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FILED

A.M. July 16 20 04

DAVID J. MALAND, CLERK

IN THE UNITED STATES DISTRICT COURT U.S. DISTRICT COURT

By BC

FOR THE EASTERN DISTRICT OF TEXAS

DEPUTY

BEAUMONT DIVISION

UNITED STATES OF AMERICA

*

v.

*

CRIMINAL NO. 1:03-CR-173

SHANNON WAYNE AGOFSKY

*

SPECIAL VERDICT FORM - SECTION I
DEFENDANT'S AGE

Instruction: Answer "YES" or "NO." Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that:

The defendant, Shannon Wayne Agofsky, was eighteen years of age or older at the time of the offense?

A. As to Count I of the Superseding Indictment:

[REDACTED]

Foreperson

YES ☒
NO ☐

B. As to Count II of the Superseding Indictment:

[REDACTED]

Foreperson

YES ☒
NO ☐

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Instructions: If you answered "NO" with respect to the determination in this section, then stop your deliberations, cross out Special Verdict Forms Sections II, III, IV, V and VI, and proceed to Special Verdict Form - Section VII. Each juror should then carefully read the statement in Special Verdict From - 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 advise the court that you have reached a decision.

If you answered "YES" with respect to the determination in this Special Verdict Form - Section I, then proceed to Special Verdict Form-Section II which follows.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA

*

v.

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CRIMINAL NO. 1:03-CR-173

SHANNON WAYNE AGOFSKY

*

SPECIAL VERDICT FORM - SECTION II

REQUISITE MENTAL STATE

Instructions: For each of the following, answer "YES" or "NO." You may consider and find more than one requisite mental state factor.

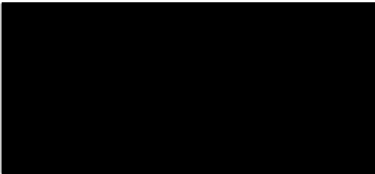
1. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that the defendant, Shannon Wayne Agofsky, intentionally killed the victim, Luther Plant?

A. As to Count I of the Superseding Indictment:



YES _____
NO ✓

B. As to Count II of the Superseding Indictment:



YES _____
NO ✓

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2. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that the defendant, Shannon Wayne Agofsky, intentionally inflicted serious bodily injury that resulted in the death of Luther Plant?

A. As to Count I of the Superseding Indictment:



Foreperson

YES ✓
NO

B. As to Count II of the Superseding Indictment:

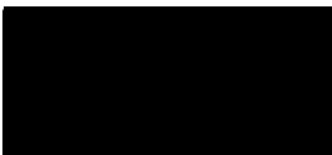


Foreperson

YES ✓
NO

3. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that the defendant, Shannon Wayne Agofsky, 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, and that the victim, Luther Plant, died as a direct result of the act?

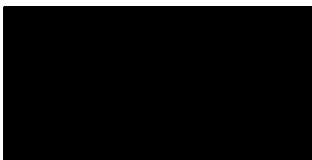
A. As to Count I of the Superseding Indictment:



Foreperson

YES ✓
NO

B. As to Count II of the Superseding Indictment:

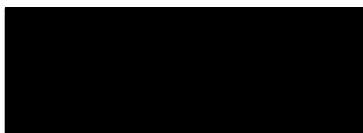


Foreperson

YES ✓
NO _____

4. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that the defendant, Shannon Wayne Agofsky, intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, such that participation in the act constituted a reckless disregard for human life and that the victim, Luther Plant, died as a direct result of the act?

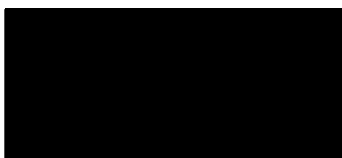
A. As to Count I of the Superseding Indictment:



Foreperson

YES ✓
NO _____

B. As to Count II of the Superseding Indictment:



Foreperson

YES ✓
NO _____

Instructions: If you answered "NO" with respect to all of the determinations in this section, then stop your deliberations, cross out Special Verdict Forms - Sections III, IV, V and VI, and proceed to Special Verdict Form -Section VII of these Instructions. Each juror should carefully read the statement in Special Verdict Form Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which you reached your decision. You

should then advise the court that you have reached a decision.

If you answered "YES" with respect to one or more of these determinations in this Special Verdict Form - Section II, then proceed to Special Verdict Form - Section III which follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA

*

v.

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CRIMINAL NO. 1:03-CR-173

SHANNON WAYNE AGOFSKY

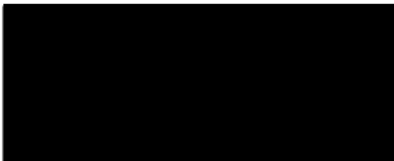
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SPECIAL VERDICT FORM - SECTION III
STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO." You may consider and find more than one statutory aggravating factor.

