

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

LARRY LUJAN, )

Defendant. )

Criminal No. 05-0924 RB

**FILED**  
UNITED STATES DISTRICT COURT  
LAS CRUCES, NEW MEXICO

*[Signature]* AUG 11 2011  
3:00 pm

MATTHEW J. DYKMAN  
CLERK

*Redacted*  
**SPECIAL FINDINGS FORM FOR**  
**ELIGIBILITY PHASE**

**I. Defendant's Age at the Time of the Offense.**

Do you unanimously find that the Government proved beyond a reasonable doubt that the defendant was eighteen (18) years of age or older at the time he committed the offense of kidnapping resulting in the death of Dana Joe Grauke II?

YES  NO

If you answered "yes," proceed to Section II of this Form. If you answered no, then stop your deliberations. Cross out Sections II and III of this Form and proceed to Section IV. Each juror should then carefully read the statement in Section IV, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the Court that you have reached a decision.

**II. Defendant's Intent in Commission of Offense.**

For each type of intent specified below, answer "yes" or "no" according to whether you unanimously find that the Government proved beyond a reasonable doubt that the defendant acted with the specified intent:

1. The defendant intentionally killed Dana Joe Grauke II.

YES  NO

2. The defendant intentionally inflicted serious bodily injury that resulted in Dana Joe Grauke II's death.

YES  NO

3. The defendant intentionally participated in an act, contemplating that a person's life 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 Dana Joe Grauke II died as a result of the act.

YES  NO

If you answered "yes" to one or more of these alternatives, proceed to Section III of this Form. If you answered "no" to all of them, then stop your deliberations. Cross out Section III of this Form and proceed to Section IV. Each juror should then carefully read the statement in Section IV, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the Court that you have reached a decision.

**III. Statutory Aggravating Factors.**

The Government has alleged that the following statutory aggravating factors are present in this case. For each factor, answer "yes" or "no" according to whether you unanimously find that the Government has proved the existence of the factor beyond a reasonable doubt:

**1. Death during the commission of a kidnapping resulting in death.**

Do you unanimously find that the Government has proved beyond a reasonable doubt that the death of Dana Joe Grauke II, or injury resulting in death, occurred during the commission or attempted commission of the offense of kidnapping resulting in death?

YES  NO

**2. Heinous, cruel, or depraved manner of committing the offense.**

Do you unanimously find that the Government has proved beyond a reasonable doubt that the defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Dana Joe Grauke II?

YES  NO

**3. Substantial planning and premeditation.**

Do you unanimously find 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 Dana Joe Grauke II?

YES  NO

**4. Vulnerability of victim.**

Do you unanimously find that the Government has proved beyond a reasonable doubt that Dana Joe Grauke II, was particularly vulnerable due to youth or infirmity?

YES  NO

If you answered "yes" to one or more of these statutory aggravating factors, you have found the defendant eligible for the death penalty and this trial will proceed to the Selection Phase. If you answered "no" to all of these factors, then you have found the defendant ineligible for a death sentence. Once you have completed all of the determinations in Section III, stop your deliberations and proceed to Section IV. Each juror should carefully read the statement in Section IV, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then notify the court that you have reached a decision.

**IV. 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 in this eligibility phase, 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.

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\_\_\_\_\_ 8/11/11  
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Foreperson

Date: 8/11/11

**FILED**  
UNITED STATES DISTRICT COURT  
LAS CRUCES, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

OCT - 5 2011

5:00pm

MATTHEW J. DYKMAN  
CLERK

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

LARRY LUJAN, )

Defendant. )

Criminal No. 05-924 RB

*Redacted*  
**SPECIAL FINDINGS FORM FOR**  
**SELECTION PHASE**

**I. Non-Statutory Aggravating Factors**

The government has alleged that the following non-statutory aggravating factors are present in this case. For each factor, answer "yes" or "no" according to whether you unanimously find that the government proved the existence of the factor beyond a reasonable doubt:

**A. Future Dangerousness**

Do you unanimously find that the government has proved beyond a reasonable doubt that the defendant represents a continuing danger to the lives and safety of other persons and is likely to commit criminal acts of violence in the future that would constitute a continuing and serious threat to the lives and safety of others, as evidenced by at least one or more of the following?

