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IN THE
SUPREME COURT OF FLORIDA

SC17-583

IN RE: STANDARD CRIMINAL JURY INSTRUCTIONS
IN CAPITAL CASES

NOTICE OF SUPPLEMENTAL AUTHORITY

The undersigned respectfully submits the attached supplemental authority, which was referenced during oral argument in this matter on March 7, 2018:

1. *United States v. Johnson*, 223 F.3d 665, 675 (7th Cir. 2000).

2. Special jury verdict forms used in the following recent federal penalty phase proceedings in Florida:

   United States v. Jermaine Michael Julian, No. 8:07-CR-9-T-27TGW, ECF No. 246 (M.D. Fla. Mar. 5, 2009)

   United States v. Ricardo Sanchez, No. 06-80171-CF-HURLEY, ECF No. 860 (S.D. Fla. Mar. 31, 2009)

   United States v. Daniel Troya, No. 06-80171-CF-HURLEY, ECF No. 859 (S.D. Fla. Mar. 31, 2009)

   United States v. Kenneth Paul Wilk, No. 04-60216-CR-COHN, ECF No. 988 (S.D. Fla. June 13, 2007)

   United States v. Luis Gonzalez-Lauzan, No. 02-20572-CR-COHN, ECF No. 236 (S.D. Fla. Feb. 25, 2004)

   United States v. Jose Denis, No. 99-714-CR-MORENO, ECF No. 390 (S.D. Fla. Mar. 26, 2003)

I certify that the foregoing was served to all parties connected to this case through the e-portal.

Respectfully Submitted,

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223 F.3d 665
United States Court of Appeals,
Seventh Circuit.

UNITED STATES of America, Plaintiff–Appellee,
v.
Darryl Lamont JOHNSON, Defendant–Appellant.

No. 99–1327.
|
Argued June 28, 2000.
|
Decided Aug. 3, 2000.

Synopsis

Defendant was convicted in the United States District Court for the Northern District of Illinois, Suzanne B. Conlon, J., of ordering murder of person assisting in federal criminal investigation and ordering murder of that person and another in furtherance of continuing criminal enterprise, and was sentenced to death. Defendant appealed. The Court of Appeals, Posner, Circuit Judge, held that: (1) defendant waived right to represent himself at trial; (2) replacing juror who did not appear for sentencing hearing with alternate did not violate statute; (3) prison warden's rebuttal testimony was not false; (4) probative value of warden's testimony about gang-ordered killings in prison was not outweighed by danger of misleading, confusing, or prejudicing jury; and (5) inconsistencies in jurors' responses as to existence of mitigating factors did not invalidate verdict recommending death sentence.

Affirmed.

Attorneys and Law Firms

***667** David E. Bindi (argued), Office of the U.S. Atty., Criminal Div., Chicago, IL, for Plaintiff-Appellee.

Terence H. Campbell, Cotsirilos, Stephenson, Tighe & Streicker, Lawrence C. Marshall (argued), Northwestern University Legal Clinic, Chicago, IL, for Defendant-Appellant.

Before POSNER, EASTERBROOK, and MANION, Circuit Judges.

Opinion

POSNER, Circuit Judge.

The defendant, a high-ranking official of the Gangster Disciples, a large Chicago street gang whose activities are described in our recent opinion in *United States v. Jackson*, 207 F.3d 910 (7th Cir.2000), was convicted of having ordered the murder of (1) a person who was assisting in a federal criminal investigation and (2) that person and one other in furtherance of a continuing criminal enterprise, and was sentenced to death. 18 U.S.C. §§ 924(i), 1121(a); 21 U.S.C. § 848(e). The victims were gang members who had been arrested but who had then been released pending their trials and who the defendant feared were working with the government to catch him. He does not deny having committed the two murders; his appeal primarily challenges the conduct of the sentencing hearing. He does, however,

raise one point about the conduct of the trial itself—that his right to represent himself was infringed—and we begin there.

Two weeks before the trial began, the defendant filed a pro se motion captioned "Defendants Motion to Proceed Pro–Se." In it he argued that his lawyers' representation of him was so deficient that it violated his right to effective assistance of ***668** counsel. But rather than asking for the appointment of new counsel, the motion concluded: "Petitioner knows absolutely nothing about the law. But petitioner feels strongly that as his life is on the line, he can do more for his defense than his attorney's have so far." It is unlikely that his statement about knowing nothing about the law is false modesty. The defendant is not an educated person, and his IQ is only 74.

The motion was never ruled on. Apparently it had gotten lost in the shuffle, *United States v. Taglia*, 922 F.2d 413, 416 (7th Cir.1991), for the judge stated at a post-trial hearing that she did not remember having seen it and that she would have remembered it if she had seen it, given the gravity and novelty of the case—this was only the second federal death penalty trial in the Northern District of Illinois since the reinstatement of the federal death penalty, and the first to result in a death sentence. The defendant did not renew the motion. His lawyers were unaware of and never mentioned it. He made a number of pro se motions during the course of the trial and in none did he express any dissatisfaction with his lawyers or a desire to represent himself.

[1] [2] [3] [4] [5] Although a defendant has an absolute right to defend himself against a criminal charge, however grave, unless he is mentally incompetent to decide to do so, *Godinez v. Moran*, 509 U.S. 389, 396–400, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993); *Davis v. Greer*, 13 F.3d 1134, 1138 (7th Cir.1994), the right can be waived either expressly or by implication. There are two types of implied waiver. One, the only one that can properly be called "waiver," is where an intention to relinquish the right, although not expressed, can be inferred. The other, properly called "forfeiture" rather than "waiver" in recognition that waiver is canonically defined as an intentional relinquishment of a right, *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), is where the right is taken away from its holder as a penalty for failure to assert it in a clear and timely manner. It is not always clear when a case is one of actually implied waiver or one of forfeiture. The "waiver" of the right of self-representation illustrates the problem. When as in the usual case the defendant is represented by a lawyer, the fact of representation is taken to be the defendant's waiver of his right to represent himself, since "representation by counsel and self-representation are mutually exclusive entitlements," *Cain v. Peters*, 972 F.2d 748, 750 (7th Cir.1992), so that "assertion of one constitutes a de facto waiver of the other." *United States v. Singleton*, 107 F.3d 1091, 1096 (4th Cir.1997). "Defendants forfeit self-representation by remaining silent at critical junctures before or during trial." *Cain v. Peters, supra*, 972 F.2d at 750. See also *Munkus v. Furlong*, 170 F.3d 980, 983–84

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(10th Cir.1999). Failure to assert the right of self-representation waives it without regard to the intentions of the defendant in not asserting it.

[6] Among the grounds (catalogued in *id.* at 984) for forfeiture of the right is delay in asserting it. *United States v. Oakey*, 853 F.2d 551, 553 (7th Cir.1988). This case was more than a year old, and on the verge of trial, when the defendant, who until then had been represented by counsel, filed his motion. But because a motion for self-representation is timely if made before the jury is empaneled, *United States v. Akers*, 215 F.3d 1089, 1097 (10th Cir.2000); *United States v. Walker*, 142 F.3d 103, 108 (2d Cir.1998), unless made for the purpose of delaying or disrupting the trial, *Moore v. Calderon*, 108 F.3d 261, 264 (9th Cir.1997), which is not argued, we set the question of timeliness to one side and with it the issue of forfeiture of the defendant's right to represent himself. What this is is a case of implicit waiver in the strict, the intentional sense. The defendant did not want to represent himself, though he didn't say so in so many words. The purpose of the motion, it is apparent, was to express in the most dramatic possible ***669** fashion his current dissatisfaction with his lawyers. No even marginally rational person who knew absolutely nothing about the law would want to defend himself against a capital charge without a lawyer's assistance. The defendant's fit of dissatisfaction with his lawyers soon passed. He neither moved to have them replaced nor renewed his motion to be permitted to represent himself. His appellate counsel, a specialist in defending death-penalty cases, has not pointed to any conduct by the defendant's trial lawyers that might have impelled the defendant to think himself better able than they to defend the case. The only plausible inference from the defendant's conduct is that he acquiesced in the denial by judicial inaction of his motion and thereby deliberately relinquished his right of self-representation. *Cain v. Peters, supra*, 972 F.2d at 750; *Wilson v. Walker*, 204 F.3d 33, 37–39 (2d Cir.2000) (per curiam); *Brown v. Wainwright*, 665 F.2d 607, 610–11 (5th Cir.1982) (en banc); *United States v. Montgomery*, 529 F.2d 1404, 1406 (10th Cir.1976).

We add that as he has made no representation that if we order a new trial he will persist in his desire to represent himself, his claim that his right of self-representation was infringed may be moot, as well as having no merit for the reasons just indicated. For if as we expect he would be represented by lawyers at any new trial, he would not have vindicated the right of self-representation upon which he premises his appeal from the denial of that right. The point is not that at a subsequent trial he would be estopped to invoke his right to counsel, an argument rejected in the only cases to have considered the issue. *United States v. McKinley*, 58 F.3d 1475, 1483 (10th Cir.1995); *Johnstone v. Kelly*, 812 F.2d 821 (2d Cir.1987) (per curiam). The point is rather that if he wants on remand exactly what he had in his first trial, namely representation by competent lawyers, it is difficult to understand what he lost by the denial of his motion: he had at the first trial what he wants at the second.

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[7] We turn to the sentencing issues. One of the jurors who participated in the deliberations that resulted in the defendant's being found guilty failed to show up for the sentencing hearing and was immediately replaced by one of the alternates, who had sat through the trial but had not participated in the jury deliberations. The judge made no effort to find out why the juror who was replaced had not shown up, but it is a sound practice immediately to replace a no-show juror, as authorized by Fed. R. Crim P. 24(c); see *United States v. Peters*, 617 F.2d 503, 505 (7th Cir.1980) (per curiam); *United States v. Gay*, 967 F.2d 322, 324–25 (9th Cir.1992); *United States v. Rodriguez*, 573 F.2d 330, 332 (5th Cir.1978); *United States v. Domenech*, 476 F.2d 1229, 1232 (2d Cir.1973), out of consideration for the remaining jurors and in order to remind them of the seriousness of their duty.

[8] The defendant's lawyer made no objection at trial to dropping the tardy juror, or to the fact that under the then Fed.R.Crim.P. 24(c) (1998), the alternate juror should have been discharged when the jury retired to consider the defendant's guilt, *United States v. Patterson*, 23 F.3d 1239, 1252 (7th Cir.1994); *United States v. Josefik*, 753 F.2d 585, 587 (7th Cir.1985); *United States v. Webster*, 162 F.3d 308, 347 (5th Cir.1998), or—the argument he now presses most vigorously on us—that the participation of the alternate in the sentencing deliberations violated 18 U.S.C § 3593(b)(1). That section provides that a federal death-penalty sentencing hearing is to be conducted "before the jury that determined the defendant's guilt," with certain exceptions, as where the defendant waived his right to a jury trial or the jury that determined his guilt has already been discharged. § 3593(b)(2). The defendant argues that the rights conferred by this provision and by Rule 24(c) are ones his lawyer could not waive for him, and so the failure to object at trial to their denial should be disregarded.

***670** **[9]** Certain rights are personal to the criminal defendant. See, e.g., Fed.R.Crim.P. 11(c)(6) ("Before accepting a plea of guilty ... the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands ... the terms of any provision in a plea agreement waiving the right to appeal or to collaterally attack the sentence"); *Jones v. Barnes*, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983) ("the accused has the ultimate authority to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal"); *United States v. Shukri*, 207 F.3d 412, 416 (7th Cir.2000); *Sexton v. French*, 163 F.3d 874, 885 (4th Cir.1998). But rights that have a mainly tactical significance and require legal training to appreciate and weigh are for the defendant's lawyer to assert or to waive as the lawyer sees fit, e.g., *United States v. Boyd*, 86 F.3d 719, 723 (7th Cir.1996); *United States v. Washington*, 198 F.3d 721 (8th Cir.1999); *United States v. Plitman*, 194 F.3d 59, 63 (2d Cir.1999); see generally Wayne R. LaFave, Jerold H. Israel & Nancy J. King, *Criminal Procedure* § 11.6(a), pp. 598–603 (2d ed.1999), though subject of course

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to eventual judicial second-guessing should the defendant claim that the lawyer made a tactical blunder so grave as to fall below the minimum level of professionally competent representation.

