

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )
Plaintiff, )
vs. )
KENNETH EUGENE BARRETT, )
Defendant. )

No. CR-04-115-P

FILED

NOV 17 2005

William E. Guthrie Clerk, U.S. District Court

Deputy Clerk

PENALTY PHASE SPECIAL VERDICT FORM

Instructions: As much as possible, you should proceed through this special verdict form section by section in order.

I. Defendant's Age at Time of Offenses

We, the jury, unanimously find beyond a reasonable doubt that the government proved that the defendant was at least eighteen (18) years of old at the time he committed the offenses alleged in Counts One, Two and Three of the superseding indictment.

YES [X]

NO

If you answered "YES," proceed to Section II of this Form. If you answered "NO" to the age determination, then you cannot consider the sentence of death for this defendant on any count. In that event, cross out Sections II, III, IV, and V. You should then proceed to Sections VI.A.2 or VI.A.3 (pages 30-31), VI.B.2 or VI.B.3 (pages 34-35), and VI.C.2 or VI.C.3 (pages 38-39), and consider whether to impose a sentence of life imprisonment without the possibility of release or some lesser sentence. Once you have reached a verdict, complete Section VII.

**II. Threshold Eligibility Factors**

**Instructions:** If you unanimously find that one or more of these "threshold eligibility factors" has been proven beyond a reasonable doubt, place an "X" next to "YES" as to that factor and move on to the statutory aggravating factors. Do this for each count.

**A. Count One - Committing a murder through the use of a firearm during or in relation to a drug trafficking crime, or possession of a firearm in furtherance of such crime**

1. The defendant, Kenneth Eugene Barrett, intentionally killed the victim, David Eales (18 U.S.C. § 3591(a)(2)(A)).

YES

NO

2. The defendant, Kenneth Eugene Barrett, intentionally inflicted serious bodily injury that resulted in the death of the victim, David Eales (18 U.S.C. § 3591(a)(2)(B)).

YES

NO

3. The defendant, Kenneth Eugene Barrett, 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 the victim, David Eales, died as a direct result of the act (18 U.S.C. § 3591(a)(2)(C)).

YES \_\_\_\_\_

NO  \_\_\_\_\_

4. The defendant, Kenneth Eugene Barrett, 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 the victim, David Eales, died as a direct result of the act (18 U.S.C. § 3591(a)(2)(D)).

YES  \_\_\_\_\_

NO \_\_\_\_\_

**B. Count Two - Committing a murder through the use of a firearm during or in relation to a crime of violence, or possessing a firearm in furtherance of such crime**

1. The defendant, Kenneth Eugene Barrett, intentionally killed the victim, David Eales (18 U.S.C. § 3591(a)(2)(A)).

YES

NO

2. The defendant, Kenneth Eugene Barrett, intentionally inflicted serious bodily injury that resulted in the death of the victim, David Eales (18 U.S.C. § 3591(a)(2)(B)).

YES

NO

3. The defendant, Kenneth Eugene Barrett, 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 the victim, David Eales, died as a direct result of the act (18 U.S.C. § 3591(a)(2)(C)).

YES

NO

4. The defendant, Kenneth Eugene Barrett, 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 the victim, David Eales, died as a direct result of the act (18 U.S.C. § 3591(a)(2)(D)).

YES

NO

C. Count Three - Intentionally killing, during the commission of a drug trafficking crime, a state law enforcement officer, engaged in the performance of his official duties

The defendant, Kenneth Eugene Barrett, intentionally killed the victim, David Eales (21 U.S.C. § 848(n)(1)(A)).

YES

NO

**Instructions:** If you answered "NO" with respect to all of the "threshold eligibility factor or factors" in Section II above as to any of Counts One, Two, or Three, then that ends your consideration of the death penalty as to that count. You must stop your deliberations as to that particular count, proceed to Section VI.A.1 (page 29), VI.B.1 (page 33) or VI.C.1 (page 37) of this form and indicate, with respect to the count or counts that the jury has been unable to unanimously find beyond a reasonable doubt that any of the "threshold eligibility factors" exist. Then follow the directions on that page and complete Sections VII.

