

COURT EXHIBIT

1/12/07

20

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

01 CR 1367 (RJD)

-against-

MARTIN AGUILAR,
Defendant.
-----X

**PENALTY PHASE
SPECIAL VERDICT FORM**

SECTION I
REQUIRED PRELIMINARY FACTOR

A. General Directions for Section I:

As used in this section, the term "capital counts" refers to Counts One (murder for hire conspiracy from which death resulted), Two (murder for hire), and Three (drug-related murder) of the Indictment.

Please indicate whether the government has proven beyond a reasonable doubt, with respect to each count, the required preliminary factor.

B. Required Preliminary Intent Factor:

We unanimously find beyond a reasonable doubt, with regard to all three capital counts, that the defendant intentionally killed Jose Fernandez.

We unanimously find beyond a reasonable doubt that the defendant intentionally killed Jose Fernandez only with regard to the following capital counts (please list below and identify by count number):

We do not unanimously find beyond a reasonable doubt that the defendant intentionally killed Jose Fernandez with regard to any capital count.

C. Further Directions for Section I:

For each capital count, if you do not unanimously find that the government has proven the preliminary intent factor beyond a reasonable doubt, then your deliberations for that count are over, and you should not consider that count in any further sections until Section VI.

If you do not find the existence of the preliminary factor for any capital count, please proceed directly to Section VI.

If you have found the existence of the preliminary factor for any capital counts, please continue to Section II.

SECTION II
STATUTORY AGGRAVATING FACTORS

A. General Directions for Section II:

As used in this section, the term "capital counts" refers only to those counts for which you found the required preliminary factor in Section I. In other words, do not consider statutory aggravating factors for counts for which you have not found the preliminary factor.

In Section II, please indicate which, if any, of the following statutory aggravating factors you unanimously find that the government had proven beyond a reasonable doubt. For each of the listed factors, you must mark one of the responses.

B. Heinous, Cruel, or Depraved Manner of Killing

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

C. Consideration for Pecuniary Gain

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

D. Substantial Planning and Premeditation

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

____ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

E. Further Directions for Section II

For each capital count you are considering in this section, if you do not unanimously find that the government has proven any statutory aggravating factor beyond a reasonable doubt, then your deliberations for that count are over, and you should not consider that count in any further sections until Section VI.

If there is no capital count for which you unanimously find that at least one statutory aggravating factor has been proved beyond a reasonable doubt, skip forward to Section VI.

If you have found one or more statutory aggravating factors with regard to one or more counts, continue to Section III.

SECTION III
NON-STATUTORY AGGRAVATING FACTORS

A. General Directions for Section III:

As used in this section, the term “capital counts” refers only to those counts for which you have found the required preliminary factor in Section I and at least one statutory aggravating factor in Section II.

In this section, please indicate which, if any, of the following four non-statutory aggravating factors you unanimously find that the government has proven beyond a reasonable doubt. For each of the proposed factors, you must mark one of the responses provided.

B. Killed While Engaged in Drug Conspiracy

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

C. Future Dangerousness

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

D. Lack of Remorse

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

____ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

E. Victim Impact

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

____ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

F. Further Directions for Section III:

After you have completed your findings in this section (whether or not you have found any of the above non-statutory aggravating factors to have been proved), continue on to Section IV.

SECTION IV
MITIGATING FACTORS

A. General Directions for Section IV:

As used in this section, the term "capital counts" refers only to those counts for which you found one required preliminary factor in Section I and at least one statutory aggravating factor in Section II.

As to the alleged mitigating factors listed below, please indicate which, if any, you find that the defendant has proven by a preponderance of the evidence.

Recall that your vote as a jury need not be unanimous with regard to each question in this section. 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 established in making his or her individual determination of whether or not a sentence of death shall be imposed, regardless of the number of other jurors who agree that the factor has been established.

In the space provided, please indicate the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence.

B. Mitigating Factors

1. If Martin Aguilar is not executed, he will spend the rest of his life in a federal prison, without the possibility of release.

Number of jurors who find 1. 12

2. But for Gilbert Caraballo and Quincy Martinez, Martin Aguilar would not have been involved in the murder of Jose Fernandez.

Number of jurors who find 2. 12

3. Others responsible for the death of the victim will not be punished by death.

Number of jurors who find 3. 5

4. Martin Aguilar was raised in a home with a violent and abusive father who promoted a culture of fear, violence and intolerance in the home.