A highly pertinent example is jury selection. *United States v. Boyd, supra*. For what we have here is an alleged right to shape the composition of the jury. And so if there is a right to insist that should one of the jurors who deliberated on guilt drop out before the sentencing hearing an entire new jury be impaneled for sentencing, it is a right that falls within the domain of tactics rather than that of basic rights. This conclusion is compelled by common sense as well as by the decision in *Boyd*. Bearing in mind that it takes only one juror to nix a death sentence, a lawyer who senses that one or more of the jurors who found his client guilty nevertheless seems sufficiently *simpatico* not to vote for death might prefer to retain the original panel with the addition of one of the alternates than to take his chances with a completely new panel. The judge is not required to voir dire the defendant to make sure the latter agrees with the lawyer's tactical decision. That would actually handicap most criminal defendants by inviting them to make tactical decisions that most of them are incompetent to make.

[10] In any event we do not think that the procedure that was employed violates the statute. The statute makes no provision for the situation that occurred here, leaving it to the good sense of the judges to deal with. We find guidance to the proper resolution in the 1999 amendment to Rule 24 of the Federal Rules of Criminal Procedure, which, altering the previous practice (to which we made reference earlier), allows the trial judge to replace a regular juror with an alternate *during* deliberations, which must then recommence. Fed.R.Crim.P. 24(c)(3). In other words, the fact that the alternate missed some of the deliberations is no longer regarded as a fatal objection, or indeed as any objection, to his participating in the jury's decision. Compare *United States v. Josefik, supra*, 753 F.2d at 587. The analogy to the procedure employed here is close. The deliberations that eventuated in the sentence of death were in two stages, a guilt stage and a sentencing stage. The alternate missed the first stage but participated in the second. True, the *entire* deliberations did not recommence; but the issues of guilt and of punishment are sufficiently distinct that the alternate didn't have to hear the deliberations on the former issue in order to be able to participate meaningfully in the deliberations on the latter issue. He had sat through the entire trial, which is the important thing.

The defendant argues that the alternate might fear he had "missed" something in the part of the deliberations that he had ***671** not been party to. But that is equally true in a Rule 24(c)(3) situation, since recommencing the deliberations would not wipe out the original jurors' memories of whatever discussion had preceded the alternate's joining them. As someone not committed to the defendant's guilt, never having voted on the question of guilt, the alternate added at the sentencing stage might

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actually have a greater inclination to lenity than the jurors whom he was joining.

The next issue is whether the defendant was unfairly surprised by false testimony allegedly presented by the government on rebuttal at the sentencing hearing. To decide to impose (technically, "recommend," but the recommendation is binding, 28 U.S.C. § 3594) the death penalty, the jury must decide that the aggravating factors, that is, factors beyond the murder itself that warrant imposing the ultimate penalty on this defendant, sufficiently outweigh any mitigating factors to justify the imposition. § 3593(e). There is a list of aggravating factors in section 3592(c) (for murder) but the list is stated to be non-exhaustive. Evidence of an aggravating or mitigating factor need not be admissible under the rules of evidence. § 3593(c).

The government alleged as a nonstatutory aggravating factor in this case "future dangerousness." The government pointed out that gang leaders have been known (the boss of the Gangster Disciples, Larry Hoover, notoriously) to continue to direct the gang's affairs from prison either by telephone or through visitors, and that the defendant himself, when in jail awaiting trial, had threatened his codefendant. In response the defendant called to the stand a psychologist who had toured the federal prison in Florence, Colorado, which is the maximum-security prison in the federal system, the successor to Alcatraz and Marion. Department of Justice, "Release Preparation Program," 61 Fed.Reg. 38042–02, 38043 (Jul. 22, 1996); Mark Johnson, "Colorado Facility is Pacesetter of Newest 'Supermax' Prisons," *Houston Chronicle*, June 20, 1999, p. 8. He testified about the security arrangements in the prison's control unit, where prisoners are kept essentially in solitary confinement. He assured the jury that if it recommended that the defendant be sentenced to life in prison rather than to death, the defendant would no longer be a threat to anyone, since he could be sentenced to spend the rest of his life in the control unit at Florence.

[11] [12] [13] In rebuttal the government put on a federal prison warden, formerly an assistant warden at Florence, to testify about Florence and about the policies of the federal Bureau of Prisons. To the extent that these policies are prescribed or codified in statutes or regulations, as distinct from being informal policies, this testimony was improper, though the defendant makes no issue of its admissibility and so any objection is waived. Witnesses testify about fact, not law. When a legal proposition is relevant to the jury's consideration, the proper procedure is for the judge to instruct the jury on the proposition. E.g., *Bammerlin v. Navistar Int'l Transportation Corp.*, 30 F.3d 898, 900 (7th Cir.1994); *Harbor Ins. Co. v. Continental Bank Corp.*, 922 F.2d 357, 366 (7th Cir.1990); *Nieves–Villanueva v. Soto–Rivera*, 133 F.3d 92, 99 (1st Cir.1997); *Molecular Technology Corp. v. Valentine*, 925 F.2d 910, 919 (6th Cir.1991). If the Bureau of Prisons is forbidden by law to confine a prisoner in a control unit for his entire life on the basis of evidence presented at his trial, that is something for the judge to tell the jury, not for a witness to testify to.

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Much of what the warden testified to was factual in character, however, for example that Florence has a limited capacity and its control unit can accommodate only 68 inmates, that most murderers and most gang leaders in federal prisons are not at Florence, let alone in Florence's control unit, that most prisoners in Florence came there after misbehaving at other facilities rather than directly from being sentenced, ***672** and that even prisoners in the control unit can have visitors and can make one 15–minute telephone call a month. He also testified that "it is not permissible, by the Bureau of Prisons policy, to keep an inmate in that status [i.e., in a control unit] indefinitely."

It is unclear whether he meant a purely informal policy or was testifying to his understanding of some legal restriction. But in fact there is a legal restriction. Regulations by the Bureau of Prisons, to which the Attorney General has delegated her plenary authority over the management of federal prisons, see 18 U.S.C. §§ 4001(b), 4042, require federal prison wardens to consider six factors in deciding whether to place an inmate in a control unit. All six relate to the inmate's behavior in prison, such as possession of a weapon in the prison, 28 C.F.R. § 541.41(b)(3), or causing injury to other people in the prison. § 541.41(b)(1). The warden may consider a seventh factor, the nature of the inmate's offense of conviction, but only "in combination with other factor(s) as described in paragraph (b)." § 541.41(b)(7). "An inmate may not be considered [for confinement in a control unit] solely on [the basis of] the nature of the crime which resulted in that inmate's incarceration." *Id.*

If the Attorney General or the head of a federal law enforcement or intelligence agency determines "that there is a substantial risk that a prisoner's communications or contacts with persons could result in death or serious bodily injury to persons," the warden can be authorized to take "special administrative measures" that "may include housing the inmate in administrative detention and/or limiting certain privileges, including, but not limited to, correspondence, visiting, interviews with representatives of the news media, and use of the telephone, as is reasonably necessary to protect persons against the risk of acts of violence or terrorism." § 501.3(a). These restrictions may, however, be imposed only in 120–day increments; and each time, before they can be reimposed, the warden must conduct the risk assessment afresh. § 501.3(c).

The limitations in these regulations imply that the Bureau of Prisons could not assign a prisoner directly upon his admission to the federal prison system to spend the rest of his life in the control unit without the possibility of reconsideration. The regulation requiring the bureau to review an inmate's control unit status "at least once every 60 to 90 days ... to determine the inmate's readiness for release from the [Control] Unit," 28 C.F.R. § 541.49(d), points in the same direction.

[14] The facts to which the warden testified and the law that he may or may not

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have been alluding to point to the same conclusion, that there can be no assurance that if the defendant were sentenced to life in prison he could not commit further serious crimes. The defendant calls the warden's testimony "false" and argues that since it came in on rebuttal he didn't have a chance to meet it and so was unfairly surprised. If true (and if the evidence was deemed prejudicial), this would presumably entitle him to a new sentencing hearing, just as, had the falsity neither been discovered nor discoverable until after the hearing had ended, he could have sought a new hearing on the basis of newly discovered evidence. See, e.g., *United States v. Austin*, 103 F.3d 606, 609 (7th Cir.1997); *United States v. Reed*, 986 F.2d 191, 192–93 (7th Cir.1993); *United States v. Sinclair*, 109 F.3d 1527, 1531–32 (10th Cir.1997); *United States v. Moore*, 54 F.3d 92, 99 (2d Cir.1995). But the warden's testimony, though it did not track the regulations exactly, was not false. The impression that he conveyed of practice and legal policy was correct.

[15] **[16]** We know from cases in this court involving murders by prisoners in the control units of federal prisons, see *United States v. Fountain*, 768 F.2d 790, modified, 777 F.2d 345 (7th Cir.1985) (per curiam); ***673** *United States v. Silverstein*, 732 F.2d 1338 (7th Cir.1984); *United States v. Fountain*, 642 F.2d 1083 (7th Cir.1981); cf. *Shoats v. Horn*, 213 F.3d 140, 141 (3d Cir.2000); *Echols v. Sullivan*, 521 F.2d 206 (5th Cir.1975) (per curiam), that such units cannot be made totally secure. And we know that anyone who has access to a telephone or is permitted to receive visitors may be able to transmit a lethal message in code. We also know that nothing in federal law authorizes a judge to sentence a prisoner to life in the control unit. Quite apart from the fact that "a sentencing court has no authority to order that a convicted defendant be confined in a particular facility, much less placed in a particular treatment program," *United States v. Williams*, 65 F.3d 301, 307 (2d Cir.1995), a prison control unit is an internal disciplinary mechanism that is not intended or designed for lifetime commitment. The Bureau of Prisons could not, therefore, commit a prisoner to the control unit for life, refusing to consider circumstances that might render his joining the open population of the prison harmless, such as extreme old age or the dissolution of the gang with which he had been affiliated. "Of course, administrative segregation may not be used as a pretext for indefinite confinement of an inmate" to a segregation unit (i.e., a control unit). *Hewitt v. Helms*, 459 U.S. 460, 477 n. 9, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983); cf. *Bono v. Saxbe*, 620 F.2d 609, 614 (7th Cir.1980); *In re Long Term Administrative Segregation of Inmates Designated as Five Percenters*, 174 F.3d 464, 472 (4th Cir.1999); *United States v. Felipe*, 148 F.3d 101, 111 (2d Cir.1998).

A prison's control unit is not intended as a punishment for the crime that got the prisoner into prison in the first place, like a sentence of imprisonment at hard labor. Its purpose rather is to deter and prevent violations of prison disciplinary rules and to protect prisoners, guards, and in some cases people outside the prison, or the society at large, against dangerous

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conduct by the prisoner. See 28 C.F.R. § 541.40(a) ("in an effort to maintain a safe and orderly environment within its institutions, the Bureau of Prisons operates control unit programs intended to place into a separate unit those inmates who are unable to function in a less restrictive environment without being a threat to others or to the orderly operation of the institution"). If, no matter what the nature of the activities that got him into prison in the first place, the prisoner poses no danger to anyone that would justify putting him into or keeping him in a control unit, such confinement is, as the regulations we cited earlier make clear, unauthorized.

Against this the defendant cites recent cases in which, he claims, federal judges have sentenced criminal defendants to be confined in a control unit. *United States v. Felipe*, No. S16 94 CR. 395 JSM, 1997 WL 220302 (S.D.N.Y. Apr.29, 1997), aff'd. in relevant respect, 148 F.3d 101, 109–11 (2d Cir.1998); *United States v. Yousef*, S12 93 CR. 180 (S.D.N.Y. Jan. 8, 1998) (sentencing transcript); *United States v. Jones*, No. 96–458, 97–0355 (D.Md.1998). Only *Felipe* involved a judicial order, however, and the order didn't purport to sentence the defendant to the control unit for life. The judge reserved the right "hopefully to adjust the conditions, if a change of circumstances occurs with the passage of time"—which he soon did. Benjamin Weiser, "Judge Gives OK For New Member of Prison Rec Club," *Plain Dealer* (Cleveland), March 13, 1999, p. A1. (To our astonishment, the modification includes, if the newspaper is to be believed, express authorization for Felipe to consort with two of the most notorious inmates in American prisons today, Timothy McVeigh and Theodore Kaczynski.)

