

ORIGINAL

CAUSE #15987

THE STATE OF TEXAS § IN THE 329TH DISTRICT COURT
VS. § OF
JAMES GARRETT FREEMAN § WHARTON COUNTY, TEXAS

JURY CHARGE

MEMBERS OF THE JURY:

By your verdict returned in this case you have found the defendant, James Garrett Freeman, guilty of the offense of capital murder, which was alleged to have been committed on or about the 17th day of March, 2007, in Wharton 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 the offense of capital murder of which you have found the defendant guilty is death or confinement in the Texas Department of Criminal Justice, Institutional Division, for life without parole.

In determining your answers to the questions, or 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.

You shall consider all evidence submitted to you during the whole 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.

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. Special issue

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No. 1 asks: do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, James Garrett Freeman, would commit criminal acts of violence that would constitute a continuing threat to society?

In deliberating on Special Issue No. 1 you shall consider all the evidence admitted at guilt or innocence stage and the punishment stage of trial, including 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 their 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

You are instructed that in answering Special Issue No. 2, you shall answer the issue "YES" or "NO". Special Issue No. 2 asks 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, James Garrett Freeman, 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.

You may not answer Special Issue No. 2 "NO" unless you agree unanimously, and you may not answer Special Issue No. 2 "YES" unless (10) or more of you agree to do so.

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

A mitigating circumstance may include, but is not limited to any aspect of the defendant's character, background, record, emotional stability or instability, intelligence or circumstances of the crime which you believe make a death sentence inappropriate.

In answering Special Issue No. 2 you shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness, including evidence of the defendant's background, character, or the circumstances of the offense that mitigates against the imposition of the death penalty.

You are again 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 in answering Special Issue No. 2.

If the jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed (meaning "YES" TO Special Issue No. 2) the Court will sentence the defendant to imprisonment in the institutional division of the Texas Department of Criminal Justice for life without parole. A person sentenced to life without parole under this article is ineligible for release from the department on parole.

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 without parole, the defendant will be ineligible for release on parole.

If the Jury answers "YES" to Special Issue #1 and "NO" to Special Issue No. 2, the court shall sentence the defendant to death.

You are instructed that the defendant may testify in his own behalf if 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

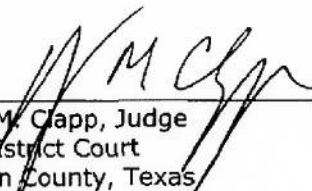
fact throughout your deliberations or take it into consideration for any purpose whatsoever.


During your deliberations upon the "Special Issues", you must not consider, discuss, or 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.


Randy M. Clapp, Judge
329th District Court
Wharton County, Texas

FILED
at 9:15 o'clock A.M.
NOV 06 2008
DENICE KUCERA MALOTA
DISTRICT CLERK, WHARTON CO., TEXAS
By  Deputy

CAUSE #15987

THE STATE OF TEXAS § IN THE 329TH DISTRICT COURT
VS. § OF
JAMES GARRETT FREEMAN § WHARTON COUNTY, TEXAS

SPECIAL ISSUE NO. 1

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, James Garrett Freeman, 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
at 1:45 o'clock P.M.

NOV 07 2008

DENICE KUCERA MALOTA
DISTRICT CLERK, WHARTON CO., TEXAS


Foreman of the Jury

OR

By  We, the jury, because at least ten (10) jurors have a reasonable doubt as to the probability that the defendant, James Garrett Freeman, would commit criminal acts of violence that would constitute a continuing threat to society, determine that the answer to this Special Issue is "NO".

Foreman of the Jury

In the event that the jury has answered Special Issue No. 1 in the affirmative, and only then, shall the jury answer Special Issue No. 2 to be found on the following page.

CAUSE #15987

THE STATE OF TEXAS § IN THE 329TH DISTRICT COURT
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JAMES GARRETT FREEMAN § WHARTON COUNTY, TEXAS

SPECIAL ISSUE NO. 2

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, James Garrett Freeman, 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?

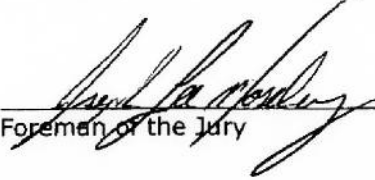
ANSWER

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

FILED
at 1:45 o'clock P.M.

NOV 07 2008

DENICE KUCERA MALOTA
DISTRICT CLERK, WHARTON CO., TEXAS
We, the jury, because at least ten (10) jurors find 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, find that the answer to this Special Issue is "YES".


Foreman of the Jury

OR

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 to be found on the last page of this charge.

CAUSE #15987

THE STATE OF TEXAS

§

IN THE 329TH DISTRICT COURT

VS.

§

OF

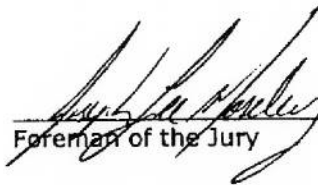
JAMES GARRETT FREEMAN

§

WHARTON COUNTY, TEXAS

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.


Foreman of the Jury

FILED
at 1:45 o'clock P.M.

NOV 07 2008

DENICE KUCERA MALOTA
DISTRICT CLERK, WHARTON CO., TEXAS

By 

I, Denice Kucera Malota, District Clerk of Wharton County, Texas, do hereby certify that the foregoing is a true, correct and full copy of the instrument herein set out as appears of record in the District Court of Wharton County, Texas.
This _____ day of _____ 2008

Page 7 of 7

DENICE KUCERA MALOTA, DISTRICT CLERK

Deputy

