

FLD
JW 11/7/08

UNITED STATES OF AMERICA,

v.

HUMBERTO PEPIN TAVERAS,
also known as "Tony"
and "Luis Rosario"

Defendant.

SPECIAL VERDICT FORM

04-CR-156 (JBW)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ NOV 07 2008 ★
BROOKLYN OFFICE

COUNT ONE
(MURDER OF JOSÉ ROSARIO)

I. AGE OF THE DEFENDANT

Instructions: Answer "YES" or "NO."

The parties have stipulated that Humberto Pepin Taveras was eighteen years of age or older at the time of this offense. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras was eighteen years of age or older at the time of this offense?

YES ✓

NO

Instructions: If you answered "NO" in this section, then stop your deliberations on Count One. Each juror should carefully read the statement in Section VII 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 proceed to Count Two.

II. REQUISITE MENTAL STATE

Instructions: Answer "YES" or "NO."

The parties have stipulated that that Humberto Pepin Taveras intentionally killed José Rosario. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras intentionally killed or caused the death of José Rosario?

YES

NO

Instructions: If you answered "YES" to question II, proceed to section III.

If you answered "NO" to question II, then stop your deliberations on Count One. Each juror should carefully read the statement in Section VII 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 proceed to Count Two.

III. STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO."

A. The parties have stipulated that Humberto Pepin Taveras has previously been convicted of two or more State and Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras has previously been convicted of two or more State and Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance?

YES ✓ ✓

NO _____

B. The parties have stipulated that Humberto Pepin Taveras has previously been convicted of violating Title 21, United States Code, Sections 841(a) and 846, for which a sentence of five or more years may be imposed. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras has previously been convicted of violating Title 21, United States Code, Sections 841(a) and 846, for which a sentence of five or more years may be imposed?

YES

NO

C. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras committed the murder of José Rosario after substantial planning and premeditation to cause the death of a person?

YES _____

NO _____ ✓

D. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras committed the murder of José Rosario in an especially heinous, cruel, or depraved manner in that it involved serious physical abuse to the victim before he died?

YES _____

NO ✓ ✓

Instructions: If you answered “NO” with respect to all of the Statutory Aggravating Factors in this Section III, then stop your deliberations on Count One. Each juror should then carefully read the statement in Section VII 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 proceed to Count Two.

If you found the requisite age in Section I, intent in Section II and answered “Yes” with respect to one or more of the aggravating factors in Section III, proceed to Section IV.

Instructions: For each of the following, answer "YES" or "NO."

A. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras is likely to commit criminal acts of violence in the future that would constitute a continuing and serious threat to the lives or safety of other people?

YES _____

NO _____ ✓

B. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras has been convicted of more than one murder? You have already found that he is guilty of two murders – that of José Rosario and Carlos Madrid.

YES _____ ✓

NO _____

C. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras intimidated, threatened or harmed at least one other person to prevent her from being a witness against him (i.e. obstruction of justice)? You have already found this factor by finding the defendant guilty of Count III in the guilt phase of this trial.

YES

NO

D. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras caused loss, injury or harm to the family and friends of José Rosario as evidenced by his personal characteristics as a human being or the impact of his death on his family or friend?

YES

NO

Instructions: Regardless of whether you answered "YES" or "NO" with respect to the Non-Statutory Aggravating Factors in this Section IV, proceed to Section V.

Instructions: For each of the following mitigating factors, 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 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 a factor established in considering 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. Any juror may also weigh a mitigating factor found by another juror, even if he or she did not also find that factor to be mitigating:

1. As a child, Humberto Pepin Tavares was a victim of physical, sexual, and emotional abuse; suffered extreme poverty and deprivation; and was affected by his father's mental illness.

Number of jurors who so find 4

2. Humberto Pepin Taveras suffered a severe beating in the Bronx in 1989 that made him prone to react strongly to threats to his safety.

Number of jurors who so find 8

3. Humberto Pepin Taveras has cognitive limitations and learning disabilities that have never been treated and that significantly diminished his capacity to appreciate the wrongfulness of his actions at the time of the crime.