The judge in the *Felipe* case found his authority for sending the defendant to the control unit in 18 U.S.C. § 3582(d). That statute authorizes the sentencing judge to "include as a part of the sentence" of imprisonment for certain crimes, including some of the noncapital drug-related offenses of which our defendant was convicted ***674** and that we have not discussed because there is no challenge to the judgment regarding them, "an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise." That is a far cry from a sentence to life imprisonment in a control unit, as is the parallel Bureau of Prisons regulation that we cited earlier. The statute requires the government to be able to name a specific person that it has probable cause to believe will associate or communicate with the defendant for illegal purposes—though the Second Circuit in *Felipe* stretched the statute to permit the sentencing judge to cut off the defendant from contact with everyone in the world except designated family members. 148 F.3d at 110. And if the government does make the required showing, the only consequence is that the defendant will not be permitted to associate or communicate with that person. It is doubtful whether the statute authorizes

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indefinite confinement in the control unit, as distinct from a limitation on visits, phone calls, or association with specified other inmates, though this we need not decide. All other objections to the defendant's effort to rely on *Felipe* to one side, he did not argue in the district court that he could be sentenced under § 3582(d).

[17] **[18]** The warden also testified that a member of the Aryan Brotherhood, the most notorious of U.S. prison gangs, had while imprisoned at Florence managed to convey an order to members of the gang at another prison to kill two inmates of that prison, and that the order had been carried out. The defendant objects, and the government concedes, that this was hearsay evidence; but as we noted earlier, the federal death-penalty statute does not require that evidence of aggravating and mitigating factors be admissible under the rules of evidence, only that its probative value not be outweighed by the danger of its confusing, misleading, or prejudicing the jury. 18 U.S.C. § 3593(c). The balancing is committed to the discretion of the district judge, *United States v. Hall*, 152 F.3d 381, 397 (5th Cir.1998), not here abused. The incident involving the Aryan Brotherhood murders, which is consistent with previous conduct by that infamous gang, see, e.g., *United States v. McKinney*, 954 F.2d 471, 472–74, 478–79 (7th Cir.1992); *Gometz v. Henman*, 807 F.2d 113 (7th Cir.1986); *United States v. Fountain, supra*; *United States v. Mills*, 704 F.2d 1553, 1555 (11th Cir.1983), came to the warden's attention through official channels and concerned a matter of transcendent professional interest to a prison official. He was in a good position to form a judgment of the reliability of this information, which went directly to the issue of the ability of the federal prison system to defang the murderers in its custody.

[19] The defendant next objects under the *Brady* rule to the government's failure to turn over "evidence" that inmates in the prison in which the Aryan Brotherhood hits occurred believed that the deaths of the inmates in question had other causes. This evidence, limited as it was to rumors that sweep prisons when any untoward event occurs, was so valueless that its exclusion from the trial could not be considered material. *United States v. Villarreal*, 963 F.2d 725, 730 (5th Cir.1992); *Hopkinson v. Shillinger*, 866 F.2d 1185, 1213, reheard en banc on other grounds, 888 F.2d 1286 (10th Cir.1989).

[20] **[21]** We add as a detail that while the defendant was of course entitled to counter the government's evidence that he would be a continued menace to society while in prison, that being evidence offered to establish an aggravating factor, 18 U.S.C. § 3593(c); cf. *Gardner v. Florida*, 430 U.S. 349, 362, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977), he should not have been permitted to present to the jury, as he was, evidence of the existence of maximum-security ***675** federal prisons decked out with control units, in order to establish a mitigating factor. A mitigating factor is a factor arguing against sentencing *this* defendant to death; it is not an argument against the death penalty in general. See *Penry v. Lynaugh*, 492 U.S. 302, 328, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989); *Eddings v. Oklahoma*, 455 U.S. 104,

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110, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); *Lockett v. Ohio*, 438 U.S. 586, 604 n. 12, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion). The argument that life in prison without parole, especially if it is spent in the prison's control unit and thus in an approximation to solitary confinement, sufficiently achieves the objectives aimed at by the death penalty to make the latter otiose is an argument addressed to legislatures, not to a jury. This is apparent from the fact that the list of mitigating factors in the federal death-penalty statute does not include the harshness or ugliness or (some would say) the immorality of the death penalty, but only factors specific to the defendant. See 18 U.S.C. § 3592(a), and in particular subsection (a)(8) ("other factors *in the defendant's background, record, or character* or any other circumstances *of the offense* that mitigate against imposition of the death sentence") (emphasis added).

The argument is also illogical, as it amounts to saying that because this defendant is *so* dangerous, he does not deserve to be sentenced to death, since his dangerousness will assure his secure confinement. And its illogic shows that it is really an argument against the death penalty, period, since if this defendant should be spared because he is unusually dangerous, surely less dangerous murderers should not be executed either, even though, because they are less dangerous, they are less likely to be confined securely.

[22] The last issue involves the verdict form. The statute requires the jury to include as part of the verdict special findings with respect to any aggravating factors that it determines to exist. But it also provides that "any member of the jury who finds the existence of a mitigating factor may consider such factor established." 18 U.S.C. § 3593(d). Whether the juror must also be permitted to include such a finding (that is, his finding that a mitigating factor exists) in the verdict, or in some separate written statement of his own, may be doubted—has in fact been rejected by the only two courts to consider the issue, *United States v. Paul*, 217 F.3d 989, 999 n.6 (8th Cir.2000); *United States v. Hall*, supra, 152 F.3d at 413—but is conceded by the government on this appeal.

The jury was given two separate verdict forms, one for each of the two murders that the defendant had committed. Each form lists more than 20 possible mitigating factors, most of which are equally applicable to both murders. For example, both forms ask whether any jurors think that "as a young child, Darryl Lamont Johnson witnessed his father's constant and serious physical abuse of his mother." On one of the forms, zero jurors thought this; on another, two did. There are a number of similar discrepancies. The defendant either did or did not witness his father's abuse of his mother; the answer has nothing to do with which murder the jury was considering.

[23] The general rule, however, the wisdom of which this case substantiates, is that inconsistent findings in a jury verdict do not invalidate the verdict. E.g., *United States v. Powell*, 469 U.S. 57, 64–69, 105 S.Ct. 471, 83 L.Ed.2d 461 (1984); *United States v. Akram*, 152 F.3d 698, 701 (7th Cir.1998);

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United States v. Sims, 144 F.3d 1082 (7th Cir.1998). A jury that inconsistently convicts the defendant of one offense and acquits him of another is as likely to have erred in acquitting him of the one as in convicting him of the other. "Inconsistent verdicts therefore present a situation where 'error,' in the sense that the jury has not followed the court's instructions, most certainly has occurred, but it is unclear whose ox has been gored. ***676** Given this uncertainty, and the fact that the Government is precluded from challenging the acquittal, it is hardly satisfactory to allow the defendant to receive a new trial on the conviction as a matter of course." *United States v. Powell, supra*, 469 U.S. at 65, 105 S.Ct. 471. The principle is applicable here, since the government cannot appeal the jury's refusal to impose the death penalty. 18 U.S.C. § 3595(a).

Of course, if the inconsistencies were such as to indicate that the verdict was a product of irrationality, it would have to be set aside. The death penalty statute is explicit about this. "Whenever the court of appeals finds that the sentence of death was imposed under the influence of passion, prejudice, *or any other arbitrary factor* ... the court shall remand the case for reconsideration under § 3593 or imposition of a sentence other than death." 18 U.S.C. § 3595(c)(2)(A) (emphasis added); *United States v. Paul, supra*, 217 F.3d at 1004–05; *United States v. Webster, supra*, 162 F.3d at 354. But that is not a necessary inference in this case or even the most likely one. It is more likely that several jurors were of two minds about, say, the relation between the defendant's father and mother, and their irresolution is reflected in their inconsistent answers. But of course jurors disagree among themselves; that is nothing new. They are required to agree about their verdict, not about every fact. What is important here is that *every* juror who found more mitigating factors present with respect to one of the murders than with respect to the other nevertheless voted that the aggravating factors taken as a whole outweighed the mitigating factors as a whole with regard to each murder. In other words, there is no reason to suspect that any juror was in doubt about the bottom line, though he may have wavered with respect to just how many mitigating factors were present. To put it differently: if a juror couldn't make up his mind whether the defendant had proved 2 mitigating factors or 10 mitigating factors, but was clear in his mind that even in the latter event the aggravating factors outweighed them, there would be no basis for thinking that he had voted irrationally. *Wainwright v. Lockhart*, 80 F.3d 1226, 1231–32 (8th Cir.1996).

The verdict form was, however, confusing. It *invited* inconsistent findings, by listing the mitigating factors twice. For future reference in a multiple-murder capital case, we suggest that the jury be asked about the presence of any mitigating factors that are common to both murders on a separate form rather than on each verdict form. This is assuming, however, that it is proper to make such inquiry of the jury, an issue we leave open because the government waived any objection to the procedure.

AFFIRMED.

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All Citations

223 F.3d 665

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. **CASE NO. 8:07-CR-9-T-27TGW**

JERMAINE MICHAEL JULIAN
a/k/a "Kid"

SPECIAL VERDICT FORM FOR MURDER OF CARLTON POTTS BY JERMAINE MICHAEL JULIAN

I. NON-STATUTORY AGGRAVATING FACTOR

Instructions: Answer "YES" or "NO."

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Jermaine Michael Julian has been convicted by you of other serious drug crimes and acts of violence, and that this factor tends to support imposition of the death penalty?

Count Three

YES __X__

NO _____

Count Seven

YES __X__

NO _____

Instructions: Regardless of whether you answered "YES" or "NO" with respect to the Non-Statutory Aggravating Factor in this Section, proceed to Section II, which follows.

SO SAY WE ALL.
Dated: March 5, 2009.

_____
FOREPERSON

II. MITIGATING FACTORS

Instructions: For each of the following mitigating factors, you are to indicate, in the space provided, the number of jurors who find the existence of that mitigating factor to be proven by a preponderance of the evidence. If no jurors find the existence of a particular mitigating factor, place "0" in the appropriate space, and continue your deliberations.

A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor in considering whether or not a sentence of death shall be imposed, regardless of the number of jurors who agree that the factor has been established.

Mitigating Factors	Number of Jurors Who So Find
1. If not sentenced to death, Jermaine Julian will spend the rest of his life in prison without the opportunity for release.	12
2. Life imprisonment without the possibility of release is a sufficiently harsh punishment that would require Jermaine Julian to regularly reflect upon his conduct and actions until the time of his death.	9
3. Jermaine Julian was exposed as a child to substance abuse.	5
4. Jermaine Julian had no positive male role models as a child.	4
5. Jermaine Julian was raised in poverty and related disadvantaged conditions.	3
6. Jermaine Julian suffered from neglect from those charged with his welfare as a child.	8
7. Jermaine Julian was a loving brother to his siblings.	9
8. Jermaine Julian was forced at a young age to become a "parent" to his younger brothers and sisters.	4
9. Jermaine Julian placed the interests of his younger brothers and sisters above his own best interests.	0
10. Jermaine Julian was a positive influence in the life of his younger brother, Willie Estinfil.	9
11. Jermaine Julian was a positive influence in the life of his younger brother, Carlos Julian.	4

12. Jermaine Julian was a positive influence in the life of his younger brother, Charlie Julian.	0
13. Jermaine Julian was a positive influence in the life of his younger sister, Precious Julian.	0
14. Jermaine Julian was a positive influence in the life of his younger sister, Niki Julian.	0
15. Jermaine Julian was a loving son.	11
16. Jermaine Julian was a loving father to his children.	0
17. Jermaine Julian can continue his loving relationships even while serving a sentence of life imprisonment without possibility of release.	8
18. The execution of Jermaine Julian would cause trauma to his family.	7
19. Lutricia Julian did not meet her responsibility as a parent to Jermaine Julian because: a. Her limited intelligence prevented her from meeting this obligation. b. She took dangerous drugs during her pregnancy with Jermaine Julian and his other siblings. c. She was absent from the home for prolonged periods. d. Her dependence contributed to the chaotic early life of Jermaine Julian.	9
20. It was difficult for Jermaine Julian to succeed in school because: a. His mother was drug addicted and could not interact with his teachers. b. The family home was not well-suited for study. c. His mother was unable to help him in school.	0
21. Jermaine Julian was well behaved and respectful during the trial, even under the significant stress of a capital trial.	5
22. The evidence of Jermaine Julian's guilt is not sufficient to justify a sentence of death.	5
23. The evidence of Jermaine Julian's exact role in the offense, or the exact sequence of events, is not sufficient to justify a sentence of death.	5

24. The totality of circumstances of the offense, notwithstanding premeditated murder, does not warrant the death penalty.	1
25. Carlton Potts willingly participated in dangerous and illegal activities, a circumstance that contributed to his death.	8
26. Jermaine Julian was twenty four years old at the time of the offense.	0
27. There is value in the remainder of Jermaine Julian's life, in the context of life in prison without release.	8
28. Jermaine Julian has adapted well in the past to structured environments similar to prison.	0
29. Jermaine Julian's prior conduct in structured environments suggests he is likely to adapt well to life in prison without the possibility of release.	0

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors. If none, write "NONE" and line out the extra spaces with a large "X." If more space is needed, write "CONTINUED" and use the reverse side of this page.