Number of jurors who find 4. 9

5. Martin Aguilar started off life as a gentle and sensitive child but was forced by his father to be aggressive and violent.

Number of jurors who find 5. 8

6. Martin Aguilar grew up in an unstable home environment characterized by marital conflict, parental drug and alcohol abuse, frequent relocations and lack of parental supervision.

Number of jurors who find 6. 12

- 7. After being arrested on December 10, 2001, MARTIN AGUILAR confessed to special agents of the Federal Bureau of Investigation with regard to his involvement in the murder of Jose Fernandez, and provided information about the murder and some of his other criminal activity during three separate proffer sessions. The defendant thereafter informed the government that he would not cooperate or provide further information.

Number of jurors who find 7. 7

- 8. Martin Aguilar has human qualities that make his life one of value.

Number of jurors who find 8. 8

The law does not limit your consideration of mitigating factors to those that have been proposed by the defendant. Therefore, you may consider during your deliberations any other factor or factors in the defendant's background, record, character, or any other circumstance of the offense that mitigate against imposition of the death penalty.

The following extra spaces are provided to write in additional mitigating factors, if any, found by one or more jurors by a preponderance of the evidence. If more space is needed, write "CONTINUED" and use the reverse side of the page.

The parental abuse of his (Martin Aguilar's) mother as a child had a negative impact on

~~Number of jurors who so find: _____~~

bringing up Martin Aguilar during his childhood and teenage years.

Number of jurors who so find: 5

Number of jurors who so find: _____

C. Further Directions for Section IV:

After you have completed this section, whether or not you have found any mitigating factors, continue to Section V.

SECTION V
DETERMINATION OF SENTENCE

A. Directions for Section V:

As used in this section, the term “capital counts” refers only to those counts for which you have found the required preliminary factor in Section I and at least one statutory aggravating factor in Section II.

In this section, enter your determination of the defendant’s sentence with regard to each of the capital counts. Your vote as a jury must be unanimous with regard to each question in this section.

B. Determination of Sentence

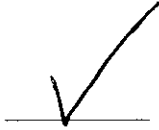
After considering the information presented by both sides during the penalty phase and balancing the aggravating factors found to exist against the mitigating factors found to exist:

_____ We, the jury, unanimously find that the government has failed to prove beyond a reasonable doubt that death is the appropriate sentence for MARTIN AGUILAR for any of the capital counts.

_____ We, the jury, unanimously find beyond a reasonable doubt, for all of the capital counts, that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist or, in the absence of any mitigating factors, that the aggravating factor or factors are themselves sufficient – so that death is the appropriate sentence for MARTIN AGUILAR. We vote unanimously that MARTIN AGUILAR should be sentenced to death separately as to each count.

_____ We, the jury, unanimously find beyond a reasonable doubt that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist or, in the absence of any mitigating factors, that the aggravating factor or factors are themselves sufficient – so that death is the appropriate sentence for MARTIN AGUILAR with regard to each of the following capital

counts only (identify each count by count number):



We, the jury, having carefully considered Sections I through IV of this Special Verdict Form, having made any appropriate findings in accordance with the Court's instructions, and having engaged in careful and thorough deliberation and discussion, are nonetheless unable to reach a unanimous verdict as to whether death is the appropriate sentence for MARTIN AGUILAR with regard to any of the capital counts. We understand that the consequence of this is that the defendant will be sentenced to life imprisonment without the possibility of release.

C. Further Directions for Section V:

Each juror must sign his or her juror number below, indicating that the above sentence determination reflects the jury's unanimous decision:

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The foreperson shall indicate the date of signing:

Date: 1-12-07

After you have completed your sentence determination in this section (regardless of what that determination was), continue to Section VI.

SECTION VI
CERTIFICATION

By signing your juror number below, each of you individually certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or the victim was not involved in reaching your individual decision. Each of you further certifies that you, as an individual, 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.

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The foreperson shall indicate the date of signing:
Date: 1-12-07

After you have completed this form, you will each be given a new certification, headed Juror No. _____, and an envelope which bears your juror number on the outside. Please sign that certificate using your real name, place the certificate in the envelope, seal the envelope and give the envelope to the Marshal. All of the certificates bearing your real name will be kept by the Court under seal.