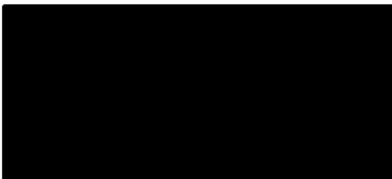
1. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that the defendant Shannon Wayne Agofsky, in committing the offense(s), the death or injury resulting in death of Luther Plant occurred during the commission of an offense under 18 U.S.C. §1118 (prisoners serving life term)?

A. As to Count I of the Superseding Indictment:



YES ✓
NO

B. As to Count II of the Superseding Indictment:

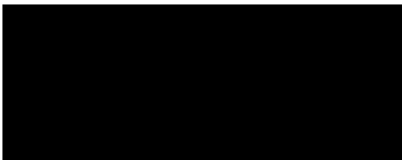


YES ✓
NO

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2. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that the defendant, Shannon Wayne Agofsky, committed the offense(s) after previously being convicted of a federal offense punishable by a term of imprisonment of more than 1 year, involving the use, attempted use, or threatened use of a firearm, as defined in 18 U.S.C. §921, against another person?

A. As to Count I of the Superseding Indictment:



Foreperson

YES ✓
NO

B. As to Count II of the Superseding Indictment:

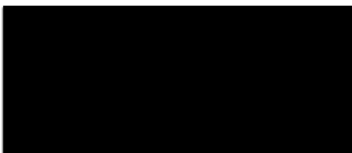


Foreperson

YES ✓
NO

3. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that the defendant, Shannon Wayne Agofsky, committed the offense(s) after previously being convicted of a federal offense resulting in the death of another for which a sentence of life imprisonment was authorized by statute?

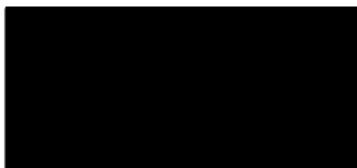
A. As to Count I of the Superseding Indictment:



Foreperson

YES ✓
NO

B. As to Count II of the Superseding Indictment:

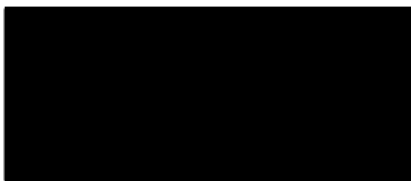


Foreperson

YES ✓
NO

4. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that the defendant, Shannon Wayne Agofsky, committed the offense(s) in an especially heinous, cruel, or depraved manner, in that it involved serious physical abuse to the victim, Luther Plant?

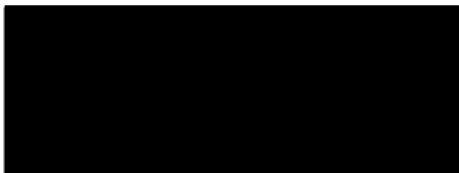
A. As to Count I of the Superseding Indictment:



Foreperson

YES ✓
NO

B. As to Count II of the Superseding Indictment:



Foreperson

YES ✓
NO

Instructions: If you answered "NO" with respect to all of the Statutory Aggravating Factors in this Special Verdict Form - Section III, then stop your deliberations, cross out Special Verdict Forms - Sections IV, V, and VI, and proceed to Special Verdict Form - Section VII of these forms. Each juror should then carefully read the statement in Special Verdict Form -

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 advise the court that you have reached a decision.

If you answered "YES" with respect to one or more of the aggravating factors in this Special Verdict Form - Section III, then proceed to Special Verdict Form -Section IV which follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA

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v.

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CRIMINAL NO. 1:03-CR-173

SHANNON WAYNE AGOFSKY

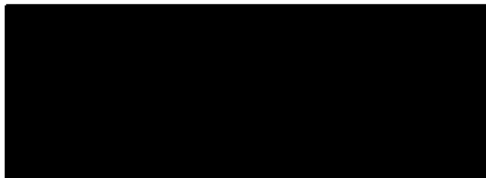
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SPECIAL VERDICT FORM - SECTION IV
NON-STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO." You may consider and find more than one non-statutory aggravating factor.

1. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that the defendant, Shannon Wayne Agofsky, represents a continuing danger to lives and safety of other persons?