NONE

Number of jurors who so find _____.

NONE

Number of jurors who so find _____

NONE

Number of jurors who so find _____.

Instructions: Proceed to Sections III and IV which follow.

III. DETERMINATION AS TO COUNT 3

In consideration of whether the statutory and/or non-statutory aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of any mitigating factors, whether the statutory and/or non-statutory aggravating factor is/are themselves sufficient to justify a sentence of death, and whether death is therefore the appropriate sentence in this case:

COUNT 3

A. We determine, by unanimous vote, that a sentence of death shall be imposed.

YES _____

NO ___X___

If you answer "YES," sign your names here and proceed to Section IV. If you answer "NO," proceed to Section III(B):

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Foreperson

Date: March 5, 2009

B. We determine, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed.

YES X

NO _____

If you answer "YES," sign your names here, and proceed to Section IV. If you answer "NO," proceed to Section IV:

Foreperson

Date: March 5, 2009

IV. DETERMINATION AS TO COUNT 7

In consideration of whether the statutory and/or non-statutory aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of any mitigating factors, whether the statutory and/or non-statutory aggravating factor is/are themselves sufficient to justify a sentence of death, and whether death is therefore the appropriate sentence in this case:

COUNT 7

A. We determine, by unanimous vote, that a sentence of death shall be imposed.

YES _____

NO ___X___

If you answer "YES," sign your names here, and proceed to Section V. If you answer "NO," proceed to Section IV(B):

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____
Foreperson

Date: March 5, 2009

B. We determine, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed.

YES X

NO _____

If you answer "YES," sign your names here, and proceed to Section V. If you answer "NO," proceed to Section V:

Foreperson

Date: March 5, 2009

V. DETERMINATION

We the Jury, certify that the above findings are accurate.

Sign your names here, and you must then proceed to Section VI.

Foreperson

Date: March 5, 2009

VI. CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or the victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding a sentence for the crime or crimes in question regardless of the race, color, religious beliefs, national origin, or sex of the defendant, or the victim.

Foreperson

Date: March 5, 2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-80171-CR-HURLEY/VITUNAC

UNITED STATES OF AMERICA,

Plaintiff.

vs.

RICARDO SANCHEZ, JR.,

Defendant.
_____/

FILED by _____ D.C.
MAR 31 2009
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - W.P.B.

VERDICT FORM

SECTION 1

AGE OF DEFENDANT

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Ricardo Sanchez, Jr., was eighteen years of age or older at the time of the offenses charged in Counts 6, 7, 8, 9 and 10 of the Indictment?

X
Yes

_____
No

If you answered "No," please stop your deliberations. Cross out the remaining sections of this verdict form, and proceed to Section 7. Each juror should carefully read the statement in Section 7, and each juror should sign in the appropriate space if the statement accurately reflects the manner in which he or she reached his or her decision. You should then inform the court that you have reached a decision.

If you answered "Yes", please proceed to Section 2, which follows.

SCANNED

SECTION 2

MENTAL STATE

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Ricardo Sanchez, Jr., intentionally killed the victim(s) named in the corresponding count?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X Yes _____ No

Count 7 (Luis Damian Escobedo):

X Yes _____ No

Count 8 (Luis Julian Escobedo):

X Yes _____ No

Count 9 (Yessica Escobedo):

X Yes _____ No

Count 10 (Jose Luis Escobedo):

X Yes _____ No

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Ricardo Sanchez, Jr., intentionally inflicted serious bodily injury which resulted in the death of the victim(s) named in the corresponding count?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes

_____
No

Count 7 (Luis Damian Escobedo):

X
Yes

_____
No

Count 8 (Luis Julian Escobedo):

X
Yes

_____
No

Count 9 (Yessica Escobedo):

X
Yes

_____
No

Count 10 (Jose Luis Escobedo):

X
Yes

_____
No

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Ricardo Sanchez, Jr., intentionally participated in an act, contemplating that the life of a person would be taken, or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and that the victim(s) named in the corresponding count died as a direct result of the act?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes _____ No

Count 7 (Luis Damian Escobedo):

X
Yes _____ No

Count 8 (Luis Julian Escobedo):

X
Yes _____ No

Count 9 (Yessica Escobedo):

X
Yes _____ No

Count 10 (Jose Luis Escobedo):

X
Yes _____ No

4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Ricardo Sanchez, Jr., intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life, and that the victim(s) named in the corresponding count died as a direct result of the act?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes _____ No

Count 7 (Luis Damian Escobedo):

X
Yes _____ No

Count 8 (Luis Julian Escobedo):

X
Yes _____ No

Count 9 (Yessica Escobedo):

X
Yes _____ No

Count 10 (Jose Luis Escobedo):

X
Yes _____ No

If you answered "No" with respect to all of the determinations in this section, please stop your deliberations. Cross out the remaining sections of this verdict form, and proceed to Section 7. Each juror should carefully read the statement in Section 7, and each juror should sign in the appropriate space if the statement accurately reflects the manner in which he or she reached his or her decision. You should then inform the court that you have reached a decision.

If you answered "Yes" with respect to one or more of the determinations above, please proceed to Section 3, which follows, as to those counts for which you answered "Yes."

SECTION 3

STATUTORY AGGRAVATING FACTORS

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Ricardo Sanchez, Jr., committed the offense in the expectation of the receipt of anything of pecuniary value?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes _____ No

Count 7 (Luis Damian Escobedo):

X
Yes _____ No

Count 8 (Luis Julian Escobedo):

X
Yes _____ No

Count 9 (Yessica Escobedo):

X
Yes _____ No

Count 10 (Jose Luis Escobedo):

X
Yes _____ No

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Ricardo Sanchez, Jr., committed the offense after substantial planning and premeditation to cause the death of a person?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes _____ No

Count 7 (Luis Damian Escobedo):

X
Yes _____ No

Count 8 (Luis Julian Escobedo):

X
Yes _____ No

Count 9 (Yessica Escobedo):

X
Yes _____ No

Count 10 (Jose Luis Escobedo):

X
Yes _____ No

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Luis Damian Escobedo and/or Luis Julian Escobedo were particularly vulnerable due to youth?

Count 6 (Luis Damian Escobedo, Luis Julian Escobedo):

X Yes _____ No

Count 7 (Luis Damian Escobedo):

X Yes _____ No

Count 8 (Luis Julian Escobedo):

X Yes _____ No

4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Ricardo Sanchez, Jr., intentionally killed or attempted to kill multiple victims in a single criminal episode?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X Yes _____ No

Count 7 (Luis Damian Escobedo):

X Yes _____ No

Count 8 (Luis Julian Escobedo):

X
Yes

_____
No

Count 9 (Yessica Escobedo):

X
Yes

_____
No

Count 10 (Jose Luis Escobedo):

X
Yes

_____
No

If you answered "No" with respect to all of the determinations in this section, please stop your deliberations. Cross out the remaining sections of this verdict form, and proceed to Section 7. Each juror should carefully read the statement in Section 7, and each juror should sign in the appropriate space if the statement accurately reflects the manner in which he or she reached his or her decision. You should then inform the court that you have reached a decision.

If you answered "Yes" with respect to one or more of the determinations above, please proceed to Section 4, which follows, as to those counts for which you answered "Yes."

SECTION 4

NON-STATUTORY AGGRAVATING FACTORS

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Ricardo Sanchez, Jr., participated in other, uncharged serious acts of violence?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes

_____
No

Count 7 (Luis Damian Escobedo):

X
Yes

_____
No

Count 8 (Luis Julian Escobedo):

X
Yes

_____
No

Count 9 (Yessica Escobedo):

X
Yes

_____
No

Count 10 (Jose Luis Escobedo):

X
Yes

_____
No

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Ricardo Sanchez, Jr., killed the victims in order to eliminate them as potential witnesses?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes

_____
No

Count 7 (Luis Damian Escobedo):

X
Yes

_____
No

Count 8 (Luis Julian Escobedo):

X
Yes

_____
No

Count 9 (Yessica Escobedo):

X
Yes

_____
No

Count 10 (Jose Luis Escobedo):

X
Yes

_____
No

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Ricardo Sanchez, Jr., caused injury, harm and loss to the family of the victim(s), as evidenced by their personal characteristics as human beings and the impact of their deaths on their family members?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes

_____
No

Count 7 (Luis Damian Escobedo):

X
Yes

_____
No

Count 8 (Luis Julian Escobedo):

X
Yes

_____
No

Count 9 (Yessica Escobedo):

X
Yes

_____
No

Count 10 (Jose Luis Escobedo):

X
Yes

_____
No

Regardless of your answers in this section, proceed to Section 5, which follows.

SECTION 5

MITIGATING FACTORS

Does any member of the jury find that the Defendant has established by a preponderance of the evidence one or more of the following mitigating factors?

For each asserted mitigating factor, please indicate whether any jurors found the mitigating factor established by a preponderance of the evidence, and if so, how many jurors found the mitigating factor established.

After the list of mitigating factors asserted by the Defendant, there is space for you to indicate additional mitigating factors not specifically raised by the Defendant, which have been found by at least one juror to have been established by a preponderance of the evidence.

1. An equally culpable co-defendant, Danny Varela, was not charged in these murders and will not be facing death. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 10 TEN.

2. Ricardo Sanchez acted under the influence of Danny Varela. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 11.

3. Prior to becoming involved with Danny Varela, Ricardo Sanchez had several legitimate jobs. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 8.

4. Prior to his involvement with Danny Varela, Ricardo Sanchez had no felony convictions. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 7.

5. Because of their family relationship, Ricardo Sanchez was more easily recruited by Danny Varela. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 9.

6. Ricardo Sanchez was more vulnerable to Danny Varela because of his low IQ. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 9.

7. Jose Luis Escobedo engaged in criminal conduct that contributed to the circumstances leading to his family's death. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 11.

8. Ricardo Sanchez is a follower and not a leader. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 8.

NO 9. Ricardo Sanchez was voluntarily baptized and confirmed at the age of seventeen. **Yes** ~~X~~ D.L. **No** ~~X~~ D.L. **If "Yes," the number of jurors who found the factor established** 0. NO D.L.

10. There is a history of mental retardation in the Sanchez family. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 4.

11. There is a history of learning disabilities in the Sanchez family. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 4.

12. Ricardo Sanchez was socially isolated from the community. **Yes** ___ **No** X. **If "Yes," the number of jurors who found the factor established** ___.

13. Ricardo Sanchez's parents had low IQs. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 4.

14. Ricardo Sanchez's parents were uneducated. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 5.

15. Ricardo Sanchez's parents were socially isolated from the community. **Yes** ___ **No** X. **If "Yes," the number of jurors who found the factor established** ___.

16. Ricardo Sanchez has a loving relationship with his son, Ricardo III. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 8.

17. Ricardo Sanchez has consistently provided support to Ricardo III since his birth. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 5.

