jury shall consider all evidence admitted at the guilt or innocence stage and the punishment stage of this trial, 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, in determining whether or not there is sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed. Further, the jury is instructed to consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

5.

You are instructed that under the law applicable in this case, if the 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 parole.

6.

You are instructed that if a jury answers 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.

Under the law applicable in this case, if the defendant is sentenced to confinement for life without parole in the Institutional Division of the Texas Department of Criminal Justice, the defendant will be ineligible for release from the department on parole.

7.

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 motive, opportunity, intent, preparation, plan, knowledge, identity of the defendant or absence of mistake or accident, if any,

in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

8.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however is a privilege accorded 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, 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, nor will you refer to or discuss any matter not before you in evidence.

9.

At times throughout the trial, the Court has been called upon to pass on the question of whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings, and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witnesses. As to the offer of evidence that has been rejected by the Court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

Specifically, the Court has sustained objections and given you explicit instructions to disregard irrelevant, improper, and inadmissible questions, answers, and evidence in this trial. You are reminded of the instruction of the court given you in this trial and you are instructed to carefully

follow those instructions in your deliberations. You are to deliberate only on evidence that is properly before you in this trial and to give this case individual deliberation based on only the evidence admitted before you in this trial.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion upon any matter of fact in this case, and if you have observed anything which you have or may interpret as the Court's opinion upon any matter of fact in the case, you must wholly disregard it.

10.

You are further instructed that any statements of counsel made during the course of the trial or during argument, not supported by the evidence, or statements of law made by counsel not in harmony with the law as stated to you by the Court in these instructions, are to be wholly disregarded.

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

11.

It is not permissible of you, under any circumstances, in answering the Special Issues, to decide the same by lot, or by straws, or by any other method of chance. Deciding a case by lot, or by any method of chance, is not permissible, and you are instructed in this case that you must not

The Special Issues, with forms for your answer or answers, are as follows:

SPECIAL ISSUE NO. 1

Is there a probability that the defendant, DEMONTRELL MILLER, would commit criminal acts of violence that would constitute a continuing threat to society?

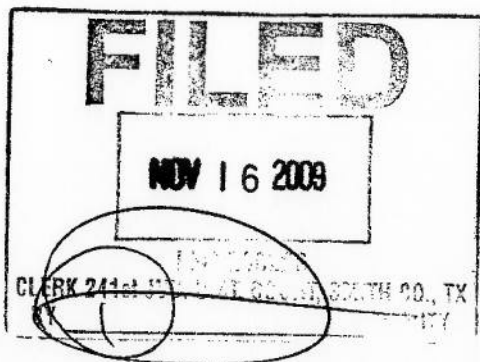
ANSWER TO SPECIAL ISSUE NUMBER 1:

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


FOREMAN

OR

We, the Jury, because at least ten (10) jurors do not find or have a reasonable doubt as to the matter inquired about in this Special Issue No. 1, find and determine that the answer to this Special Issue No. 1 is "NO."



FOREMAN

IF YOU HAVE UNANIMOUSLY ANSWERED SPECIAL ISSUE NO. 1 "YES" THEN ANSWER SPECIAL ISSUE NO. 2. OTHERWISE, DO NOT ANSWER SPECIAL ISSUE NO. 2.

SPECIAL ISSUE NO. 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, is there sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed?

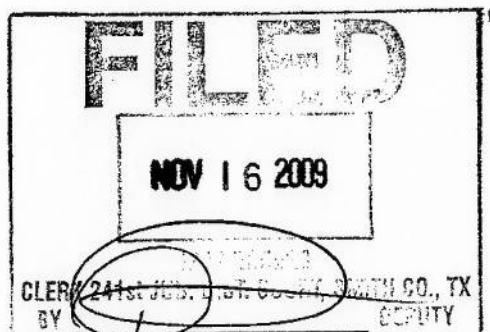
ANSWER TO SPECIAL ISSUE NUMBER 2:

We, the jury unanimously find and determine that the answer to this Special Issue No. 2 is "NO."


FOREMAN

OR


We, the Jury, because at least ten (10) jurors do find the answer to Special Issue No. 2 is "yes", do hereby find and determine that the answer to this Special Issue No. 2 is "YES."



FOREMAN

JURY CERTIFICATE

WE, THE JURY, RETURN IN OPEN COURT THE ABOVE ANSWER OR ANSWERS AS OUR ANSWER OR ANSWERS TO THE SPECIAL ISSUE OR SPECIAL ISSUES SUBMITTED TO US, AND THE SAME IS OUR VERDICT IN THIS CASE.


FOREMAN

