

Ch. Ex 25
8/31/09
11:25 am

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

KHALID BARNES,
a/k/a "Big Homie,"
a/k/a "Lid,"

Defendant.

S9 04 Cr. 186 (SCR)

SPECIAL VERDICT FORM

SECTION I. GATEWAY FACTORS

General Directions For Section I:

As used in this section, the term "capital counts" refers to Counts Twenty-Seven and Twenty-Eight of the Indictment.

Please indicate which, if any, of the following gateway factors you unanimously find that the Government has proven beyond a reasonable doubt. For each of the four gateway factors listed in Part A below, you must mark one of the responses.

Part A.

1. That the defendant intentionally killed the victim of the particular capital count you are considering.

✓	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

2. That the defendant intentionally inflicted serious bodily injury that resulted in the death of the victim of the particular capital count you are considering.

✓	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

3. That the defendant 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 of the particular capital count you are considering died as a direct result of the act.

✓	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

4. 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 the victim of the particular capital count you are considering died as a direct result of the act.

✓	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

Part B.

After reviewing your findings in Section I, Part A, please identify by count number those capital counts, if any, for which you have not unanimously found that the Government has proven beyond a reasonable doubt the existence of any gateway factor:

Directions:

For each capital count, if you do not unanimously find that the Government has proven beyond a reasonable doubt at least one of the above gateway factors with respect to that count, then your deliberations are over as to that count. That is to say, you are not to consider in Section II (or thereafter until Section VI) any of the counts you have specified above in Section I, Part B.

If there is no capital count for which you unanimously find a gateway factor has been proved beyond a reasonable doubt, skip forward to Section VI and complete that section in accordance with the directions there. Then notify the Court that you have completed your deliberations.

If you have found at least one gateway factor with regard to one or more capital counts, continue on to Section II.

SECTION II. STATUTORY AGGRAVATING FACTORS

General Directions For Section II:

As used in this section, the term "capital counts" refers only to those counts for which you found at least one gateway factor in Section I. Do not consider statutory aggravating factors in this section with regard to any counts for which you have not found at least one gateway factor in Section I.

In this section, please indicate which, if any, of the following statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. For each of the three statutory aggravating factors listed in Part A below, you must mark one of the responses.

Part A.

1. That the defendant committed the offense you are considering in the expectation of the receipt of anything of pecuniary value, that is, narcotics and money.

✓	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

2. That the defendant committed the offense you are considering after substantial planning and premeditation to cause the death of a person.

✓	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

3. That the defendant intentionally killed more than one person in a single criminal episode.

✓	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

Part B.

After reviewing your findings in Section II, Part A, please identify by count number those capital counts, if any, for which you have not unanimously found that the Government has proven beyond a reasonable doubt the existence of any statutory aggravating factor:

Directions:

For each capital count you are considering in this section, if you do not unanimously find that the Government has proven beyond a reasonable doubt at least one of the above statutory aggravating factors with respect to that count, then your deliberations are over as to that capital count. In other words, you are not to consider in Section III (or thereafter until Section VI) any of the counts you have specified above in Section II, Part B.

If there is no capital count for which you unanimously find that at least one statutory aggravating factor has been proved beyond a reasonable doubt, skip forward to Section VI and complete that section in accordance with the directions there. Then notify the Court that you have completed your deliberations.

If you have found one or more statutory aggravating factors with regard to one or more capital counts, continue on to Section III.

SECTION III. NON-STATUTORY AGGRAVATING FACTORS

General Directions For Section III:

As used in this section, the term "capital counts" refers only to those counts for which you have found at least one gateway factor in Section I and at least one statutory aggravating factor in Section II. Do not consider non-statutory aggravating factors in this section with regard to the counts for which you have not found at least one gateway factor in Section I and at least one statutory aggravating factor in Section II.

In this section, please indicate which, if any, of the following five non-statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. For each of the proposed factors, you must mark one of the responses provided.

1. That the defendant 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 his death upon the victim's family.

<input checked="checked" type="checkbox"/>	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
<input type="checkbox"/>	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
<input type="checkbox"/>	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

2. That the defendant committed the offense while under court supervision, namely while on Supervised Release following his conviction in the United States District Court for the Northern District of West Virginia for a drug trafficking offense.

✓	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

3. That on or about June 9, 1999, the defendant was convicted in the United States District Court for the Northern District of West Virginia for a drug trafficking offense.

✓	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

4. That in addition to being convicted of the murders of Demond Vaughan and Sergio Santana, the defendant was convicted of participating in a racketeering enterprise.

✓	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

5. That in addition to being convicted of the murders of Demond Vaughan and Sergio Santana, the defendant was convicted of conspiring to kidnap, and kidnapping Eddy Solano-Herrera.

✓	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to both of the capital counts.
	We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital count only (identify by count number): _____
	We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

Directions:

After you have completed your findings in this section (whether or not you have found any of the above non-statutory aggravating factors to have been proved), continue on to Section IV.