18. Ricardo Sanchez grew up in a home with an alcoholic father. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 10.

19. Ricardo Sanchez and his family were subjected to violence by Ricardo Sanchez, Sr. as a result of his drinking. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 10.

20. Ricardo Sanchez and his siblings grew up in fear of their father because of his drinking. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 9.

NO 21. Ricardo Sanchez was exposed to criminal activity by family members as a child. **Yes** ~~X~~ **No** ~~X~~ **If "Yes," the number of jurors who found the factor established** 0. NO D.L.

NO 22. Ricardo Sanchez was exposed to his brother's violent seizures as a child. **Yes** ~~X~~ D.L. **No** ~~X~~ D.L. **If "Yes," the number of jurors who found the factor established** 0. NO D.L.

23. Ricardo Sanchez's family system normalized crime, violence and substance abuse. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 8.

24. Ricardo Sanchez has a low IQ. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 9.

25. Ricardo Sanchez has difficulty in processing verbal information. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 8.

26. His low IQ and learning disabilities caused Ricardo Sanchez embarrassment and humiliation. **Yes** X **No** ___. **If "Yes," the number of jurors who**

found the factor established 8 **.**

27. Ricardo Sanchez suffered from learning disabilities and cognitive deficiencies which did not allow him to function at the level of his already low IQ. **Yes** X **No** ___**. If "Yes," the number of jurors who found the factor established** 9 **.**

28. Ricardo Sanchez's cognitive deficiencies and limited IQ were so severe that he was exempted from taking the FCAT (Florida Comprehensive Achievement Test). **Yes** X **No** ___**. If "Yes," the number of jurors who found the factor established** 8 **.**

29. As a child, Ricardo Sanchez had no parental support in overcoming his learning disabilities. **Yes** X **No** ___**. If "Yes," the number of jurors who found the factor established** 9 **.**

NO 30. Ricardo Sanchez can only read on an elementary grade level. **Yes** ~~X~~ D.L. **No** ~~X~~ NO D.L. **If "Yes," the number of jurors who found the factor established** 0 **.**

NO 31. Ricardo Sanchez can only do math on an elementary grade level. **Yes** ~~X~~ **No** D.L. ~~X~~ **. If "Yes," the number of jurors who found the factor established** 0 **.**

32. Ricardo Sanchez's academic failures contributed to reduced self-esteem and low bonding to school. **Yes** X **No** ___**. If "Yes," the number of jurors who found the factor established** 8 **.**

33. Ricardo Sanchez's learning disabilities and low IQ limited his opportunities for career choices. **Yes** X **No** ___**. If "Yes," the number of jurors who found the factor established** 9 **.**

NO 34. Ricardo Sanchez looked out for his older brother inside and outside the home. **Yes** ~~X~~ D.L. **No** ~~X~~ D.L. NO **If "Yes," the number of jurors who found the factor established** 0 **.**

35. Ricardo Sanchez lacked the skills to live completely independent of assistance. **Yes** ___ **No** X **. If "Yes," the number of jurors who found the factor established** ___**.**

36. As a child, Ricardo Sanchez had no positive male role models in his life other than limited exposure to his Uncle Tony. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 7.

37. While growing up Ricardo Sanchez was exposed to many of the risk factors identified by the Department of Justice. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 9.

38. Because of his exposure to the Department of Justice identified risk factors, Ricardo Sanchez' "framework" to make the right decisions was flawed. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 9.

39. During the time Rachel Ramos knew Ricardo Sanchez, he treated her with respect, contributed to the household income and assisted her in caring for her son, Julio. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 1.

NO 40. Ricardo Sanchez was a loving companion to the son of Rachel Ramos. **Yes** ~~X~~ D.L. **No** ~~X~~ D.L. **If "Yes," the number of jurors who found the factor established** 0. NO D.L.

NO 41. Ricardo Sanchez has adapted very well in a prison environment while awaiting trial. **Yes** X **No** ~~X~~ D.L. **If "Yes," the number of jurors who found the factor established** 0.

NO 42. Ricardo Sanchez was well behaved and respectful during the trial. **Yes** ~~X~~ D.L. **No** ~~X~~ NO D.L. **If "Yes," the number of jurors who found the factor established** 0.

43. The evidence of Ricardo Sanchez's exact role in the offense is not sufficient to justify a sentence of death. **Yes** ___ **No** X. **If "Yes," the number of jurors who found the factor established** ___.

NO 44. Ricardo Sanchez was 22 years old at the time of the offense. **Yes** ~~X~~ D.L. **No** ~~X~~ D.L. NO. **If "Yes," the number of jurors who found the factor established** 0.

Space for Recording Findings Regarding Additional Mitigating Factors:

45. NONE

_____ **Number of jurors who so find _____.**

46. _____

_____ **Number of jurors who so find _____.**

47. _____

_____ **Number of jurors who so find _____.**

Regardless of your findings in this section, proceed to Section 6, which follows.

SECTION 6

SELECTION

Having considered whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of any mitigating factors, whether the aggravating factors are sufficient in themselves to justify a sentence of death, and whether death is therefore the appropriate sentence in this case:

A. Sentence of Death

We, the jury, determine by unanimous vote that a sentence of death shall be imposed.

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

_____ Yes	X No

Count 7 (Luis Damian Escobedo):

X Yes	_____ No

Count 8 (Luis Julian Escobedo):

X Yes	_____ No

Count 9 (Yessica Escobedo):

_____ Yes	X No

Count 10 (Jose Luis Escobedo):

_____ Yes	X No

If you answer "Yes" to all of the counts set forth above, the foreperson must sign here, and you must then proceed to Section 7. If you answer "No" to any of the counts set forth above, the foreperson must sign, and you must then proceed to Section 6.B, which immediately follows, as to those counts for which you have answered "No."

_____ Foreperson

March 31st 2009
Date

B. Sentence of Life Imprisonment Without the Possibility of Release

We, the jury, determine by unanimous vote that a sentence of life imprisonment without the possibility of release shall be imposed.

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X Yes ____ No

Count 7 (Luis Damian Escobedo):

____ Yes ____ No

Count 8 (Luis Julian Escobedo):

____ Yes ____ No

Count 9 (Yessica Escobedo):

X Yes ____ No

Count 10 (Jose Luis Escobedo):

X
Yes

_____
No

If you answer "Yes" to all of the counts set forth above, the foreperson must sign here, and you must then proceed to Section 7. If you answer "No" to any of the counts set forth above, the foreperson must sign, and you must then proceed to Section 6.C, which immediately follows, as to those counts for which you have answered "No."

_____
Foreperson

March 31st 2009
Date

C. Lesser Sentence

We, the jury, unanimously recommend that the Court impose a sentence for a term of years up to life imprisonment without possibility of release.

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

_____
Yes

_____
No

Count 7 (Luis Damian Escobedo):

_____
Yes

_____
No

Count 8 (Luis Julian Escobedo):

_____
Yes

_____
No

Count 9 (Yessica Escobedo):

_____
Yes

_____
No

SECTION 7

CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the Defendant or any victim was not involved in reaching his or her individual decision. The signing juror further certifies that he or she would have made the same recommendation regarding a sentence for the crime or crimes in question regardless of the race, color, religious beliefs, national origin, or sex of the Defendant, or the victims.

Foreperson

March 31st 2009
Date

Count 10 (Jose Luis Escobedo):

_____ Yes _____ No

If you answer "Yes" to any of the counts set forth above, the foreperson must sign here, and you must then proceed to Section 7.

_____ Foreperson _____ Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-80171-CR-HURLEY/VITUNAC

UNITED STATES OF AMERICA,

Plaintiff.

vs.

DANIEL TROYA,

Defendant.
_____/

FILED by _____ D.C.
MAR 3 1 2009
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - W.P.B.

VERDICT FORM

SECTION 1

AGE OF DEFENDANT

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Daniel Troya, was eighteen years of age or older at the time of the offenses charged in Counts 6, 7, 8, 9 and 10 of the Indictment?

X
Yes

_____
No

If you answered "No," please stop your deliberations. Cross out the remaining sections of this verdict form, and proceed to Section 7. Each juror should carefully read the statement in Section 7, and each juror should sign in the appropriate space if the statement accurately reflects the manner in which he or she reached his or her decision. You should then inform the court that you have reached a decision.

If you answered "Yes", please proceed to Section 2, which follows.

SCANNED

SECTION 2

MENTAL STATE

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Daniel Troya, intentionally killed the victim(s) named in the corresponding count?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X Yes _____ No

Count 7 (Luis Damian Escobedo):

X Yes _____ No

Count 8 (Luis Julian Escobedo):

X Yes _____ No

Count 9 (Yessica Escobedo):

X Yes _____ No

Count 10 (Jose Luis Escobedo):

X Yes _____ No

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Daniel Troya, intentionally inflicted serious bodily injury which resulted in the death of the victim(s) named in the corresponding count?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X Yes _____ No

Count 7 (Luis Damian Escobedo):

X Yes _____ No

Count 8 (Luis Julian Escobedo):

X Yes _____ No

Count 9 (Yessica Escobedo):

X Yes _____ No

Count 10 (Jose Luis Escobedo):

X Yes _____ No

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Daniel Troya, intentionally participated in an act, contemplating that the life of a person would be taken, or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and that the victim(s) named in the corresponding count died as a direct result of the act?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes

_____
No

Count 7 (Luis Damian Escobedo):

X
Yes

_____
No

Count 8 (Luis Julian Escobedo):

X
Yes

_____
No

Count 9 (Yessica Escobedo):

X
Yes

_____
No

Count 10 (Jose Luis Escobedo):

X
Yes

_____
No

4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Daniel Troya, intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life, and that the victim(s) named in the corresponding count died as a direct result of the act?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X Yes _____ No

Count 7 (Luis Damian Escobedo):

X Yes _____ No

Count 8 (Luis Julian Escobedo):

X Yes _____ No

Count 9 (Yessica Escobedo):

X Yes _____ No

Count 10 (Jose Luis Escobedo):

X Yes _____ No

If you answered "No" with respect to all of the determinations in this section, please stop your deliberations. Cross out the remaining sections of this verdict form, and proceed to Section 7. Each juror should carefully read the statement in Section 7, and each juror should sign in the appropriate space if the statement accurately reflects the manner in which he or she reached his or her decision. You should then inform the court that you have reached a decision.

If you answered "Yes" with respect to one or more of the determinations above, please proceed to Section 3, which follows, as to those counts for which you answered "Yes."

SECTION 3

STATUTORY AGGRAVATING FACTORS

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Daniel Troya, committed the offense in the expectation of the receipt of anything of pecuniary value?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X Yes _____ No

Count 7 (Luis Damian Escobedo):

X Yes _____ No

Count 8 (Luis Julian Escobedo):

X Yes _____ No

Count 9 (Yessica Escobedo):

X Yes _____ No

Count 10 (Jose Luis Escobedo):

X Yes _____ No

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Daniel Troya, committed the offense after substantial planning and premeditation to cause the death of a person?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X Yes _____ No

Count 7 (Luis Damian Escobedo):

X Yes _____ No

Count 8 (Luis Julian Escobedo):

X Yes _____ No

Count 9 (Yessica Escobedo):

X Yes _____ No

Count 10 (Jose Luis Escobedo):

X Yes _____ No

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Luis Damian Escobedo and/or Luis Julian Escobedo were particularly vulnerable due to youth?

Count 6 (Luis Damian Escobedo, Luis Julian Escobedo):

X Yes _____ No

Count 7 (Luis Damian Escobedo):

X Yes _____ No

Count 8 (Luis Julian Escobedo):

X Yes _____ No

4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Daniel Troya, intentionally killed or attempted to kill multiple victims in a single criminal episode?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X Yes _____ No

Count 7 (Luis Damian Escobedo):

X Yes _____ No

Count 8 (Luis Julian Escobedo):

X
Yes

_____
No

Count 9 (Yessica Escobedo):

X
Yes

_____
No

Count 10 (Jose Luis Escobedo):

X
Yes

_____
No

If you answered "No" with respect to all of the determinations in this section, please stop your deliberations. Cross out the remaining sections of this verdict form, and proceed to Section 7. Each juror should carefully read the statement in Section 7, and each juror should sign in the appropriate space if the statement accurately reflects the manner in which he or she reached his or her decision. You should then inform the court that you have reached a decision.