If you answered "NO" with respect to all four of the "threshold eligibility factors" as to each of Counts One and Two, and as to the one "threshold eligibility factor" in Count Three, then that ends your consideration of the death penalty completely. Cross out Sections III, IV, V, and indicate in Section VI.A.1 (page 29), VI.B.1 (page 33) and VI.C.1 (page 37) of this Form, with respect to all counts, that

the jury has been unable to unanimously find beyond a reasonable doubt that any of the “threshold eligibility factors” exist. You should then proceed to Sections VI.A.2 or VI.A.3 (pages 30-31), VI.B.2 or VI.B.3 (pages 34-35), and VI.C.2 or VI.C.3 (pages 38-39) and consider whether to impose a sentence of life imprisonment without the possibility of release or some lesser sentence. Once you have reached a verdict, proceed to Section VII of this Form.

If you answered “YES” with respect to one or more of the “threshold eligibility factors” in Section II above as to Counts One, Two or Three, then proceed to Section III and continue your deliberations in accordance with the court’s instructions as to the count or counts for which you found a “threshold eligibility factor” to exist.

**III. Statutory Aggravating Factors**

**Instructions:** For each of the following statutory aggravating factors, answer "YES" or "NO" as to whether you, the jury, unanimously find that the government has established the existence of that factor beyond a reasonable doubt as to each of Counts One, Two and Three.

**A. Count One - Committing a murder through the use of a firearm during or in relation to a drug trafficking crime, or possession of a firearm in furtherance of such crime**

1. The defendant, in the commission of the offense charged in Count One of the Superseding Indictment, or in escaping apprehension for the violation of this offense, knowingly created a grave risk of death to one or more persons, to-wit: the other law enforcement officers involved in the tactical entry, except for John Mark Hamilton, Jr., in addition to the victim of the offenses, David Eales. 18 U.S.C. § 3592(c)(5).

YES \_\_\_\_\_

NO  \_\_\_\_\_

2. The defendant killed or attempted to kill more than one person, to-wit: John Mark Hamilton, Jr., and David Eales, in a single criminal episode. 18 U.S.C. § 3592(c)(16).

YES  \_\_\_\_\_

NO \_\_\_\_\_



3. The defendant committed the offenses as charged in Count One of the superseding indictment after substantial planning and premeditation to cause the death of a person. 18 U.S.C. § 3592(c)(9).

YES

NO

**B. Count Two - Committing a murder through the use of a firearm during or in relation to a crime of violence, or possessing a firearm in furtherance of such crime**

1. The defendant, in the commission of the offense charged in Count Two of the Superseding Indictment, or in escaping apprehension for the violation of this offense, knowingly created a grave risk of death to one or more persons, to-wit: the other law enforcement officers involved in the tactical entry, except for John Mark Hamilton, Jr., in addition to the victim of the offenses, David Eales. 18 U.S.C. § 3592(c)(5).

YES \_\_\_\_\_

NO

2. The defendant killed or attempted to kill more than one person, to-wit: John Mark Hamilton, Jr., and David Eales, in a single criminal episode. 18 U.S.C. § 3592(c)(16).

YES

NO \_\_\_\_\_

3. The defendant committed the offenses as charged in Count Two of the superseding indictment after substantial planning and premeditation to cause the death of a person. 18 U.S.C. § 3592(c)(9).

YES

NO \_\_\_\_\_

C. Count Three - Intentionally killing, during the commission of a drug trafficking crime, a state law enforcement officer, engaged in the performance of his official duties

1. The defendant, Kenneth Eugene Barrett, in the commission of the offense alleged in Count Three or in escaping apprehension for a violation of said offense knowingly created a grave risk of death to one or more persons in addition to the victim of the offense, David Eales (21 U.S.C. § 848(n)(5)).

YES

NO

2. The defendant, Kenneth Eugene Barrett, committed the offense as alleged in Count Three of the superseding indictment after substantial planning and premeditation (21 U.S.C. § 848(n)(8)).

YES

NO

**Instructions:** If you answered "NO" with respect to all of the statutory aggravating factors in Section III above as to any of Counts One, Two or Three, then that ends your consideration of the death penalty as to that count. You must stop your deliberations as to that particular count, proceed to Section VI.A.1 (page 29), VI.B.1 (page 33) or VI.C.1 (page 37) of this form and indicate, with respect to the count or counts that the jury has been unable to unanimously find beyond a reasonable doubt that any of the statutory aggravating factors exist.