SECTION IV. MITIGATING FACTORS

General Directions for Section IV:

As used in this section, the term "capital counts" refers only to those counts for which you found at least one gateway factor in Section I and at least one statutory aggravating factor in Section II.

As to the alleged mitigating factors which are listed below, please indicate which you find that the defendant has proven by a preponderance of the evidence,

Recall that your vote as a jury need not be unanimous with regard to each question in this section. 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 making his or her individual determination of 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.

Part A.

In the space provided, please indicate the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence with regard to each of the capital counts.

Mitigating Factor No. 1: If he is not sentenced to death, Mr. Barnes can be sentenced to lifetime imprisonment without parole.	
Number of jurors who so find as to Count 27	12
Number of jurors who so find as to Count 28	12

Mitigating Factor No. 2: The Federal Bureau of Prisons will impose appropriate conditions of confinement and security with regard to Mr. Barnes.	
Number of jurors who so find as to Count 27	12
Number of jurors who so find as to Count 28	12

Mitigating Factor No. 3: Mr. Barnes is the product of a childhood marked by chaos, abuse and abandonment.	
Number of jurors who so find as to Count 27	12
Number of jurors who so find as to Count 28	12

Mitigating Factor No. 4: Growing up, Mr. Barnes lacked positive male role models in his home.	
Number of jurors who so find as to Count 27	12
Number of jurors who so find as to Count 28	12

Mitigating Factor No. 5: His mother's poor choices in the men she brought into the family home had a negative impact on Mr. Barnes.	
Number of jurors who so find as to Count 27	12
Number of jurors who so find as to Count 28	12

Mitigating Factor No. 6: At age 17, Deborah Settles, Mr. Barnes' mother, was ill-equipped to become a parent and, as the years passed, became increasingly overwhelmed by her circumstances.

Number of jurors who so find as to Count 27

12

Number of jurors who so find as to Count 28

12

Mitigating Factor No. 7: Mr. Barnes' execution would cause others to suffer grief and loss.

Number of jurors who so find as to Count 27

12

Number of jurors who so find as to Count 28

12

Mitigating Factor No. 8: The two victims of the murders voluntarily chose to engage in dangerous and illegal activities, a circumstance that contributed to their deaths.

Number of jurors who so find as to Count 27

12

Number of jurors who so find as to Count 28

12

Mitigating Factor No. 9: Mr. Barnes always behaved respectfully in court.

Number of jurors who so find as to Count 27

12

Number of jurors who so find as to Count 28

12

Mitigating Factor No. 10: Mr. Barnes' life has value.	
Number of jurors who so find as to Count 27	12
Number of jurors who so find as to Count 28	12

Mitigating Factor No. 11: There are other relevant circumstances that weigh against imposing a sentence of death.	
Number of jurors who so find as to Count 27	11
Number of jurors who so find as to Count 28	11

Part B.

The law does not limit your consideration of mitigating factors to those that can be articulated in advance. Therefore, you may consider during your deliberations any other factor or factors in the defendant's background, record, character, or any other circumstances of the offense that mitigate against imposition of a death sentence. The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors. If more space is needed, write "CONTINUED" and use the reverse side of the next page.

Mitigating Factor No. ____:	
Number of jurors who so find as to Count 27	—
Number of jurors who so find as to Count 28	—

Mitigating Factor No. _____:	
Number of jurors who so find as to Count 27	—
Number of jurors who so find as to Count 28	—

Directions:

After you have completed your findings in this section (whether or not you have found any mitigating factors in this section), continue on to Section V.

SECTION V. DETERMINATION OF SENTENCE

General Directions for Section V:

As used in this section, the term "capital count" refers only to those counts for which you found at least one gateway factor in Section I and at least one statutory aggravating factor in Section II. You may not impose a sentence of death on a particular capital count unless you have first found with regard to that count, unanimously and beyond a reasonable doubt, at least one gateway factor in Section I and at least one statutory aggravating factor in Section II.

In this section, enter your determination of the defendant's sentence with regard to each of the capital counts. Your vote as a jury must be unanimous with regard to each question in this section. Please note that it may be appropriate for you to check more than one box in this section.