If you answered "Yes" with respect to one or more of the determinations above, please proceed to Section 4, which follows, as to those counts for which you answered "Yes."

SECTION 4

NON-STATUTORY AGGRAVATING FACTORS

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Daniel Troya, participated in other, uncharged serious acts of violence?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes

_____
No

Count 7 (Luis Damian Escobedo):

X
Yes

_____
No

Count 8 (Luis Julian Escobedo):

X
Yes

_____
No

Count 9 (Yessica Escobedo):

X
Yes

_____
No

Count 10 (Jose Luis Escobedo):

X
Yes

_____
No

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Daniel Troya, killed the victims in order to eliminate them as potential witnesses?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes

_____
No

Count 7 (Luis Damian Escobedo):

X
Yes

_____
No

Count 8 (Luis Julian Escobedo):

X
Yes

_____
No

Count 9 (Yessica Escobedo):

X
Yes _____ No

Count 10 (Jose Luis Escobedo):

X
Yes _____ No

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the Defendant, Daniel Troya, caused injury, harm and loss to the family of the victim(s), as evidenced by their personal characteristics as human beings and the impact of their deaths on their family members?

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X
Yes _____ No

Count 7 (Luis Damian Escobedo):

X
Yes _____ No

Count 8 (Luis Julian Escobedo):

X
Yes _____ No

Count 9 (Yessica Escobedo):

X
Yes _____ No

Count 10 (Jose Luis Escobedo):

X
Yes

_____
No

Regardless of your answers in this section, proceed to Section 5, which follows.

SECTION 5

MITIGATING FACTORS

Does any member of the jury find that the Defendant has established by a preponderance of the evidence one or more of the following mitigating factors?

For each asserted mitigating factor, please indicate whether any jurors found the mitigating factor established by a preponderance of the evidence, and if so, how many jurors found the mitigating factor established.

After the list of mitigating factors asserted by the Defendant, there is space for you to indicate additional mitigating factors not specifically raised by the Defendant, which have been found by at least one juror to have been established by a preponderance of the evidence.

NO 1. Daniel Troya was only 23 years old when he committed the crime in this case. **Yes** ~~X~~ DL **No** X. **If "Yes," the number of jurors who found the factor established** 0 .

2. An equally culpable co-defendant, Danny Varela, will not be punished by the death penalty. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 10 .

NO 3. Daniel Troya has a loving and caring relationship with his family, who continue to love him. **Yes** ~~X~~ DL **No** X. **If "Yes," the number of jurors who found the factor established** 0 .

NO 4. Daniel Troya volunteered for many years at the Morse Geriatric Center. **Yes** ~~X~~ DL **No** X. **If "Yes," the number of jurors who found the factor established** 0 .

5. At the Morse Geriatric Center Daniel Troya was a valued volunteer who worked well with the staff and residents. **Yes** ___ **No** X. **If "Yes," the number of jurors who found the factor established** _____.

NO 6. Daniel Troya exhibited friendship by endeavoring to save Kevin Vetere from drug addiction and debt to Danny Varela and other cocaine dealers. **Yes** ~~X~~ D.L. **No** X. **If "Yes," the number of jurors who found the factor established** 0.

7. While he was in prison Daniel Troya received a GED (8/28/02). **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 1.

NO 8. Daniel Troya peaceably followed directions and did not resist when confronted by the police at the time of his arrest. **Yes** ~~X~~ D.L. **No** X. **If "Yes," the number of jurors who found the factor established** 0.

NO 9. Daniel Troya acted respectfully in Court throughout the trial. **Yes** ~~X~~ D.L. **No** X. **If "Yes," the number of jurors who found the factor established** 0.

10. None of Daniel Troya's prior convictions are for any killings or any offense involving weapons. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 6.

NO 11. In his felony battery case, Daniel Troya was first confronted by the alleged victim who was impaired due to alcohol. **Yes** ~~X~~ D.L. **No** X. **If "Yes," the number of jurors who found the factor established** 0.

12. In the domestic battery case, the only weapon possessed was a BB gun. **Yes** ___ **No** X. **If "Yes," the number of jurors who found the factor established** ___.

NO 13. The attempted escape did not involve any weapons. **Yes** ~~X~~ D.L. **No** X. **If "Yes," the number of jurors who found the factor established** 0.

14. The attempted escape followed an incident wherein Daniel Troya was beaten by guards in a work camp. **Yes** X **No** ___. **If "Yes," the number of jurors who found the factor established** 6.

NO 15. Daniel Troya surrendered peaceably when discovered by guards during the escape attempt. **Yes** ~~X~~ D.L. **No** X. **If "Yes," the number of jurors who found the factor established** 0.

16. Daniel Troya was adversely influenced by his Uncle Isidro "Tito." **Yes** X

No ___. If "Yes," the number of jurors who found the factor established 7.

17. Daniel Troya was traumatized by witnessing the shooting death of his friend Jean Kamel. **Yes** X **No ___. If "Yes," the number of jurors who found the factor established** 9.

18. Daniel Troya received no "grief counseling" from school authorities or family members after he witnessed the shooting of Jean Kamel. **Yes** X **No ___. If "Yes," the number of jurors who found the factor established** 9.

NO 19. Daniel Troya suffered adversely and received no grief counseling after the suicide death of a close family friend. **Yes** ~~X~~ D.L. **No** X. **If "Yes," the number of jurors who found the factor established** 0.

NO 20. Daniel Troya suffered adversely and received no grief counseling after the illness and death of his grandmother. **Yes** ~~X~~ D.L. **No** X. **If "Yes," the number of jurors who found the factor established** 0.

21. Jose Luis Escobedo engaged in criminal conduct that contributed to the circumstances leading to his family's death. **Yes** X **No ___. If "Yes," the number of jurors who found the factor established** 11.

22. The evidence of Daniel Troya's exact role in the offense is not sufficient to justify a sentence of death. **Yes ___ No** X. **If "Yes," the number of jurors who found the factor established ___.**

Space for Recording Findings Regarding Additional Mitigating Factors:

23. NONE

Number of jurors who so find ___.

24. ___

_____

_____

_____ **Number of jurors who so find _____.**

25. _____

_____

_____

_____ **Number of jurors who so find _____.**

Regardless of your findings in this section, proceed to Section 6, which follows.

SECTION 6

SELECTION

Having considered whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of any mitigating factors, whether the aggravating factors are sufficient in themselves to justify a sentence of death, and whether death is therefore the appropriate sentence in this case:

A. Sentence of Death

We, the jury, determine by unanimous vote that a sentence of death shall be imposed.

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

_____ Yes	X No

Count 7 (Luis Damian Escobedo):

X Yes	_____ No

Count 8 (Luis Julian Escobedo):

X Yes	_____ No

Count 9 (Yessica Escobedo):

_____ Yes	X No

Count 10 (Jose Luis Escobedo):

_____ Yes	X No

If you answer "Yes" to all of the counts set forth above, the foreperson must sign here, and you must then proceed to Section 7. If you answer "No" to any of the counts set forth above, the foreperson must sign, and you must then proceed to Section 6.B, which immediately follows, as to those counts for which you have answered "No."

_____ _____ March 31st 2009
Foreperson Date

B. Sentence of Life Imprisonment Without the Possibility of Release

We, the jury, determine by unanimous vote that a sentence of life imprisonment without the possibility of release shall be imposed.

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

X Yes _____ No

Count 7 (Luis Damian Escobedo):

_____ Yes _____ No

Count 8 (Luis Julian Escobedo):

_____ Yes _____ No

Count 9 (Yessica Escobedo):

X Yes _____ No

Count 10 (Jose Luis Escobedo):

X
Yes

_____
No

If you answer "Yes" to all of the counts set forth above, the foreperson must sign here, and you must then proceed to Section 7. If you answer "No" to any of the counts set forth above, the foreperson must sign, and you must then proceed to Section 6.C, which immediately follows, as to those counts for which you have answered "No."

_____
Foreperson

March 31st 2009
Date

C. Lesser Sentence

We, the jury, unanimously recommend that the Court impose a sentence for a term of years up to life imprisonment without possibility of release.

Count 6 (Jose Luis Escobedo, Yessica Escobedo, Luis Damian Escobedo, Luis Julian Escobedo):

_____
Yes

_____
No

Count 7 (Luis Damian Escobedo):

_____
Yes

_____
No

Count 8 (Luis Julian Escobedo):

_____
Yes

_____
No

Count 9 (Yessica Escobedo):

_____
Yes

_____
No

Count 10 (Jose Luis Escobedo):

_____ Yes _____ No

If you answer "Yes" to any of the counts set forth above, the foreperson must sign here, and you must then proceed to Section 7.

_____ Foreperson _____ Date

SECTION 7

CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the Defendant or any victim was not involved in reaching his or her individual decision. The signing juror further certifies that he or she would have made the same recommendation regarding a sentence for the crime or crimes in question regardless of the race, color, religious beliefs, national origin, or sex of the Defendant, or the victims.

Foreperson

March 31st 2009

Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60216-CR-COHN/SNOW(s)(s)

UNITED STATES OF AMERICA,
Plaintiff,

vs.

KENNETH PAUL WILK
a/k/a "Wolfpackeines,"
Defendant.
_____/

SPECIAL VERDICT

We, the jury, make the following findings, relevant to a sentence of death or life imprisonment without the possibility of release:

A. Age

1. All jurors unanimously agree that the Government has proved beyond a reasonable doubt that Defendant Kenneth Paul Wilk was eighteen (18) years of age or older at the time of the offense.

Yes ✓ No _____

If you answered "yes" in Subpart "A" then proceed to answer Subpart "B." If you answered "no" in Subpart "A," then your verdict is for life imprisonment without the possibility of release as to Counts One and Two and either life imprisonment without the possibility of release or a term of imprisonment to be determined by the Court as to Count Four. Do not answer the questions in Subparts "B" thru "F". You should proceed directly to Subpart "G" and then sign and date the verdict form.

B. Intent

1. All jurors unanimously agree that the Government has proved beyond a reasonable doubt that the Defendant:

a. intentionally killed Todd M. Fatta.

Yes ___ DP No ✓

If your answer is "yes" you should proceed to Subpart "C" regarding determination of necessary aggravating factors. If your answer is "no" you should proceed to determine whether the Government has proven intent factor "b."

b. intentionally inflicted serious bodily injury that resulted in the death of Todd M. Fatta.

Yes ✓ No ___

If your answer is "yes" you should proceed to Subpart "C" regarding determination of necessary aggravating factors. If your answer is "no" you should proceed to determine whether the Government has proven intent factor "c."

c. intentionally participated in an act, contemplating that a life of a person would be taken and intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and Todd M. Fatta died as a direct result of the act.

Yes ___ No ___

If your answer is "yes" you should proceed to Subpart "C" regarding determination of necessary aggravating factors. If your answer is "no" you should proceed to determine whether the Government has proven intent factor "d."

d. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life, and Todd M. Fatta died as a direct result of the act.

Yes ___ No ___

If your answer is "yes" you should proceed to Subpart "C" regarding determination of necessary aggravating factors.

If you answered "no" to all 4 intent factors in Subpart "A," then your verdict is for life imprisonment without the possibility of release as to Counts One and Two and either life imprisonment without the possibility of release or a term of imprisonment to be determined by the Court as to Count Four. Do not answer the questions in Subparts "C" thru "F". You should proceed directly to Subpart "G" and then sign and date the verdict form.

C. Necessary Aggravating Factors *(Answer all questions in this section)*

1. All jurors unanimously agree that the Government has proved beyond a reasonable doubt that the Defendant Kenneth Paul Wilk, killed or attempted to kill more than one person, that is, Todd M. Fatta and Angelo Cedeno, in the same criminal episode.

Yes ✓ No _____

2. All jurors unanimously agree that the Government has proved beyond a reasonable doubt that the Defendant committed the offense after substantial planning and premeditation to cause the death of Todd M. Fatta.

Yes _____ No ✓

3. All jurors unanimously agree that the Government has proved beyond a reasonable doubt that the Defendant in the commission of the offense knowingly created a grave risk of death to one or more persons in addition to Todd M. Fatta and Angelo Cedeno.