If you answered "NO" with respect to all of the statutory aggravating factors as to **each** of Counts One, Two and Three, then that ends your consideration of the death penalty completely. Cross out Sections IV and V, and indicate in Sections VI.A.1 (page 29), VI.B.1 (page 33), and VI.C.1 (page 37) of this Form with respect to **all** counts, that the jury has been unable to unanimously find beyond a reasonable doubt that any of the statutory aggravating factors exist. You should then proceed to Sections VI.A.2 or VI.A.3 (pages 30-31), VI.B.2 or VI.B.3 (pages 34-35), and VI.C.2 or VI.C.3 (pages 38-39) and consider whether to impose a sentence of life imprisonment without the possibility of release or some lesser sentence. Once you have reached a verdict, proceed to Section VII of this Form.

If you answered "YES" with respect to any one or more of the statutory aggravating factors alleged as to Counts One, Two or Three in Section III above, then you may continue your deliberations only if you also found a "threshold eligibility factor" in Section II as to that particular count. If you **unanimously** found one "threshold eligibility factor" in Section II and at least one statutory aggravating factor in Section III to exist as to the same count, in any or all of Counts One, Two or Three, then you must proceed to Section IV and continue your deliberations in accordance with the court's instructions.

#### **IV. Non-Statutory Aggravating Factors**

**Instructions:** For each of the following, answer “YES” or “NO” as to whether you, the jury, unanimously find that the government has established the existence of that non-statutory aggravating factor beyond a reasonable doubt.

**A. Count One - Committing a murder through the use of a firearm during or in relation to a drug trafficking crime, or possession of a firearm in furtherance of such crime**

1. **Future Dangerousness.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat in an institutional correctional setting to the lives or safety of other persons, including, but not limited to, inmates and correctional officers, as evidenced by the offenses charged in the Superseding Indictment and the statutory and non-statutory aggravating factors. The circumstances that demonstrate the defendant’s future dangerousness include but are not limited to the capital offenses charged in the Superseding Indictment and the statutory and non-statutory aggravating factors alleged by the government. In addition, the defendant’s future dangerousness is demonstrated by his making non-specific and specific threats of violence; his non-verbal threats of violence directed toward others; his plans to commit acts of violence against others and his encouragement and solicitation of the commission of acts of violence against others. These include, but are not limited to:
  - a. Barrett advised others that he intended to kill law enforcement officers if they came upon his property.
  - b. Barrett posted a sign upon his property which stated “Keep out I Don’t give a Shit who you are! If you cross my gate or come on my property I’ll shoot.”
  - c. Barrett would obtain and carry a firearm when a vehicle which he did not recognize came onto his property.

- d. Barrett, in or about January, 2000, communicated with certain individuals that the identity of the confidential informant should be learned and that the confidential informant should be taken care of.
- e. Barrett, in about January, 1998, did intentionally accelerate through a vehicle check point in Sequoyah County, Oklahoma, endangering multiple law enforcement officers.
- f. Barrett committed other acts of violence or potential violence and threatened violence to others.

YES \_\_\_\_\_

NO  \_\_\_\_\_

- 2. The defendant, Kenneth Eugene Barrett, caused injury, harm, and loss to the victim's family because of the victim's personal characteristics as an individual human being and the impact of the death on the victim's family and friends.

YES  \_\_\_\_\_

NO \_\_\_\_\_

**B. Count Two - Committing a murder through the use of a firearm during or in relation to a crime of violence, or possessing a firearm in furtherance of such crime**

- 1. **Future Dangerousness.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat in an institutional correctional setting to the lives or safety of other persons, including, but not limited to, inmates and correctional officers, as evidenced by the offenses charged in the Superseding Indictment and the statutory and non-statutory aggravating factors. The circumstances that demonstrate the defendant's future dangerousness include but are

not limited to the capital offenses charged in the Superseding Indictment and the statutory and non-statutory aggravating factors alleged by the government. In addition, the defendant's future dangerousness is demonstrated by his making non-specific and specific threats of violence; his non-verbal threats of violence directed toward others; his plans to commit acts of violence against others and his encouragement and solicitation of the commission of acts of violence against others. These include, but are not limited to:

- a. Barrett advised others that he intended to kill law enforcement officers if they came upon his property.
- b. Barrett posted a sign upon his property which stated "Keep out I Don't give a Shit who you are! If you cross my gate or come on my property I'll shoot."
- c. Barrett would obtain and carry a firearm when a vehicle which he did not recognize came onto his property.
- d. Barrett, in or about January, 2000, communicated with certain individuals that the identity of the confidential informant should be learned and that the confidential informant should be taken care of.
- e. Barrett, in about January, 1998, did intentionally accelerate through a vehicle check point in Sequoyah County, Oklahoma, endangering multiple law enforcement officers.
- f. Barrett committed other acts of violence or potential violence and threatened violence to others.