YES  NO

**1. Continuing Pattern of Violence**

Do you unanimously find that the defendant has engaged in a continuing pattern of violence, attempted violence, and threatened violence, based upon your earlier finding of guilt on

the charge in the Indictment; and the evidence of the double homicide for which the defendant has been charged by the State of New Mexico?

YES  NO

**2. Low Rehabilitative Potential**

Do you unanimously find that the defendant has demonstrated a low potential for rehabilitation by engaging in repeated acts of institutional misconduct while in the custody of various state and local correction or detention agencies, or the United States Marshals Service?

YES  NO

**3. Lack of Remorse**

Do you unanimously find that the defendant has demonstrated a lack of remorse for killing Dana Joe Grauke II, as demonstrated by the defendant's statements following the offenses alleged in the Indictment?

YES  NO

**4. Gang Participation**

Do you unanimously find that the defendant has demonstrated an allegiance to, and active membership in the Barrio Azteca, a violent criminal enterprise?

YES  NO

**B. Victim Impact**

Do you unanimously find that the government has proved beyond a reasonable doubt that, as reflected by the victim's personal characteristics as an individual human being and the impact of the offense on the victim and the victim's family, the defendant caused loss, injury, and harm to the victim and the victim's family?

YES  NO

Regardless of your findings on these non-statutory aggravating factors, you must proceed to the next Section (II) of this Form.

**II. Mitigating Factors**

The defendant has alleged that the following mitigating factors are present in this case. For each of these factors, answer "yes" or "no" according to whether any juror (or jurors) finds that the defendant has proved the existence of the factor by a preponderance of the evidence. (Answer "yes" if *any one or more jurors* finds that the corresponding factor was proved by a preponderance of the evidence. Answer "no" if no juror finds that corresponding factor was proved by a preponderance of the evidence).

1. If he is not sentenced to death, Larry Lujan will spend the rest of his life in a highly structured and secure federal prison without the possibility of release.

Yes  No

2. Leticia Lujan, Larry Lujan's mother, was ill-equipped to raise Larry Lujan in a healthy, safe, and nurturing environment due to one or more of the following:

- She was attempting to raise six children by five different fathers, none of whom were involved in a meaningful way in the children's lives;

Yes  No

- She was addicted to heroin and cocaine;

Yes  No

- She sold drugs throughout Larry Lujan's childhood and young adulthood;

Yes  No

- She was a victim of violence from lovers, family members, and the community; Yes  No
  - She served time in prison in both the Texas Department of Corrections and the New Mexico Department of Corrections, and was arrested repeatedly; Yes  No
  - She was orphaned at 8 years of age and had no consistent or meaningful parental guidance. Yes  No
3. Larry Lujan was born into and raised in an environment where addiction to alcohol and drugs was commonplace. Yes  No
  4. The adults in Larry Lujan's life were either absent, addicted, violent, broken or ineffective. Yes  No
  5. As a child Larry Lujan was raised by people who used and sold drugs, sexually abused others, and were violent. Yes  No
  6. Larry Lujan had health problems as an infant and young child that made it difficult for him to walk, breathe, and talk. Yes  No
  7. Larry Lujan did not do well in school. He failed and repeated the first, sixth, and seventh grades. Yes  No
  8. Larry Lujan showed potential as a young boy to teachers,



probation officers, and others.

Yes  No

9. Larry Lujan has shown goodness to people who have known him throughout his life and to those who have known and visited him in jail.

Yes  No

10. When Larry Lujan was a child, the people who were supposed to take care of him – including his uncle, mother, stepfathers, brother and sister – were arrested multiple times.

Yes  No

11. When Larry Lujan was a child, he was sexually abused by his older brother, Alfred Gene "Gino" Lujan.

Yes  No

12. When Larry Lujan was a child, his older brother, Alfred Gene "Gino" Lujan buried Larry Lujan and concealed him underground.

Yes  No

13. When Larry Lujan was a child, he witnessed a number of people, including, but not limited to, his older brother Alfred Gene "Gino" Lujan, his mother Leticia Lujan, his uncle Rafael Martinez-Vasquez, and his stepfathers Alfredo Lujan and Arturo Arellano threaten physical harm or inflict violence on other people.