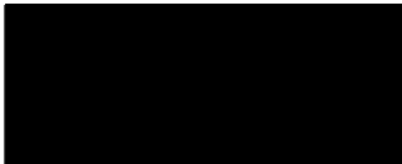
A. As to Count I of the Superseding Indictment:



Foreperson

YES ✓
NO _____

B. As to Count II of the Superseding Indictment:



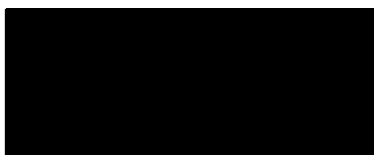
Foreperson

YES ✓
NO _____

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2. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that the defendant, Shannon Wayne Agofsky, has a significant history of disciplinary violations while he has been incarcerated including threatening another inmate with his fists and then stomping on the inmate's head until he was rendered unconscious, being involved in a riot among a group of inmates, and on at least two occasions prior to Luther Plant's murder being found in possession of handmade metal weapons?

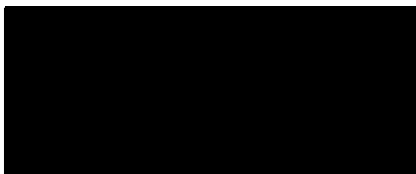
A. As to Count I of the Superseding Indictment:



Foreperson

YES ✓
NO

B. As to Count II of the Superseding Indictment:



Foreperson

YES ✓
NO

3. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that, after commission of the offense charged in the Indictment, the defendant, Shannon Wayne Agofsky, demonstrated utter lack of remorse over having committed the offense?

A. As to Count I of the Superseding Indictment:



Foreperson

YES ✓
NO

B. As to Count II of the Superseding Indictment:

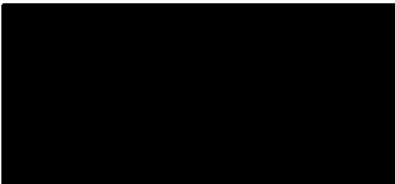


Foreperson

YES ✓
NO

4. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that the defendant, Shannon Wayne Agofsky, has prior criminal convictions for interstate transportation of stolen property?

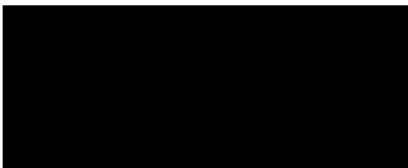
A. As to Count I of the Superseding Indictment:



Foreperson

YES ✓
NO

B. As to Count II of the Superseding Indictment:



Foreperson

YES ✓
NO

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

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

UNITED STATES OF AMERICA

*

v.

*

CRIMINAL NO. 1:03-CR-173

SHANNON WAYNE AGOFSKY

*

SPECIAL VERDICT FORM - SECTION V

MITIGATING FACTORS

Instructions: For each of the following mitigating factors, you have the option to 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. Individual jurors may find and consider more than one mitigating factor. If you choose not to make these written findings, cross out each page of Special Verdict Form - Section V with a large "X" and then continue your deliberations in accordance with the Instructions of the court.

A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established in 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. Further, 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.

The non-statutory mitigating factors that the defendant asserts he has proved by a preponderance of the evidence are:

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1. That Defendant, Shannon Wayne Agofsky, does not represent a continuing danger to the lives and safety of others.

Number of jurors who find 0.

2. That Defendant, Shannon Wayne Agofsky, has no prior escape attempts from federal prison.

Number of jurors who find 3.

3. That Defendant, Shannon Wayne Agofsky, has never assaulted a federal prison guard or corrections officer.

Number of jurors who find 6.

4. That Defendant, Shannon Wayne Agofsky, has never utilized a shank or homemade metal weapon against an inmate or guard.

Number of jurors who find 7.

5. That Defendant, Shannon Wayne Agofsky, has received "good conduct" Bureau of Prisons (BOP) reviews since Jan. 5, 2001.

Number of jurors who find 1.

6. That Mr. Luther Plant had an extensive violent criminal record, including consistent use of firearms while committing violent acts. Mr. Plant's convictions

include robbery, aggravated robbery, delivery of a controlled substance, arson, and felon in possession of a firearm.

Number of jurors who find 0.

7. That Mr. Michael Miele has a significant history of disciplinary violations while he has been incarcerated in federal prison.

Number of jurors who find 0.

8. That Mr. Michael Miele has a significant history of criminal convictions prior to being incarcerated in federal prison.

Number of jurors who find 0.

9. That Mr. Agofsky's father died when he was (8) years old.

Number of jurors who find 1.

10. That the Defendant has not had any behavior/disciplinary problems while incarcerated at the Liberty County Jail.

Number of jurors who find ~~2~~ 3.

11. That the Bureau of Prisons (BOP) can designate a location for Mr. Agofsky to serve a life sentence so that he will not have access to other inmates or guards.

Number of jurors who find 1.

12. That the fight between Mr. Plant and Mr. Agofsky was the result of a sudden quarrel.

Number of jurors who find 0.

13. That Mr. Luther Plant was the first aggressor during the fight with Mr. Agofsky.

Number of jurors who find 0.

14. That at least one other federal inmate that has committed murder in prison did not receive the death penalty as punishment upon conviction.

