

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :

:

v. : Criminal No. DKC 2001-0367

:

CORNELL WINFREI McCLURE :  
Defendant :

:

SPECIAL VERDICT FORM REGARDING  
THE PUNISHMENT TO BE IMPOSED

SECTION I: AGE OF THE DEFENDANT

Instructions: Answer "YES" or "NO"

**Age of the Defendant.** The Court finds that the government has established beyond a reasonable doubt that the Defendant, Cornell McClure, was either eighteen (18) years of age or older at the time of the offenses alleged in the Second Superseding Indictment.

YES           X          

NO                           

**Instructions:** If the Court answered "NO" regarding the age of the Defendant, then the Court should cross out Sections II, III, IV and V, and proceed to Section VI of this form.

If the Court answered "YES" regarding the age of the Defendant, then the Court should proceed to Section II of this form.

CJM  
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**SECTION II: THRESHOLD ELIGIBILITY FACTORS**

**Instructions:** For each of the following, answer "YES" or "NO" as to whether the Court finds the government has proven beyond a reasonable doubt the existence of that "threshold eligibility factor."

1. **Intentional Killing.** The Court finds that the government has established beyond a reasonable doubt that the Defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).

YES     X    

NO           

2. **Intentional Infliction of Injury Resulting in Death.** The Court finds that the government has established beyond a reasonable doubt that the Defendant intentionally inflicted serious bodily injury that resulted in the death of the victim. 18 U.S.C. § 3591 (a)(2)(B).

YES     X    

NO

3. **Intentional Acts to Take Life or Use Lethal Force.**

The Court finds that the government has established beyond a reasonable doubt that the Defendant intentionally participated in an act, contemplating the 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 Tessa Mae Osborne died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

YES   X    
NO \_\_\_\_\_

4. **Intentional Acts of Violence Creating a Grave Risk of Death.**

The Court finds that the government has established beyond a reasonable doubt that the Defendant 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 Tessa Mae Osborne died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

YES   X    
NO \_\_\_\_\_

**Instructions:** If the Court answered "NO" with respect to all four of the "threshold eligibility factors" in Section II above then that ends the Court's consideration of the death penalty. The Court should proceed to Section VI DETERMINATION OF SENTENCE portion of this form and indicate that the Court did not find any of the "threshold eligibility factors" beyond a reasonable doubt. If the Court answered "YES" with respect to one or more of the threshold eligibility factors" in Section II above then proceed to Section III which follows.

**SECTION III: STATUTORY AGGRAVATING FACTORS**

**Instructions:** For the following, answer "YES" or "NO" as to whether the Court finds that the government has established beyond a reasonable doubt the existence of the "statutory aggravating factor."

1. **Death During Commission of Another Crime.** The Court finds beyond a reasonable doubt that the death or injuries resulting in death occurred during the commission of, attempted commission of, or during the immediate flight from the commission of, an offense under 18 U.S.C. § 1201(a)(2)(kidnapping). 18 U.S.C. § 3592(c)(1).

YES     X      
NO

**Instructions:** If the Court answered "NO" regarding the "Statutory Aggravating Factor," then cross out Sections IV and V, and proceed to Section VI of this form. If the Court answered "YES" regarding the "Statutory Aggravating Factor," proceed to Section IV of this form.

**SECTION IV: NON-STATUTORY AGGRAVATING FACTORS**

**Instructions:** For each of the following, answer "YES" or "NO" as to whether the Court finds that the government has proven beyond a reasonable doubt the existence of that "non-statutory aggravating factor."

1. **Victim Impact Evidence.** The Court finds beyond a reasonable doubt that the Defendant caused injury, harm, and loss to Tessa Mae Osborne and her family because of the effect of the offense on Tessa Mae Osborne, her personal characteristics as an individual human being, and the impact of her death upon her and her family.

YES           X          

NO                           

2. **Callous Disregard for the Severity of the Offense.** The Court finds beyond a reasonable doubt that, in the Defendant's statements to law enforcement officials or to others, he exhibited a callous disregard for the severity of the offense.

YES                           

NO           X

3. **Defenseless Victim.** The Court finds beyond a reasonable doubt that the Defendant kidnapped and murdered Tessa Mae Osborne under circumstances that demonstrate she was defenseless.

YES   X  

NO \_\_\_\_\_

**Instructions.** Regardless of whether the Court answered "YES" or "NO" regarding ANY or ALL of the "non-statutory aggravating factors," the Court should proceed to Section V of this form.

**SECTION V: MITIGATING FACTORS**

**Instructions:** For each of the following, answer "YES" or "NO" as to whether the Court finds by a preponderance of the evidence that a particular mitigating factor has been proven. Extra space is provided to write in additional mitigating factors, if any, found by the Court.

1. **Statutory Mitigating Factors.** In determining whether a sentence of death is to be imposed on a defendant, the Court shall consider any mitigating factor, including the following:

a. **Equally culpable defendants** - The Court finds by the preponderance of evidence that Rufus Millegan, who is equally culpable in the crimes for which Cornell McClure has been found guilty, will not be punished by death. 18 U.S.C. § 3592(a)(4).

YES   X  

NO \_\_\_\_\_

b. **No prior criminal record** - The Court finds by the preponderance of evidence that Cornell McClure did not have a significant prior history of other criminal conduct. 18 U.S.C. § 3592(a)(5).

YES     X    

NO           

1. **Non-Statutory Mitigating Factors.** Other factors in the Defendant's background, record, or character or any other circumstance of the offense that mitigate against imposition of the death sentence. 18 U.S.C. § 3592(a)(8).

a. The Court finds by the preponderance of the evidence that Cornell McClure was youthful, in age and maturity, at the time of the offense(s), only twenty-two (22) years of age.