Yes  No

14. When Larry Lujan was growing up, many of the people who were supposed to care for him were addicted to one or more

of the following: heroin, cocaine, paint, glue, marijuana,  
prescription pills and/or alcohol.

Yes  No

15. Due to violence in the community, his family and the drug  
trade, Larry Lujan grew up in fear for his and his family's safety.

Yes  No

16. Before Larry Lujan was 19 years old, he lost a number of  
loved ones to death, incarceration, drug addiction and  
abandonment.

Yes  No

17. Larry Lujan had few or no positive male role models in  
his life.

Yes  No

18. When Larry Lujan was 10 years old, he watched his older  
brother Alfredo Gene "Gino" Lujan, attack his family, barricade  
himself inside the house, draw the El Paso Police Department  
SWAT team to the house, arm himself with knives that he threw  
at police, and hold his siblings hostage. Larry Lujan's home was  
tear-gassed and his brother was arrested.

Yes  No

19. Larry Lujan's sister, Mary Ann Lujan, supported the  
family in her mother's absence. Larry Lujan cared for the  
younger children when Mary Ann was at school or working.

Yes  No

20. Despite the chaos in his home, Larry Lujan was generous,

kind, and supportive to his younger siblings and younger cousins. Yes  No

21. While Larry Lujan was a child, his mother was reported to the Texas child welfare agency on multiple occasions for neglectful supervision. Yes  No

22. Larry Lujan, at thirteen years old, was subjected to maltreatment in New Opportunities and Ways School in New Braunfels, Texas because of one or more of the following: poor nutrition, lack of educational, counseling, and recreational services, and poor health conditions. New Opportunities and Ways School closed while under investigation for mismanagement. Yes  No

23. Larry Lujan did not receive the help he needed when he was sent to New Opportunities and Ways School in New Braunfels. Yes  No

24. While Leticia Lujan was pregnant with Larry Lujan, she drank alcohol regularly and suffered multiple physical assaults. Yes  No

25. Larry Lujan had learning disabilities in school and low adaptive functioning as an adult. Yes  No

26. Larry Lujan became addicted to one or more of the following substances: paint, glue, alcohol, marijuana, Rohypnol,

cocaine and Xanax. Some of Larry Lujan's substance addictions began when he was only 13 years old.

Yes  No

27. Larry Lujan was bullied by kids at school and in the neighborhood. He saw people like his uncle Rafael Martinez-Vasquez as someone who could protect himself and others.

Yes  No

28. Larry Lujan's role models taught him, since he was a child, that in order to survive, he had to "no te dejas," i.e., "don't let yourself," meaning "don't let others push you around."

Yes  No

29. The adults in Larry Lujan's life did not intervene, support, protect, or guide him after one or more difficult life events.

Yes  No

30. As a child, Larry Lujan did not receive meaningful intervention for any of the difficulties he experienced.

Yes  No

31. Larry Lujan made attempts to make an honest living by working at a deli, detailing cars, being an electrician's assistant, and digging ditches.

Yes  No

32. Dana Joe Grauke II, engaged in criminal conduct that may have contributed to the circumstances leading to his death, in that he was involved in drug dealing.

Yes  No

33. Every other participant in the kidnapping resulting in death of Dana Joe Grauke II, or the homicides of Alfredo Gonzales and Juana Olmeda, is either free, has never been charged with a crime, or will be released to the community in the next one to nine years. None are facing the death penalty or serving life in prison.

Yes  No

34. There is evidence that Larry Lujan was not acting alone at the time of Dana Joe Grauke II's death.

Yes  No

35. Larry was under the influence of drugs and alcohol at the time of Dana Joe Grauke II's kidnapping and death.

Yes  No

36. There is evidence that Larry Lujan was not acting alone at the time of the deaths of Alfredo Gonzales and Juana Olmeda.

Yes  No

37. Larry Lujan was under the influence of drugs and alcohol at the time of the deaths of Alfredo Gonzales and Juana Olmeda.