YES \_\_\_\_\_

NO

2. The defendant, Kenneth Eugene Barrett, caused injury, harm, and loss to the victim's family because of the victim's personal characteristics as an individual human being and the impact of the death on the victim's family and friends.

YES

NO

C. **Count Three - Intentionally killing, during the commission of a drug trafficking crime, a state law enforcement officer, engaged in the performance of his official duties**

1. **Future Dangerousness.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat in an institutional correctional setting to the lives or safety of other persons, including, but not limited to, inmates and correctional officers, as evidenced by the offenses charged in the Superseding Indictment and the statutory and non-statutory aggravating factors. The circumstances that demonstrate the defendant's future dangerousness include but are not limited to the capital offenses charged in the Superseding Indictment and the statutory and non-statutory aggravating factors alleged by the government. In addition, the defendant's future dangerousness is demonstrated by his making non-specific and specific threats of violence; his non-verbal threats of violence directed toward others; his plans to commit acts of violence against others and his encouragement and solicitation of the commission of acts of violence against others. These include, but are not limited to:
- a. Barrett advised others that he intended to kill law enforcement officers if they came upon his property.
  - b. Barrett posted a sign upon his property which stated "Keep out I Don't give a Shit who you are! If you cross my gate or come on my property I'll shoot."



- c. Barrett would obtain and carry a firearm when a vehicle which he did not recognize came onto his property.
- d. Barrett, in or about January, 2000, communicated with certain individuals that the identity of the confidential informant should be learned and that the confidential informant should be taken care of.
- e. Barrett, in about January, 1998, did intentionally accelerate through a vehicle check point in Sequoyah County, Oklahoma, endangering multiple law enforcement officers.
- f. Barrett committed other acts of violence or potential violence and threatened violence to others.

YES \_\_\_\_\_

NO  \_\_\_\_\_

- 2. The defendant, Kenneth Eugene Barrett, caused injury, harm, and loss to the victim's family because of the victim's personal characteristics as an individual human being and the impact of the death on the victim's family and friends.

YES  \_\_\_\_\_

NO \_\_\_\_\_

**Instructions:** Regardless of whether you answered "YES" or "NO" with respect to the non-statutory aggravating factors in Section IV above, continue your deliberations in accordance with the court's instructions and proceed to Section V which follows. You must, however, have unanimously found, beyond a reasonable doubt, the

existence of one "threshold eligibility factor" in Section II above and at least one statutory aggravating factor in Section III above as to at least one count.

**V. Mitigating Factors**

**Instructions:**

For each of the following mitigating factors, you may indicate, in the space provided, the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence.

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

In addition to the mitigating factors outlined by the court, this section also contains blank lines in which you may write any additional mitigating factors that any member or members of the jury have found. If you need additional space, simply write "continued" at the end of the blank list and write additional factors on the back side of the paper.

A. Count One - Committing a murder through the use of a firearm during or in relation to a drug trafficking crime, or possession of a firearm in furtherance of such crime

1. The Defendant has accepted responsibility for the death of David Eales from his previous conviction.

Number of jurors who so find 5.

2. The Defendant has been convicted and punished for the death of David Eales.

Number of jurors who so find 5.

3. The Defendant, at the time of this incident, had no prior felony convictions.

Number of jurors who so find 12.

4. The Defendant is a father.

Number of jurors who so find 12.

5. The Defendant is a loved son and stepson.

Number of jurors who so find 12.

6. The Defendant is a good neighbor and friend.

Number of jurors who so find 7.

7. The Defendant's death will impact his child, family and friends.

Number of jurors who so find 10.

8. The Defendant has expressed remorse for the crimes.

Number of jurors who so find 0.

9. The Defendant will not present a future danger to society by being imprisoned for life without possibility of release as demonstrated by his incarceration since September 24, 1999.

Number of jurors who so find 2.

10. That other factors in defendant's childhood, background or character mitigate against imposition of the death sentence.