Number of jurors who so find 0

4. Humberto Pepin Taveras does not pose a significant threat to the safety of other inmates or correctional officers while incarcerated.

Number of jurors who so find 4

5. Humberto Pepin Taveras has demonstrated the potential for rehabilitation within prison.

Number of jurors who so find 3

6. Execution of defendant will cause loss, injury, or harm to the family and friends of Humberto Pepin Taveras.

Number of jurors who so find 7

7. Other factors regarding Humberto Pepin Taveras's background or the circumstances of the offense justify imposition of a sentence other than death.

Number of jurors who so find 1

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 and following pages.

8. Cultural differences

Number of jurors who so find 1

9. _____

Number of jurors who so find _____

10. _____

Number of jurors who so find _____

11. _____

Number of jurors who so find _____

Instructions: Regardless of whether you chose to make written findings for the Mitigating Factors in Section V above, proceed to Section VI.

VI. DETERMINATION

Instruction: If you have reached this point in your deliberations, you have unanimously decided in Section II that the defendant acted with intent. You have also unanimously decided that at least one of the aggravating factors alleged by the government in Section III exists in this case.

Now, you must balance the aggravating factors you found in Sections III and IV against any mitigating factors you identified in Section V. When balancing these factors, consider the following instructions:

1. If you find that the aggravating factors sufficiently outweigh the mitigating factors to justify imposition of the death penalty, you may choose to impose the death penalty. You are never required to impose the death penalty.
2. Even if you do not find that any mitigating factors are present in this case, you must still consider whether the aggravating factors you unanimously find are, in themselves, sufficient to justify imposition of the death penalty. If they are, you may choose to impose the death penalty. You are never required to impose the death penalty.
3. When deciding whether to impose the death penalty, you may only consider those aggravating factors that the jury unanimously found to exist. Each of you may consider any mitigating factor that you or any other juror found to exist, even if no other member of the jury agreed.
4. Your decision to impose the penalty of death must be unanimous. If you are unable to reach a unanimous decision of death, the court will sentence the defendant to life imprisonment without the possibility of release.

Instruction: Regardless of your determination with regard to Count One, proceed to consider the death penalty for Count Two.

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

Do you, the jury, unanimously find beyond a reasonable doubt that death is the appropriate sentence for Humberto Pepin Taveras and vote unanimously that Humberto Pepin Taveras should be sentenced to death for Count One, the murder of José Rosario?

(If the answer is NO, the sentence will be life in prison without the possibility of release.)

YES

NO

_____ ✓

UNITED STATES OF AMERICA,

v.

HUMBERTO PEPIN TAVERAS,
also known as "Tony"
and "Luis Rosario"

Defendant.

SPECIAL VERDICT FORM

04-CR-156 (JBW)

COUNT TWO
(MURDER OF CARLOS MADRID)

I. AGE OF THE DEFENDANT

Instructions: Answer "YES" or "NO."

The parties have stipulated that Humberto Pepin Taveras was eighteen years of age or older at the time of this offense. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras was eighteen years of age or older at the time of this offense?

YES ✓

NO

Instructions: If you answered "NO" in this section, then stop your deliberations on Count Two. Each juror should then carefully read the statement in Section VII and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision.

II. REQUISITE MENTAL STATE

Instructions: Answer "YES" or "NO."

The parties have stipulated that that Humberto Pepin Taveras intentionally killed Carlos Madrid. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras intentionally killed or caused the death of Carlos Madrid?

YES

NO

Instructions: If you answered "YES" to question II, proceed to section III.

If you answered "NO" to question II, then stop your deliberations on Count Two. Each juror should then carefully read the statement in Section VII and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision.

III. STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer “YES” or “NO.”

A. The parties have stipulated that Humberto Pepin Taveras has previously been convicted of two or more State and Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras has previously been convicted of two or more State and Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance?

YES

NO

B. The parties have stipulated that Humberto Pepin Taveras has previously been convicted of violating Title 21, United States Code, Sections 841(a) and 846, for which a sentence of five or more years may be imposed. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras has previously been convicted of violating Title 21, United States Code, Sections 841(a) and 846, for which a sentence of five or more years may be imposed?