Yes _____ No ✓

If you answered "yes" to any one of the three questions "C.1", "C.2," or "C.3" then proceed to answer the remaining questions on this verdict form. If you answered "no" to all three questions "C.1"; "C.2"; and "C.3" then your verdict is for life imprisonment without the possibility of release as to Counts One and Two and either life imprisonment without the possibility of release or a term of imprisonment to be determined by the Court as to Count Four. Do not answer

the questions in Subparts "D" thru "F". You should proceed directly to Subpart "G" and then sign and date the verdict form.

D. Additional Aggravating Factors *(Answer all questions in this section)*

1. All jurors unanimously agree that the Government has proved beyond a reasonable doubt that the Defendant killed Todd M. Fatta in an effort by the Defendant to obstruct justice or tamper with a witness as described in Count Seven of the Superseding Indictment.

   Yes _____ No ✓

2. All jurors unanimously agree that the Government has proved beyond a reasonable doubt that the Defendant has been convicted of, in addition to the capital offenses, an endeavor to obstruct justice through threats or force as charged in Count Five of the Superseding Indictment.

   Yes ✓ No _____

3. All jurors unanimously agree that the Government has proved beyond a reasonable doubt that in the context of a life in prison setting, the Defendant poses a continuing danger to the lives and safety of other persons, alleged to be evidenced by specific threats of violence to law enforcement officers, a continuing pattern of violence toward law enforcement officers, specific admissions of violence, low rehabilitative potential and lack of remorse for his criminal activities.

   Yes _____ No ✓

4. All jurors unanimously agree that the Government has proved beyond a reasonable doubt that the Defendant caused injury, harm, and loss to the family of Todd M. Fatta because of Todd M. Fatta's personal characteristics as an individual human being and the impact of his death upon those persons.

   Yes ✓ No _____

E. Mitigating Factors *(Answer all questions in this section)*

For each of the following factors indicate the number of jurors, if any, who have found the existence of the mitigating factor by a preponderance of the evidence:

1. For the first 40 years of Mr. Wilk's life, he was never arrested for any crime.

   Yes ✓ If "yes", number of jurors 12

   No _____

2. For the first 40 years of Mr. Wilk's life, he was a productive, contributing member of society.

   Yes ✓ If "yes", number of jurors 12

   No _____

3. If not sentenced to death, Mr. Wilk will spend the rest of his life in prison without the possibility of release.

   Yes ✓ If "yes", number of jurors 12

   No _____

4. Even though not sufficient to constitute a defense to the charges, Mr. Wilk's capacity to fully appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired.

   Yes ✓ If "yes", number of jurors 2

   No _____

5. Mr. Wilk was under duress, even though not to such a degree as to constitute a defense to the charges.

   Yes ✓ If "yes", number of jurors 12

   No _____

6. Mr. Wilk has obeyed all rules and regulations of the jail, and has had no disciplinary problems, during his pre-trial detention at the Federal Detention Center from August 19, 2004 to the present.

Yes ✓ If "yes", number of jurors 12

No _____

7. Even though not sufficient to constitute a defense to the charges, Mr. Wilk committed the offense under some degree of mental or emotional disturbance.

Yes ✓ If "yes", number of jurors 12

No _____

8. Mr. Wilk is not likely to commit future acts of violence if sentenced to life in prison without release.

Yes ✓ If "yes", number of jurors 9

No _____

9. From late 2000 through 2001, following the deterioration of Mr. Wilk's health and Kelly Jones' arrests, Mr. Wilk's life entered a downward spiral.

Yes ✓ If "yes", number of jurors 12

No _____

10. Mr. Wilk showed respect and decorum in this courtroom, even under the significant stress of a capital trial.

Yes ✓ If "yes", number of jurors 12

No _____

11. After the brief, initial exchange of shots had stopped, Mr. Wilk did not fire any remaining rounds and voluntarily walked out of his home.

Yes ✓ If "yes", number of jurors 12

No _____

12. Evidence you have heard of planning and premeditation may have been partially attributable to Mr. Wilk's mental or emotional disturbance.

Yes ✓ If "yes", number of jurors 12

No _____

13. Although not sufficient to establish self defense, the following factors may have contributed to Mr. Wilk's reaction when the police forcibly entered his home:

a. Mr. Wilk suffered from hearing loss.

Yes ✓ If "yes", number of jurors 4

No _____

b. Mr. Wilk suffered prior acts of vandalism and harassment at his home.

Yes ✓ If "yes", number of jurors 5

No _____

c. The entry team was not in full police uniform.

Yes ✓ If "yes", number of jurors 3

No _____

d. Visibility inside Mr. Wilk's home may have been impaired.

Yes ✓ If "yes", number of jurors 2

No _____

e. Dep. Fatta may have been in a crouched position with his firearm pointed at Mr. Wilk when Mr. Wilk fired.

Yes ✓ If "yes", number of jurors 2

No _____

f. Mr. Wilk was lawfully in his home when the officers made the forced entry into his home.

Yes ✓ If "yes", number of jurors 7

No _____

g. Mr. Wilk had no advance knowledge that the police would forcibly enter his home on the morning of August 19, 2004.

Yes ✓ If "yes", number of jurors 4

No _____

14. Mr. Wilk's mental and/or emotional decline was at least partially attributable to matters beyond his control, including but not limited the following:

a. Kelly Jones' conduct, criminal behavior and controlling nature.

Yes ✓ If "yes", number of jurors 12

No _____

b. Mr. Wilk's personal stressors led him to drugs/alcohol.

Yes ✓ If "yes", number of jurors 9

No _____

c. Mr. Wilk suffered from depression.

Yes ✓ If "yes", number of jurors 12

No _____

d. Mr. Wilk suffered from some degree of dementia.

Yes ✓ If "yes", number of jurors 2

No _____

e. Mr. Wilk had some degree of organic brain damage.

Yes ✓ If "yes", number of jurors 2

No _____

f. Mr. Wilk knew he had the fatal disease of AIDS.

Yes ✓ If "yes", number of jurors 10

No _____

15. Mr. Wilk was subjected to a series of significant stressors between 2001 and 2004, which had an effect on his mental and emotional well-being.

Yes ✓ If "yes", number of jurors 12

No _____

16. Mr. Wilk was ill-equipped to cope with the combination of stress factors that led to his mental and/or emotional decline.

Yes _____ If "yes", number of jurors _____

No ✓

17. During his life, Mr. Wilk has showed acts of generosity, kindness and charity to others.

Yes ✓ If "yes", number of jurors 12

No _____

18. In light of the fact that Mr. Wilk has full blown AIDS, imprisonment until his death will be a particularly severe punishment for him.

Yes ✓ If "yes", number of jurors 4

No _____

19. Mr. Wilk saved the life of a woman at a Miami Subs restaurant in Hollywood by performing the Heimlich Maneuver on her when she was choking.

Yes ✓ If "yes", number of jurors 5

No _____

20. Mr. Wilk counseled and helped Jim Sipowicz when Jim Sipowicz revealed to him that he had been abused as a child.

Yes ✓ If "yes", number of jurors 4

No _____

21. Defendant Kenneth P. Wilk has been a good and loyal friend to Jim Sipowicz, Richard Murphy and Donn Crothers.

Yes ✓ If "yes", number of jurors 6

No _____

F. Additional Mitigating Factors

Describe and identify any other factors that mitigate against the imposition of a sentence of death and identify the number of jurors, if any, who find such factor to have been established by a preponderance of the evidence:

Kelly Ray Jones presence, intimidation and corrupt influence on. mr. Wilk

Number of jurors 12

The manner in which the search & arrest warrants were planned & carried out.

Number of jurors 10

_____,

Number of jurors _____

_____,

Number of jurors _____

_____,

Number of jurors _____

_____,

Number of jurors _____

G. Determination of Sentence

1. As to **Count One**, the Intentional Killing of Deputy Sheriff Todd M. Fatta, as a State or Local Law Enforcement Officer engaged in the performance of his duties, we the jury unanimously find:

   a. that the aggravating factor(s) to which we have provided a unanimous "yes" answer above sufficiently outweigh(s) the mitigating factor(s) to justify a sentence of death, or in the absence of a mitigating factor, that the aggravating factor(s) alone is (are) sufficient to justify a sentence of death, and that the Defendant should be sentenced to death.

   Yes _____ No ✓

   b. that the Defendant should be sentenced to life imprisonment without the possibility of release.

   Yes ✓ No _____

2. As to **Count Two**, the murder of Todd M. Fatta, a person assisting a Federal Law Enforcement Officer engaged in the performance of that officer's duties, we the jury unanimously find:

   a. that the aggravating factor(s) to which we have provided a unanimous "yes" answer above sufficiently outweigh(s) the mitigating factor(s) to justify a sentence of death, or in the absence of a mitigating factor, that the aggravating factor(s) alone is (are) sufficient to justify a sentence of death, and that the Defendant should be sentenced to death.

   Yes _____ No ✓

b. that the Defendant should be sentenced to life imprisonment without the possibility of release.

Yes ✓ No _____

3. As to **Count Four**, the Using, Carrying, or Possessing a firearm which crime caused the murder of Todd M. Fatta, as defined in Counts 1 and 2, we the jury unanimously find:

a. that the aggravating factor(s) to which we have provided a unanimous "yes" answer above sufficiently outweigh(s) the mitigating factor(s) to justify a sentence of death, or in the absence of a mitigating factor, that the aggravating factor(s) alone is (are) sufficient to justify a sentence of death, and that the Defendant should be sentenced to death.

Yes _____ No ✓

b. that the Defendant should be sentenced to life imprisonment without the possibility of release.

Yes ✓ No _____

c. that the Defendant should be sentenced to a lesser sentence to be determined by the Court.

Yes _____ No ✓

SO SAY WE ALL,

Debbie Potts
Foreperson

6/13/07
Date

Each juror must sign below, indicating that the above sentence reflects the jury's unanimous decision:

By signing below, each of us, individually, hereby certifies that consideration of the race, color, religious beliefs, national origin, or sex of the Defendant Kenneth Paul Wilk or the victim Todd M. Fatta was not involved in reaching our individual decisions. Each of us, individually, further certifies that the same decision regarding a sentence for the crime in question would have been made no matter what the race, color, religious belief, national origin, or sex of Kenneth Paul Wilk or Todd M. Fatta may have been.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 02-20572-CR-COHN/SNOW

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LUIS GONZALEZ-LAUZAN, JR.,

Defendant.
_____/

FILED by VT D.C.
FEB 2 5 2004
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. FT. LAUD

SPECIAL VERDICT

We, the jury, make the following findings, relevant to a sentence of death or life imprisonment without possibility of release:

A. Intent

All jurors unanimously agree that the government has proved beyond a reasonable doubt that the Defendant intentionally participated in an act contemplating that the life of Alexander Texidor would be taken, or intending that lethal force would be used against him, and that Alexander Texidor died as a result.

Yes X No _____

If you answered "no" to question "A" then your verdict is for life imprisonment without release and you do not answer any more questions

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but simply sign the verdict form.

If you answered "yes" to question "A" then proceed to answer question "B".

B. Necessary Aggravating Factors

1. All jurors unanimously agree that the government has proved beyond a reasonable doubt that the Defendant procured the offense by payment or promises of payment or release from debt.

   Yes X No _____

2. All jurors unanimously agree that the government has proved beyond a reasonable doubt that the Defendant committed the offense after substantial planning and premeditation to cause the victim's death.

   Yes X No _____

If you answered "no" to both questions "B.1" and "B.2" then your verdict is for life imprisonment without release and you do not answer any more questions but simply sign the verdict form.

If you answered "yes" to either question "B.1" or "B.2" then proceed to answer the remaining questions.

C. Additional Aggravating Factor

All jurors unanimously agree that the government has proved beyond a reasonable doubt that the Defendant committed the offense to retaliate against the victim for having cooperated with Federal agents.

Yes X No _____

D. Mitigating Factors

For each of the following factors indicate the number of jurors, if any, who have found the existence of the mitigating factor by a preponderance of the evidence:

1. Luis Gonzalez Lauzan, Jr. was a mentor to others.

   Yes X If "yes", number of jurors 4

   No _____

2. Luis Gonzalez Lauzan, Jr. was a good son to his mother when his father went to prison.

   Yes X If "yes", number of jurors 9

   No _____

3. Luis Gonzalez Lauzan, Jr. was a good and caring boyfriend to Christy Bouley his girlfriend, the mother of their child.