Number of jurors who so find 1.

11. Additional mitigating factors:

NEVER left his residence for THAT YEAR

Number of jurors who so find 1.

Philpot mistreating him when he was 17.

Number of jurors who so find 6.

Number of jurors who so find \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

**B. Count Two - Committing a murder through the use of a firearm during or in relation to a crime of violence, or possessing a firearm in furtherance of such crime**

1. The Defendant has accepted responsibility for the death of David Eales from his previous conviction.

Number of jurors who so find 5.

2. The Defendant has been convicted and punished for the death of David Eales.

Number of jurors who so find 5.

3. The Defendant, at the time of this incident, had no prior felony convictions.

Number of jurors who so find 12.

4. The Defendant is a father.

Number of jurors who so find 12.

5. The Defendant is a loved son and stepson.

Number of jurors who so find 12.

6. The Defendant is a good neighbor and friend.

Number of jurors who so find 7.

7. The Defendant's death will impact his child, family and friends.

Number of jurors who so find 12.

8. The Defendant has expressed remorse for the crimes.

Number of jurors who so find 0.

9. The Defendant will not present a future danger to society by being imprisoned for life without possibility of release as demonstrated by his incarceration since September 24, 1999.

Number of jurors who so find 2.

10. That other factors in defendant's childhood, background or character mitigate against imposition of the death sentence.

Number of jurors who so find 1.

11. Additional mitigating factors:

Never left his residence for that year.

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\_\_\_\_\_  
\_\_\_\_\_

Number of jurors who so find 1.

Philpot mistreating him when he  
was 17.

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Number of jurors who so find 6.

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Number of jurors who so find \_\_\_\_\_.



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Number of jurors who so find \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

C. Count Three - Intentionally killing, during the commission of a drug trafficking crime, a state law enforcement officer, engaged in the performance of his official duties

1. The Defendant has accepted responsibility for the death of David Eales from his previous conviction.

Number of jurors who so find 5.

2. The Defendant has been convicted and punished for the death of David Eales.

Number of jurors who so find 5.

3. The Defendant, at the time of this incident, had no prior felony convictions.

Number of jurors who so find 12.

4. The Defendant is a father.

Number of jurors who so find 12.

5. The Defendant is a loved son and stepson.

Number of jurors who so find 12.

6. The Defendant is a good neighbor and friend.

Number of jurors who so find 7.

7. The Defendant's death will impact his child, family and friends.

Number of jurors who so find 12.

8. The Defendant has expressed remorse for the crimes.

Number of jurors who so find 0.

9. The Defendant will not present a future danger to society by being imprisoned for life without possibility of release as demonstrated by his incarceration since September 24, 1999.

Number of jurors who so find 2.

10. That other factors in defendant's childhood, background or character mitigate against imposition of the death sentence.

Number of jurors who so find 2.

11. Additional mitigating factors:

Never left his residence for that year

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Number of jurors who so find 1.

Philpot mistreating him when he was 17.

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Number of jurors who so find 6.

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Number of jurors who so find \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

**Instructions:** Regardless of whether or not you chose to make written findings for the mitigating factors in Section V above, continue your deliberations in accordance with the court's instructions and proceed to Sections VI and VII which follow.

**VI. VERDICT**

**A. Count One - Committing a murder through the use of a firearm during or in relation to a drug trafficking crime, or possession of a firearm in furtherance of such crime**

1. If no “threshold eligibility factors” or statutory aggravating factors are found to exist as to Count One.

**Instructions:** If you have been unable to unanimously find beyond a reasonable doubt that any “threshold eligibility factors” (Section II of this Form) and/or statutory aggravating factors (Section III of this Form) exist as to Count One, then so indicate below.

We, the jury, do not unanimously find proven, beyond a reasonable doubt, the existence of any of the “threshold eligibility factors” and/or statutory aggravating factors required by law as prerequisites for the imposition of capital punishment, and therefore do not consider the death penalty as to the murder of David Eales for which the defendant has been convicted in Count One.