YES     X    

NO           

b. The Court finds by the preponderance of the evidence that Cornell McClure has demonstrated the ability to make a positive adjustment to incarceration.

YES           

NO     X

c. The Court finds by the preponderance of the evidence that Cornell McClure has demonstrated the ability to make positive contributions to others while incarcerated.

YES   X  

NO           

d. The Court finds by the preponderance of the evidence that Cornell McClure's childhood and development were influenced by poor and/or indifferent parenting.

YES   X  

NO           

e. The Court finds by the preponderance of the evidence that Cornell McClure was physically abused by his mother.

YES   X  

NO           

f. The Court finds by the preponderance of the evidence that Cornell McClure was emotionally abused by his mother.

YES           

NO   X



g. The Court finds by the preponderance of the evidence that Cornell McClure suffers from learning disabilities.

YES   X    
NO \_\_\_\_\_

h. The Court finds by the preponderance of the evidence that Cornell McClure's learning disabilities interfered with his ability to be successful in school.

YES \_\_\_\_\_  
NO   X  

i. The Court finds by the preponderance of the evidence that Cornell McClure did not receive adequate support and structure in his mother's home to assist him in overcoming his learning disabilities.

YES   X    
NO \_\_\_\_\_

j. The Court finds by the preponderance of the evidence that Cornell McClure's cognitive impairments and deficits made life more difficult and challenging for him.

YES \_\_\_\_\_

NO       X      

k. The Court finds by the preponderance of the evidence that Cornell McClure has an abnormal brain volume as reflected in his MRI.

YES \_\_\_\_\_

NO       X      

l. The Court finds by the preponderance of the evidence that Cornell McClure has abnormal brain metabolism as reflected in his PET Scan.

YES \_\_\_\_\_

NO       X      

m. The Court finds by the preponderance of the evidence that Cornell McClure suffers from organic brain dysfunction.

YES \_\_\_\_\_

NO       X

n. The Court finds by the preponderance of the evidence that Cornell McClure was, and is, capable of establishing and sustaining meaningful and positive personal relationships.

YES \_\_\_\_\_  
NO   X  

o. The Court finds by the preponderance of the evidence that Cornell McClure was able to maintain steady full-time employment, with positive work evaluations.

YES   X    
NO \_\_\_\_\_

p. The Court finds by the preponderance of the evidence that, with the structure and support of the educational unit at the Prince George's County Correctional Center, Cornell McClure earned his GED while incarcerated.

YES   X    
NO \_\_\_\_\_

q. The Court finds by the preponderance of the evidence that Cornell McClure's life has value to his extended family, and to members of the community with whom he has established strong personal bonds.

YES  \_\_\_\_\_

NO \_\_\_\_\_

r. The Court finds by the preponderance of the evidence that Cornell McClure's brother Nicholas will suffer significant psychological harm and emotional trauma if Mr. McClure is executed.

YES \_\_\_\_\_

NO  \_\_\_\_\_

s. The Court finds by the preponderance of the evidence that Cornell McClure's extended family will suffer grief and loss if he is executed.

YES  \_\_\_\_\_

NO \_\_\_\_\_

t. The Court finds by the preponderance of the evidence that there are other factors in Cornell McClure's background, record or character or the circumstances of the offense, that mitigate against imposition of a death sentence.

YES \_\_\_\_\_

NO   X  

**Instructions.** The last factor listed above permits the Court to consider anything else about the commission of the crime or about Cornell McClure's background or character that would mitigate against the imposition of the death penalty.

The following extra spaces are provided to write in additional mitigating factors, if any, found by the Court.

*none*

**Instructions:** Regardless of whether or not the Court chooses to make written findings for the Mitigating Factors in Section t above, proceed to Section VI which follows.

**SECTION VI. DETERMINATION OF SENTENCE**

A. No "threshold eligibility factors" and/or statutory aggravating factors are found to exist as to Count One.

**Instructions:** If the Court has been unable to find beyond a reasonable doubt that any factors exist in either the "threshold eligibility factors" and/or the statutory aggravating factor, then so indicate below.

The Court does not find proven, beyond a reasonable doubt, the existence of any of the "threshold eligibility factors" and/or statutory aggravating factor required by law as prerequisites for the imposition of capital punishment, and therefore does not consider the death penalty as to the charges of First Degree Murder of Tessa Mae Osborne and Kidnapping Resulting in Death, for which Cornell McClure has been convicted in Counts One and Two of the Second Superseding Indictment.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DEBORAH K. CHASANOW  
UNITED STATES DISTRICT JUDGE

B. **Instructions:** If the Court has found at least one "threshold eligibility factor" and a Statutory Aggravating Factor, the Court is to consider whether all the aggravating factor or factors found to have been proven beyond a reasonable doubt sufficiently outweigh all the mitigating factor or factors found to have been proven by a preponderance of the evidence 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, this Court is to determine whether Cornell McClure should be sentenced to death or to life imprisonment without possibility of release.

**Instructions:** Indicate the Court's determination by placing an "X" in the appropriate space. Please sign and date in the following spaces provided below.

The Court has determined that Cornell McClure should be sentenced to:

_____	Death
<u>  X  </u>	Life Imprisonment Without the Possibility of Release

Feb. 28, 2005  
DATE

Deborah K. Chasanow  
DEBORAH K. CHASANOW  
UNITED STATES DISTRICT JUDGE