Yes  No

38. Larry Lujan is an important person to his older sister Mary Ann Lujan, and she loves him.

Yes  No

39. Larry Lujan is an important person to his younger sister Dora Vasquez, and she loves him.

Yes  No

40. Larry Lujan is an important person to his younger brother Jesse Lujan, and Jesse loves him. Yes  No

41. Larry Lujan is an important person to his younger brother [REDACTED] Arellano, and [REDACTED] loves him. Yes  No

42. Larry Lujan is an important person to his sons [REDACTED] and [REDACTED] Lujan, and they love him. Yes  No

43. Larry Lujan is an important person to his cousins [REDACTED] and [REDACTED] Martinez, and they love him. Yes  No

44. Larry Lujan maintains a loving, warm, and appropriate relationship with the children he raised, [REDACTED] and [REDACTED] Lujan, and [REDACTED] and [REDACTED] Martinez, even while incarcerated. Yes  No

45. Larry Lujan's family will suffer grief and loss if he is executed. Yes  No

46. Larry Lujan was exposed to risk factors as identified by the Department of Justice. Yes  No

47. Guards who have interacted with Larry Lujan feel he has been respectful of them while in jail. Yes  No

48. Even under the stress of a capital trial, Larry Lujan has shown respect and decorum in the courtroom. Yes  No

49. Larry Lujan has been working with Sophora Davis since 2008. Ms. Davis has observed in him genuine spiritual growth and a sincere desire to continue his self-improvement.

Yes  No

50. Larry Lujan's life has value.

Yes  No

51. There are other factors in Larry Lujan's life, background, record, character, or any other circumstance of the offense that mitigate against imposition of a death sentence.

Yes  No

As explained in the court's instructions, the law permits you to consider any other relevant mitigating information, in addition to the specific mitigating factors alleged by the defendant listed above, so long as you find that it was proved by a preponderance of the evidence. As with specific mitigating factors, your findings in this regard need not be unanimous. Answer "yes" if *any one or more jurors* finds the existence of any other relevant mitigating factor was proved by a preponderance of the evidence. Answer "no" if no juror finds any other relevant mitigating factor was proved by a preponderance of the evidence.

Did one or more jurors find that other relevant mitigating information was proved?

YES  NO

If you answered "yes," list the additional mitigation information you found to be present in the space provided immediately below:

- Larry counseled Dora twice against suicide
- Larry counsels his children about dangers of drugs
- Larry provides counsel and concern about family

issues, for example, his children's welfare

When you have completed your findings regarding mitigation, proceed to the next Section (III) of this Form, where you will weigh the aggravating factors with the mitigating factors, if any, that you have found to be present in this case.

**III. Weighing Process**

The question you must answer at this stage of your deliberations is whether the proven aggravating factors sufficiently outweigh the proven mitigating factors and information to justify a sentence of death or, if you have not found any mitigation present, whether the aggravating factors considered alone justify a death sentence. If you unanimously find that the weight of the aggravating factors is sufficient to justify a sentence of death, answer "yes" below, record your verdict on the attached Verdict – Sentence of Death, certify your decision as described in Section V, and notify the court that you have reached a decision. If you do not unanimously find that a death sentence is justified, answer "no" below, stop your deliberations, sign the attached Verdict – Life Imprisonment, certify your decision as described in section V, and notify the court that you have reached a decision.

YES \_\_\_\_\_

NO

**IV. Imposition of Sentence**

This is the last step in your deliberations. If you have made all of the findings necessary and have unanimously concluded that a sentence of death is justified and therefore must be imposed on the defendant, record your decision by collectively signing the verdict set out in Verdict – Sentence of Death below, sign the certification that follows in Section V, and notify the court that you have reached a decision. If you do not unanimously conclude that a sentence of



death is justified and therefore must be imposed, sign the verdict for life imprisonment set out in Verdict – Life Imprisonment below, sign the certification in Section V, and notify the court that you have reached a decision.

**V. 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.

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FOREPERSON

Date: 10/5/11

**VERDICT – SENTENCE OF DEATH**

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 on the defendant.

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FOREPERSON

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

**VERDICT - LIFE IMPRISONMENT**

Based upon our consideration of the evidence and in accordance with the court's instructions, we find that a sentence of life imprisonment without release shall be imposed on the defendant.

*Let it be known that this verdict was not unanimous*

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FOREPERSON

Date: 10/5/11