   Yes X If "yes", number of jurors 7

   No _____

4. Luis Gonzalez Lauzan, Jr. was a good brother to his brothers Alex and Ivan.

   Yes X If "yes", number of jurors 9

   No _____

5. Luis Gonzalez Lauzan, Jr. had exemplary conduct during the trial of this cause.

   Yes X If "yes", number of jurors 2

   No _____

6. Luis Gonzalez Lauzan, Jr. has no significant prior criminal history, or violent criminal history.

   Yes X If "yes", number of jurors 5

   No _____

7. Luis Gonzalez Lauzan, Jr. volunteered in the community after Hurricane Andrew.

   Yes _____ If "yes", number of jurors _____

   No X

8. Luis Gonzalez Lauzan, Jr. when questioned by the police cooperated with them, and gave them a full statement admitting guilt and waived his right to legal counsel.

   Yes X If "yes", number of jurors 7

   No _____

9. Throughout his entire lifetime as well as the time of the offense, Luis Gonzalez Lauzan, Jr. was under the dominance and influence of his father.

Yes X If "yes", number of jurors 5

No _____

10. Luis Gonzalez Lauzan, Jr. was an abused child, both verbally, mentally, and physically.

Yes X If "yes", number of jurors 8

No _____

11. Luis Gonzalez Lauzan, Jr. lacked a positive male role model and father figure when growing up.

Yes X If "yes", number of jurors 8

No _____

12. Luis Gonzalez Lauzan, Jr. had a substance abuse (drug) problem causing Neuropsychological problems which affected and impaired his thought and decision making process.

Yes X If "yes", number of jurors 1

No _____

13. Luis Gonzalez Lauzan, Jr. is a religious and spiritual person.

Yes _____ If "yes", number of jurors _____

No X

14. Luis Gonzalez Lauzan, Jr. is extremely remorseful over the death of Alex Texidor.

Yes _____ If "yes", number of jurors _____

No X

15. Luis Gonzalez Lauzan, Jr.'s sentence should be equal and proportionate to his co-defendant James Wiggins, who actually shot and killed Alex Texidor.

Yes X If "yes", number of jurors 9

No _____

16. The victim Alex Texidor involved himself in the underworld criminal activity of guns, knowing the risks involved in his activity, which led to his demise.

Yes X If "yes", number of jurors 5

No _____

17. Luis Gonzalez Lauzan, Jr. has demonstrated his ability to make a positive adjustment to incarceration through his good prison record.

Yes X If "yes", number of jurors 1

No _____

18. Luis Gonzalez Lauzan, Jr.'s positive adjustment during his federal prison sentence and his pre-trial incarceration indicates that he would not present a future danger to others in an institution.

Yes X If "yes", number of jurors 4

No _____

19. Luis Gonzalez Lauzan, Jr. has family and friends who will visit him regularly in prison if he receives a life sentence.

Yes X If "yes", number of jurors 3

No _____

20. Luis Gonzalez Lauzan, Jr. is a charitable person who has "adopted" two children in Africa through a Save the Children Fund.

Yes _____ If "yes", number of jurors _____

No X

21. Luis Gonzalez Lauzan, Jr. has a strong work ethic and has worked hard throughout his life.

Yes _____ If "yes", number of jurors _____

No X

22. Luis Gonzalez Lauzan, Jr. has been a responsible, hard working, and valued employee.

Yes _____ If "yes", number of jurors _____

No X

E. Additional Mitigating Factors

Describe and identify any other factors that mitigate against the imposition of a sentence of death and identify the number of jurors, if any, who find such factor to have been established by a preponderance of the evidence:

_____,

Number of jurors _____

_____,

Number of jurors _____

_____,

Number of jurors _____

_____,

Number of jurors _____

_____,

Number of jurors _____

_____,

Number of jurors _____

_____,

Number of jurors _____

F. Determination of Sentence

1. We the jury unanimously find that the aggravating factor(s) to which we have provided a unanimous "yes" answer above sufficiently outweigh(s) the mitigating factor(s) to justify a sentence of death, or in the absence of a mitigating factor, that the aggravating factor(s) alone is (are) sufficient to justify a sentence of death, and that the Defendant should be sentenced to death.

Yes _____ No X

2. We the jury unanimously find that the Defendant should be sentenced to life imprisonment without the possibility of release.

Yes X No _____

SO SAY WE ALL,

Foreperson Date 2-24-04

Each juror must sign below, indicating that the above sentence reflects the jury's unanimous decision:

Date 2-24-04

Margaret Richardson	2/24/04 Date
Brenda Gibson	2/24/04 Date
Ana M. Villar	2/24/04 Date
Margaret C. Green	2/24/04 Date
Joan Knight	2/24/04 Date
Jomis Todd	2 24 04 Date
[illegible]	2-24-04 Date
Mario C. Rodriguez	2/24/04 Date
Larry Washington	2/24/04 Date
[illegible]	2/24/04 Date
[illegible]	2/24/04 Date

By signing below, each of us, individually, hereby certifies that consideration of the race, color, religious beliefs, national origin, or sex of the Defendant Luis Gonzalez-Lauzan, Jr. or the victim Alexander Texidor was not involved in reaching our individual decisions. Each of us, individually, further certifies that the same decision regarding a sentence for the crime in question would have been made no matter what the race, color, religious belief, national origin, or sex of Luis Gonzalez-Lauzan, Jr. or Alexander Texidor may have been.

Caroline Black	2-24-04 Date
Margaret Richardson	2/24/04 Date
Blondell Gibson	2/24/04 Date
Ana M. Villard	2/24/04 Date
Margaret C. Atem	2/24/04 Date
Joan Knight	2/24/04 Date
James Gold	2 24/04 Date
Mari [illegible]	2/24/04 Date
Mario C. Rodriguez	2/24/04 Date

Larry Washington — 2-24-04
Date

2-24-04
Date

2/24/04
Date

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 99-714-CR-MORENO

FILED by D.C.
MAR 26 2003
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S. D. OF FLA.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SPECIAL VERDICT FORM

JOSE DENIS,

Defendant.
_____/

Questions 1 to 5 must be answered by you unanimously and based upon proof beyond a reasonable doubt.

1. Was Jose Denis 18 years of age at the time of the offense?

_X_ YES _____ NO

2. Did Jose Denis intentionally kill Richard Valdez?

_____ YES _X_ NO

If you answered "no" to either question #1 or #2, then your verdict is for life imprisonment and you do not answer any more questions but simply sign the verdict form.

If you have answered "yes" to both questions #1 and #2, then proceed to answer the other questions.

3. Did Jose Denis commit the offense in a heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim?

_____ YES _____ NO

4. Did Jose Denis commit the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value?

_____ YES _____ NO

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If you have answered "yes" to either question #3 or #4 then proceed to answer the other questions. If you have answered "no" to both questions #3 and #4 then your verdict is for life imprisonment, you do not answer any other questions but you sign and date the verdict form.

5. NON-STATUTORY AGGRAVATING FACTORS

A) Did Jose Denis participate in an additional uncharged attempted murder to obstruct justice?

_____ YES _____ NO

B) Does Jose Denis present a danger to others in the future?

_____ YES _____ NO

C) Did Jose Denis cause loss, injury and harm to the victim's family?

_____ YES _____ NO

MITIGATING FACTORS

All the parts to question #6 may be found by any number of jurors and need be proven only by a preponderance of the evidence.

6. For each of the following factors indicate the number of jurors, if any, who have found the existence of that mitigating factor:

(1) Jose Denis was not a leader in the conspiracy to rob the victim.

_____ YES If yes, # of jurors _____ _____ NO

(2) The deceased involved himself in the drug world knowing the risks involved in such activity.

_____ YES If yes, # of jurors _____ _____ NO

(3) Other defendants equally or more culpable than Jose Denis have received less severe sentences than the death penalty:

_____ YES If yes, # of jurors _____ _____ NO

(4) Jose Denis grew up believing it was his role to protect Pedro Castillo.

_____ YES If yes, # of jurors_____ _____ NO

(5) Jose Denis acted under the influence of Pedro Castillo.

_____ YES If yes, # of jurors _____ _____ NO

(6) Jose Denis was youthful, only twenty-two years of age, at the time of the offense.

_____ YES If yes, # of jurors _____ _____ NO

(7) Jose Denis has no history of criminal convictions.

_____ YES If yes, # of jurors _____ _____ NO

(8) After the offense, Jose Denis took positive steps to change his life by returning to school, leaving the Miami area and setting positive career goals.

_____ YES If yes, # of jurors _____ _____ NO

(9) Jose Denis has demonstrated his ability to make a positive adjustment to incarceration through his work performance and good conduct.

_____YES If yes, # of jurors _____ _____ NO

(10) Jose Denis would not present a future risk of danger to others in the prison setting.

_____ YES If yes, # of jurors _____ _____ NO

(11) Jose Denis' life was shaped by the hardship and persecution his family suffered in Cuba and in fleeing Cuba to the United States.

_____ YES If yes, # of jurors _____ _____ NO

(12) Jose Denis' life in the United States was shaped by hardship, poverty and his family's struggle.

_____ YES If yes, # of jurors _____ _____ NO

(13) Jose Denis has a strong work ethic and has worked hard throughout his life.

_____ YES If yes, # of jurors _____ _____ NO

(14) Jose Denis has worked hard to obtain a college education.

_____ YES If yes, # of jurors _____ _____ NO

(15) Jose Denis overcame language and learning problems to obtain an education.

_____ YES If yes, # of jurors _____ _____ NO

(16) At age 29, Jose Denis is still a young man.

_____ YES If yes, # of jurors _____ _____ NO

(17) Jose Denis registered for the draft prior to becoming a naturalized citizen.

_____ YES If yes, # of jurors _____ _____ NO

(18) Jose Denis has demonstrated concern for other through participation in community service projects while in college.

_____ YES If yes, # of jurors _____ _____ NO

(19) Jose Denis has an extended, loving family that will suffer loss, harm and grief if he is killed.

_____ YES If yes, # of jurors _____ _____ NO

(20) Any other factors in Jose Denis' background, record, or character or the circumstances of the offense or any other relevant factor that mitigates against the imposition of a sentence of death.

_____ YES If yes, # of jurors _____ _____ NO

Please indicate what these factors are and the number of jurors who so find.

_____ # of jurors _____

_____ # of jurors _____

_____ # of jurors ____

_____ # of jurors ____

_____ # of jurors ____

7. You shall consider whether all the aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death.

Based upon this consideration, the jury by unanimous vote determines that the sentence to be imposed on Jose Denis as to Count IV shall be:

__X__ life imprisonment without possibility of release

OR

_____ death

DONE and ORDERED this __26__ day of March 2003.

Benjamin Addison
FOREPERSON
BENJAMIN ADDISON

Each juror must sign below, indicating that the above sentence reflects the jury's unanimous decision:

Muldrow-Young, Katherine

Addison, Benjamin F.

Hamilton, Phil Jr.

Mirabal, Jose Angel

Fenwick, Rita A.

Carreno, Elena B.

Pelletier, Dana R.

Wolff, Grace S.

Blanco, Lopez Lourdes

Scholl, Rosalie E.

Wadley, Brena Mae

Rodriguez, Carmen I.

DATE: March 26, 2003

By signing below, each of us, individually, hereby certifies that consideration of the race, color, religious beliefs, national origin, or sex of Jose Denis and Richard Valdez was not involved in reaching our individual decisions. Each of us, individually, further certifies that the same decision regarding a sentence for the crime in question would have been made no matter what the race, color, religious belief, national origin, or sex of Jose Denis or Richard Valdez may have been.

Signature of Jurors:

Muldrow-Young, Katherine

Hamilton, Phil Jr.

Fenwick, Rita A.

Pelletier, Dana R.

Blanco, Lopez Lourdes

Wadley, Brena Mae

Rodriquez, Carmen I.

Addison, Benjamin F.

Mirabal, Jose Angel

Carreno, Elena B.

Wolff, Grace S.

Scholl, Rosalie E.

Date: March 26, 2003