\_\_\_\_\_  
FOREPERSON

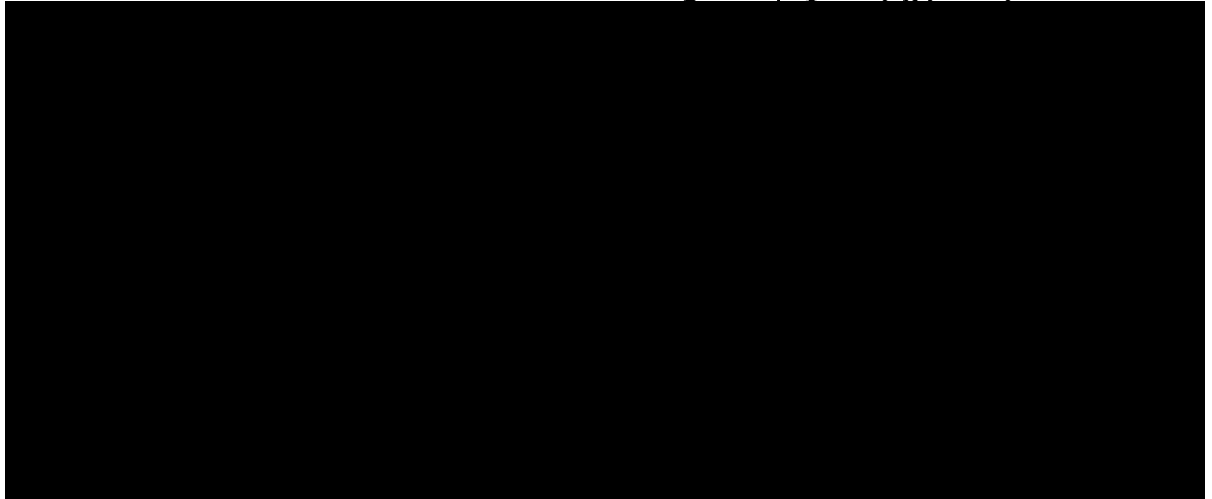
DATE: \_\_\_\_\_

**Instructions:** If you have been unable to unanimously find beyond a reasonable doubt that any “threshold eligibility factor” (Section II of this Form) or statutory aggravating factor (Section III of this Form) exists as to Count One, then after the foreman so indicates above, you should proceed to render your verdict as set forth in Section VI.A.2 (page 30) or VI.A.3 (page 31). Once you have reached a verdict, complete Section VII.

If you have unanimously found beyond a reasonable doubt that at least one “threshold eligibility factor” and one statutory aggravating factor exist as to Count One, then you should proceed to render your verdict as set forth in Section VI.A.2 (page 30), VI.A.3 (page 31), or VI.A.4 (page 32). Again, once you have reached a verdict, complete Section VII.

2. VERDICT - SENTENCE OF LIFE IN PRISON WITHOUT  
POSSIBILITY OF RELEASE

Based upon our consideration of the evidence and in accordance with the court's instructions, we find, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed upon the defendant for the murder of David Eales as described in Count One of the superseding indictment.



DOREPERSON

Date: 11-17-05

3. **VERDICT - LESSER SENTENCE**

Based upon our consideration of the evidence and in accordance with the court's instructions, we find, by unanimous vote, that a sentence less than death or life in prison without the possibility of release shall be imposed upon the defendant by the Court as authorized by the law for the murder of David Eales as described in Count One of the superseding indictment.


FOREPERSON

Date: \_\_\_\_\_

4. **VERDICT - DEATH SENTENCE**

Based upon our consideration of the evidence and in accordance with the court's instructions, we find, by unanimous vote, that a sentence of death shall be imposed upon the defendant for the murder of David Eales as described in Count One of the superseding indictment.

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_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

FOREPERSON

Date: \_\_\_\_\_



**VI. VERDICT**

**B. Count Two - Committing a murder through the use of a firearm during or in relation to a crime of violence, or possessing a firearm in furtherance of such crime**

1. If no "threshold eligibility factors" or statutory aggravating factors are found to exist as to Count Two.

**Instructions:** If you have been unable to unanimously find beyond a reasonable doubt that any "threshold eligibility factors" (Section II of this Form) and/or statutory aggravating factors (Section III of this Form) exist as to Count Two, then so indicate below.

We, the jury, do not unanimously find proven, beyond a reasonable doubt, the existence of any of the "threshold eligibility factors" and/or statutory aggravating factors required by law as prerequisites for the imposition of capital punishment, and therefore do not consider the death penalty as to the murder of David Eales for which the defendant has been convicted in Count Two.