YES

NO

C. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras committed the murder of Carlos Madrid after substantial planning and premeditation to cause the death of a person?

YES _____

NO _____

D. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value?

YES _____
NO _____

Instructions: If you answered “NO” with respect to all of the Statutory Aggravating Factors in this Section III, then stop your deliberations on Count Two. Each juror should then carefully read the statement in Section VII and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision.

If you found the requisite age in Section I, a threshold mental state in Section II and answered “Yes” with respect to one or more of the aggravating factors in this Section III, proceed to Section IV.

IV. NON-STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, Answer "YES" or "NO."

A. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras is likely to commit criminal acts of violence in the future that would constitute a continuing and serious threat to the lives or safety of other people?

YES _____
NO _____ ✓

B. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras has been convicted of more than one murder? You have already found that he is guilty of two murders -- that of José Rosario and Carlos Madrid.

YES _____ ✓
NO _____

C. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras intimidated, threatened or harmed at least one other person to prevent him or her from being a witness against him (i.e. Obstruction of Justice)? You have already found this factor by finding the defendant guilty of Count III in the guilt phase of this trial.

YES

NO

D. Do you unanimously find that the government has established beyond a reasonable doubt that Humberto Pepin Taveras caused loss, injury or harm to the family and friends of Carlos Madrid as evidenced by his personal characteristics as a human being or the impact of his death on his family or friend?

YES

NO

Instructions: Regardless of whether you answered "YES" or "NO" with respect to the Non-Statutory Aggravating Factors in this Section IV, proceed to Section V.

Instructions: For each of the following mitigating factors, 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 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 that factor established in considering 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. Any juror may also weigh a mitigating factor found by another juror, even if he or she did not also find that factor to be mitigating:

1. As a child, Humberto Pepin Taveras was a victim of physical, sexual, and emotional abuse; suffered extreme poverty and deprivation; and was affected by his father's mental illness.

Number of jurors who so find 4

2. Humberto Pepin Taveras suffered a severe beating in the Bronx in 1989 that made him prone to react strongly to threats to his safety.

Number of jurors who so find 8

3. Humberto Pepin Taveras has cognitive limitations and learning disabilities that have never been treated and that significantly diminished his capacity to appreciate the wrongfulness of his actions at the time of the crime.

Number of jurors who so find 0

4. Humberto Pepin Taveras does not pose a significant threat to the safety of other inmates or correctional officers while incarcerated.

Number of jurors who so find 4

5. Humberto Pepin Taveras has demonstrated the potential for rehabilitation within prison.

Number of jurors who so find 3

6. Execution of Humberto Pepin Taveras will negatively affect his family and friends.

Number of jurors who so find 7

7. Other factors regarding Humberto Pepin Taveras's background or the circumstances of the offense justify imposition of a sentence other than death.

Number of jurors who so find 1

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 and following pages.

8. Cultural Differences

Number of jurors who so find 1

9. _____

Number of jurors who so find _____

10. _____

Number of jurors who so find _____

11. _____

Number of jurors who so find _____

Instructions: Regardless of whether you chose to make written findings for the Mitigating Factors in Section V above, proceed to Section VI.

VI. DETERMINATION

Instruction: If you have reached this point in your deliberations, you have unanimously decided in Section II that the defendant acted with intent. You have also unanimously decided that at least one of the aggravating factors alleged by the government in Section III exists in this case.

Now, you must balance the aggravating factors you found in Sections III and IV against any mitigating factors you identified in Section V. When balancing these factors, consider the following instructions:

1. If you find that the aggravating factors sufficiently outweigh the mitigating factors to justify imposition of the death penalty, you may choose to impose the death penalty. You are never required to impose the death penalty.
2. Even if you do not find that any mitigating factors are present in this case, you must still consider whether the aggravating factors you unanimously find are, in themselves, sufficient to justify imposition of the death penalty. If they are, you may choose to impose the death penalty. You are never required to impose the death penalty.
3. When deciding whether to impose the death penalty, you may only consider those aggravating factors that the jury unanimously found to exist. Each of you may consider any mitigating factor that you or any other juror found to exist, even if no other member of the jury agreed.
4. Your decision to impose the penalty of death must be unanimous. If you are unable to reach a unanimous decision of death, the court will sentence the defendant to life imprisonment without the possibility of release.