Number of jurors who find 0.

15. Any other factors that you may find to be mitigating.

Number of jurors who find 0.

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors. If none are found, 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 page.

NONE

Number of jurors who so find _____.

~~None~~

Number of jurors who so find _____.

~~None~~

Number of jurors who so find _____.

~~None~~

Number of jurors who so find _____.

Instructions: Regardless of whether you chose to make written findings for the Mitigating Factors in Special Verdict Form - Section V above, proceed to Special Verdict Form- Section- VI which follows.

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

BEAUMONT DIVISION

UNITED STATES OF AMERICA

*

v.

*

CRIMINAL NO. 1:03-CR-173

SHANNON WAYNE AGOFSKY

*

SPECIAL VERDICT FORM - SECTION VI - AS TO COUNT I

DETERMINATION

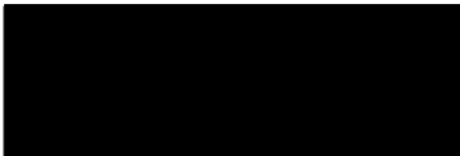
Based upon consideration of whether the aggravating factors found to exist, which do not include the defendant's intent, sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, and whether death is therefore the appropriate sentence in this case, keeping in mind, however, that regardless of your findings with respect to aggravating and mitigating factors, you are never required to recommend a death sentence:

We determine, by unanimous vote, that a sentence of death shall be imposed.

YES ✓

We determine that a sentence of life without possibility of release shall be imposed.

YES _____



For person

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After you complete this Special Verdict Form - Section VI - As To Count I, proceed to
Special Verdict Form - Section VI as to Count II.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

UNITED STATES OF AMERICA

*

v.

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CRIMINAL NO. 1:03-CR-173

SHANNON WAYNE AGOFSKY

*

SPECIAL VERDICT FORM - SECTION VI - AS TO COUNT II

DETERMINATION

Based upon consideration of whether the aggravating factors found to exist, which do not include the defendant's intent, sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, and whether death is therefore the appropriate sentence in this case, keeping in mind, however, that regardless of your findings with respect to aggravating and mitigating factors, you are never required to recommend a death sentence:

We determine, by unanimous vote, that a sentence of death shall be imposed.

YES ✓

We determine that a sentence of life without possibility of release shall be imposed.

YES _____

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After you complete this Special Verdict Form- Section VI as to Count II, you must then proceed to Special Verdict Form - Section VII.

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

UNITED STATES OF AMERICA

*

v.

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CRIMINAL NO. 1:03-CR-173

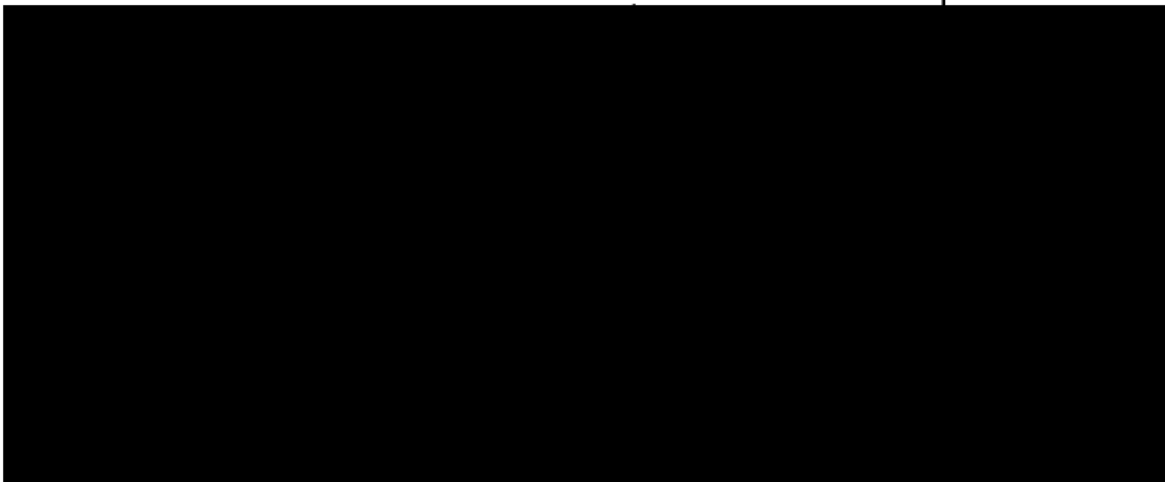
SHANNON WAYNE AGOFSKY

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SPECIAL VERDICT FORM – SECTION VII

CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or the victim was not involved in reaching his or her individual decision as to each count of the Superseding Indictment, 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 the defendant or the victim.



Date:

7/16/04

FOREPERSON