\_\_\_\_\_  
FOREPERSON

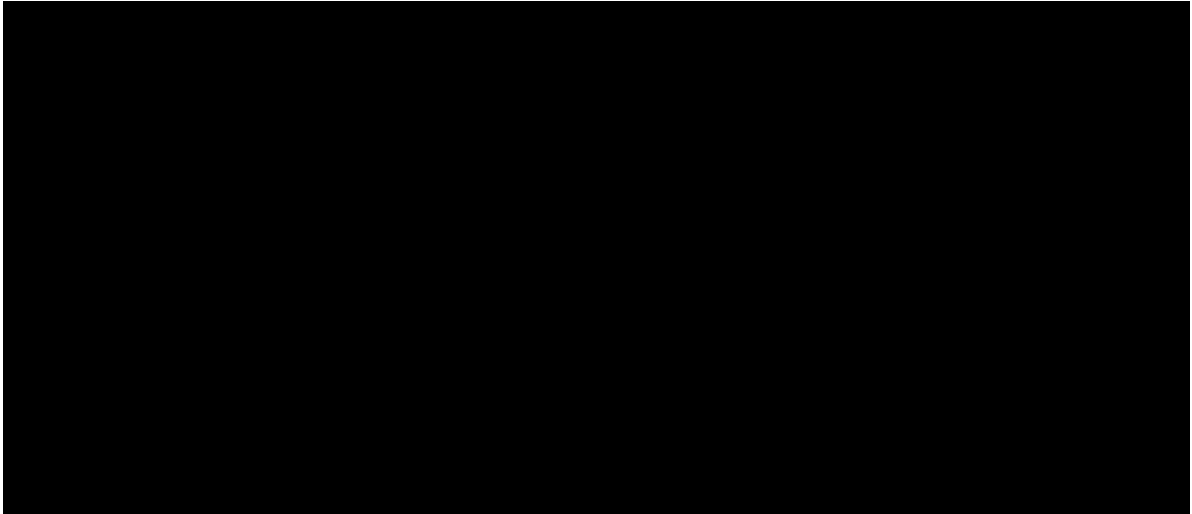
DATE: \_\_\_\_\_

**Instructions:** If you have been unable to unanimously find beyond a reasonable doubt that any "threshold eligibility factor" (Section II of this Form) or statutory aggravating factor (Section III of this Form) exists as to Count Two, then after the foreman so indicates above, you should proceed to render your verdict as set forth in Section VI.B.2 (page 34) or VI.B.3 (page 35). Once you have reached a verdict, complete Section VII.

If you have unanimously found beyond a reasonable doubt that at least one "threshold eligibility factor" and one statutory aggravating factor exist as to Count Two, then you should proceed to render your verdict as set forth in Section VI.B.2 (page 34), VI.B.3 (page 35), or VI.B.4 (page 36). Again, once you have reached a verdict, complete Section VII.

2. **VERDICT - SENTENCE OF LIFE IN PRISON WITHOUT  
POSSIBILITY OF RELEASE**

Based upon our consideration of the evidence and in accordance with the court's instructions, we find, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed upon the defendant for the murder of David Eales as described in Count Two of the superseding indictment.



~~FOREPERSON~~

Date: 11-17-05

**3. VERDICT - LESSER SENTENCE**

Based upon our consideration of the evidence and in accordance with the court's instructions, we find, by unanimous vote, that a sentence less than death or life in prison without the possibility of release shall be imposed upon the defendant by the Court as authorized by the law for the murder of David Eales as described in Count Two of the superseding indictment.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

FOREPERSON

Date: \_\_\_\_\_

4. **VERDICT - DEATH SENTENCE**

Based upon our consideration of the evidence and in accordance with the court's instructions, we find, by unanimous vote, that a sentence of death shall be imposed upon the defendant for the murder of David Eales as described in Count Two of the superseding indictment.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**FOREPERSON**

Date: \_\_\_\_\_

VI. VERDICT

C. Count Three - Intentionally killing, during the commission of a drug trafficking crime, a state law enforcement officer, engaged in the performance of his official duties

1. If no "threshold eligibility factors" or statutory aggravating factors are found to exist as to Count Three.

**Instructions:** If you have been unable to unanimously find beyond a reasonable doubt that any "threshold eligibility factors" (Section II of this Form) and/or statutory aggravating factors (Section III of this Form) exist as to Count Three, then so indicate below.