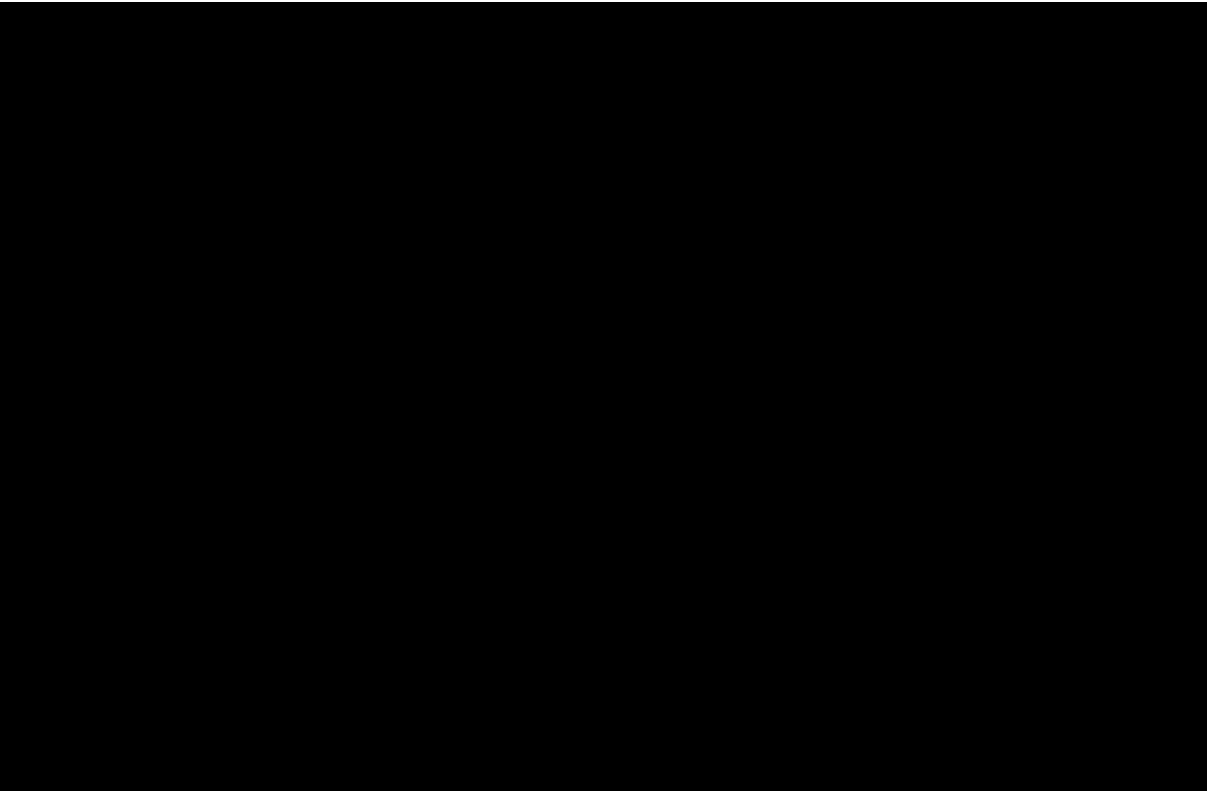
After considering the information presented by both sides during the penalty phase and weighing the aggravating factors found to exist against the mitigating factors found to exist:

Do you, the jury, unanimously find beyond a reasonable doubt that death is the appropriate sentence for Humberto Pepin Taveras and vote unanimously that Humberto Pepin Taveras should be sentenced to death for Count Two, the murder of Carlos Madrid?

(If the answer is NO, the sentence will be life in prison without the possibility of release.)

YES _____
NO _____ ✓

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of Humberto Pepin Taveras or the deceased, José Rosario and Carlos Madrid, 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 Humberto Pepin Taveras, or the deceased José Rosario and Carlos Madrid.



Date: NOVEMBER 7, 2008

The above findings are an accurate statement of the findings of the jury or individual jurors.


Foreperson 