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

CAPITAL COUNT TWENTY-SEVEN

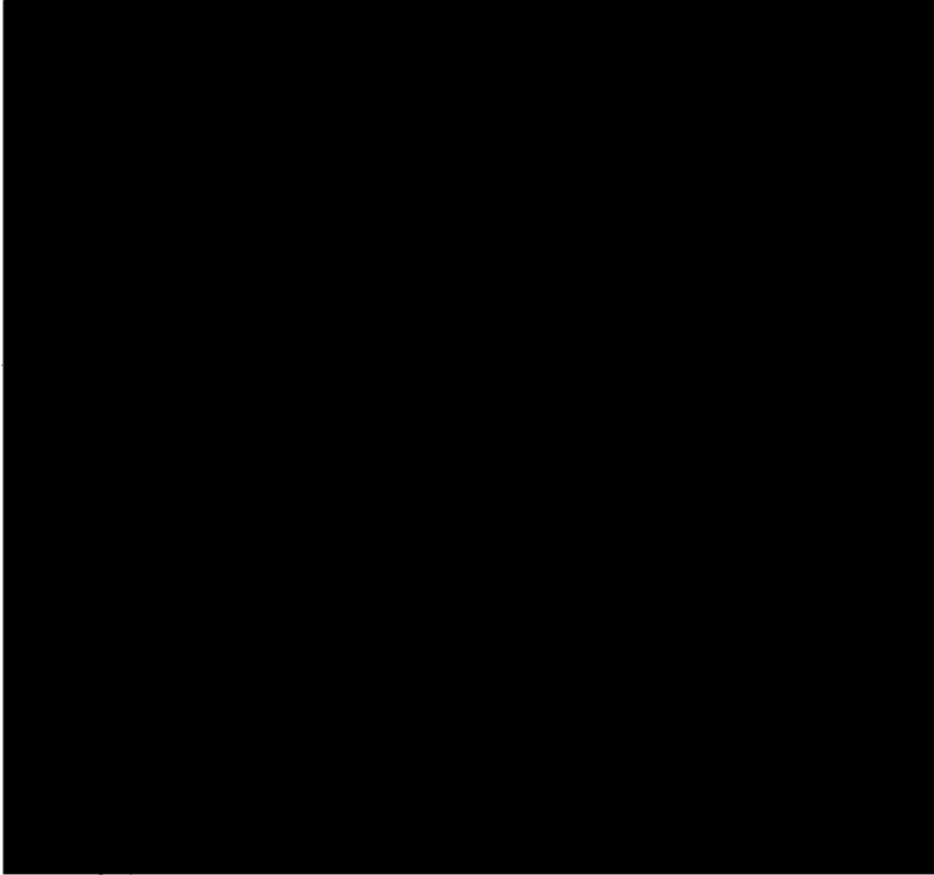
✓	We, the jury, unanimously find that the Government has failed to prove that death is the appropriate sentence for the defendant for Capital Count Twenty-Seven.
	We, the jury, are not unanimously persuaded that either a death sentence or life imprisonment without possibility of release should be imposed in this sentence. We unanimously find that some lesser authorized sentence, which could be up to life imprisonment without possibility of release, is the appropriate sentence for the defendant for Capital Count Twenty-Seven. We understand that the Court will impose a sentence authorized by law of less than death.
✓	Although we do not unanimously find that the Government has proved that death is the appropriate sentence, we, the jury, unanimously find that a sentence of life in prison without possibility of release is the appropriate sentence for the defendant on Capital Count Twenty-Seven.
	We, the jury, unanimously find, for Capital Count Twenty-Seven, that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist so that death is the appropriate sentence for the defendant. We vote unanimously that the defendant shall be sentenced to death as to Capital Count Twenty-Seven.
	We, the jury, are unable to reach a unanimous verdict in favor of a lesser authorized sentence, or a life sentence, or a death sentence, for Capital Count Twenty-Seven. We understand that the consequence of this is that the defendant will be sentenced to life imprisonment without the possibility of release or some other authorized sentence.

CAPITAL COUNT TWENTY-EIGHT

✓	We, the jury, unanimously find that the Government has failed to prove that death is the appropriate sentence for the defendant for Capital Count Twenty-Eight.
	We, the jury, are not unanimously persuaded that either a death sentence or life imprisonment without possibility of release should be imposed in this sentence. We unanimously find that some lesser authorized sentence, which could be up to life imprisonment without possibility of release, is the appropriate sentence for the defendant for Capital Count Twenty-Eight. We understand that the Court will impose a sentence authorized by law of less than death.
✓	Although we do not unanimously find that the Government has proved that death is the appropriate sentence, we, the jury, unanimously find that a sentence of life in prison without possibility of release is the appropriate sentence for the defendant on Capital Count Twenty-Eight.
	We, the jury, unanimously find, for Capital Count Twenty-Eight, that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist so that death is the appropriate sentence for the defendant. We vote unanimously that the defendant shall be sentenced to death as to Capital Count Twenty-Eight.
	We, the jury, are unable to reach a unanimous verdict in favor of a lesser authorized sentence, or a life sentence, or a death sentence, for Capital Count Twenty-Eight. We understand that the consequence of this is that the defendant will be sentenced to life imprisonment without the possibility of release or some other authorized sentence.

SECTION V. DETERMINATION OF SENTENCE

Each juror must sign his or her name below, indicating that the above sentence determination reflects the jury's decision.



The foreperson shall indicate the date of signing:

Date: May 30, 2008

Directions:

After you have completed your sentence determination in this section (regardless of what that determination was), continue on to Section VI.

SECTION VI. CERTIFICATION

By signing your name below, each of you individually certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or the victims was not involved in reaching your individual decision. Each of you further certifies that you, as an individual, 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 victims.



The foreperson shall indicate the date of signing:

Date: May 30, 2008