We, the jury, do not unanimously find proven, beyond a reasonable doubt, the existence of any of the "threshold eligibility factors" and/or statutory aggravating factors required by law as prerequisites for the imposition of capital punishment, and therefore do not consider the death penalty as to the murder of David Eales for which the defendant has been convicted in Count Three.

\_\_\_\_\_  
FOREPERSON

DATE: \_\_\_\_\_.

**Instructions:** If you have been unable to unanimously find beyond a reasonable doubt that any "threshold eligibility factor" (Section II of this Form) or statutory aggravating factor (Section III of this Form) exists as to Count Three, then after the foreman so indicates above, you should proceed to render your verdict as set forth in Section VI.C.2 (page 38) or VI.C.3 (page 39). Once you have reached a verdict, complete Section VII.

If you have unanimously found beyond a reasonable doubt that at least one "threshold eligibility factor" and one statutory aggravating factor exist as to Count Three, then you should proceed to render your verdict as set forth in Section VI.C.2 (page 38), VI.C.3 (page 39), or VI.C.4 (page 40). Again, once you have reached a verdict, complete Section VII.

2. **VERDICT- SENTENCE OF LIFE IN PRISON WITHOUT  
POSSIBILITY OF RELEASE**

Based upon consideration of the evidence and in accordance with the court's instructions, we find, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed upon the defendant for the murder of David Eales as described in Count Three of the superseding indictment.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

FOREPERSON

Date: \_\_\_\_\_

3. **VERDICT - LESSER SENTENCE**

Based upon consideration of the evidence and in accordance with the court's instructions, we find, by unanimous vote, that a sentence less than death or life in prison without the possibility of release, but not less than twenty (20) years, shall be imposed upon the defendant by the Court as authorized by the law for the murder of David Eales as described in Count Three of the superseding indictment.

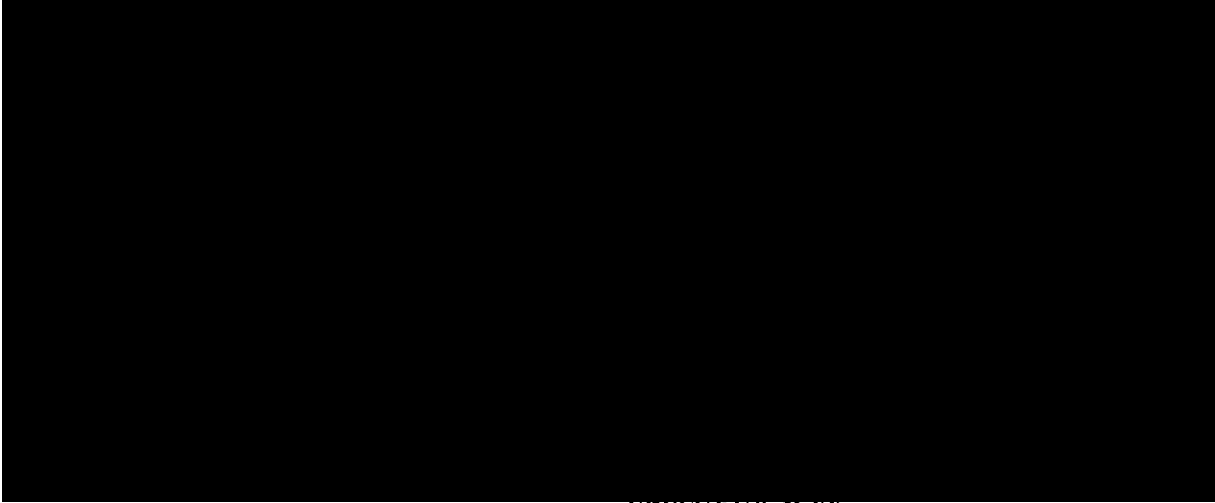
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FOREPERSON

Date: \_\_\_\_\_

**VII. Certification**

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or gender 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 decision regarding the appropriate sentence for the offense in question regardless of the race, color, religious beliefs, national origin, or gender of the defendant or the victim.



FOREPERSON

Date: 11-17-05



4. **VERDICT - DEATH SENTENCE**

Based upon our consideration of the evidence and in accordance with the court's instructions, we find, by unanimous vote, that a sentence of death shall be imposed upon the defendant for the murder of David Eales as described in Count Three of the superseding indictment.



Date: 11-17-05