

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

01 CR 1367 (RJD)

GILBERTO CARABALLO,

Defendant.

-----X

FD-503 (Rev. 1-25-80)	COURT'S
	EXHIBIT NO. <u>11</u>
	IDENTIFICATION EVIDENCE
	DKT. # _____
	DATE: <u>3/13/08</u>

**PENALTY PHASE
SPECIAL VERDICT FORM**

SECTION I
REQUIRED PRELIMINARY FACTOR

A. General Directions for Section I:

As used in this section, the term "capital counts" refers to Counts One (murder for hire conspiracy from which death resulted), Two (murder for hire), Three and Six (drug-related murder) of the Indictment.

Please indicate whether the government has proven beyond a reasonable doubt, with respect to each count, the required preliminary intent factor.

B. Required Preliminary Intent Factor:

We unanimously find beyond a reasonable doubt, with regard to Counts One, Two and Three, that the defendant intentionally killed Jose Fernandez.

We unanimously find beyond a reasonable doubt that the defendant intentionally killed Jose Fernandez only with regard to the following capital counts (please list below and identify by count number):

We do not unanimously find beyond a reasonable doubt that the defendant intentionally killed Jose Fernandez with regard to any capital count.

 We unanimously find beyond a reasonable doubt, with regard to Count Six, that the defendant intentionally killed Edward Cortes.

We do not unanimously find beyond a reasonable doubt that the defendant intentionally killed Edward Cortes with regard to Count Six.

C. Further Directions for Section I:

For each capital count, if you do not unanimously find that the government has proven the preliminary intent factor beyond a reasonable doubt, then your deliberations for that count are over, and you should not consider that count in any further sections until Section VI.

If you do not find the existence of the preliminary factor for any capital count, please proceed directly to Section VI.

If you have found the existence of the preliminary factor for any capital counts, please continue to Section II.

SECTION II
STATUTORY AGGRAVATING FACTORS

A. General Directions for Section II:

As used in this section, the term "capital counts" refers only to those counts for which you found the required preliminary factor in Section I. In other words, do not consider statutory aggravating factors for counts for which you have not found the preliminary factor.

In Section II, 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 listed factors, you must mark one of the responses.

B. Procurement by Promise of Payment

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

C. Substantial Planning and Premeditation

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

We unanimously find that this factor has been proved beyond a reasonable doubt

only with regard to the following capital counts (please list below and identify by count number):

____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

D. Expectation of Pecuniary Gain

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Six.

____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Six.

E. Further Directions for Section II

For each capital count you are considering in this section, if you do not unanimously find that the government has proven any statutory aggravating factor beyond a reasonable doubt, then your deliberations for that count are over, and you should not consider that count in any further sections until Section VI.

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.

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

SECTION III
NON-STATUTORY AGGRAVATING FACTORS

A. General Directions for Section III:

As used in this section, the term "capital counts" refers only to those counts for which you have found the required preliminary 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 four 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.

B. Killed While Engaged in Drug Conspiracy [Pg 12 par #5]

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

C. Future Dangerousness [Pg 13 paragraph #1]

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

D. Lack of Remorse

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

E. Victim Impact

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts (please list below and identify by count number):

We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any capital count.

F. Further Directions for Section III:

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

A. General Directions for Section IV:

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

As to the mitigating factors listed below, please indicate which, if any, 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.

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

B. Mitigating Factors

1. Mr. Caraballo was reared without adequate structure and guidance.

Number of jurors who so find 7

2. Mr. Caraballo's parents could not provide the family's basic needs.

Number of jurors who so find 3

3. Mr. Caraballo helped support his family from an early age.

Number of jurors who so find 11

4. Gilberto Caraballo, Sr. was an abusive and alcoholic father.

Number of jurors who so find 10

5. Gilberto Caraballo, Sr. suffers from mental illness.

Number of jurors who so find 7

6. Mr. Caraballo was a troubled child.

Number of jurors who so find 6

7. At a young age, Mr. Caraballo was exposed to drug-dealing by his older brother.

Number of jurors who so find 12

8. Members of Mr. Caraballo's extended family abused drugs and alcohol and engaged in criminal behavior and violence.

Number of jurors who so find 12

9. Sunset Park lacked adequate community resources.

Number of jurors who so find 3

10. Throughout his youth, Mr. Caraballo was exposed to drugs and violence in Sunset Park.

Number of jurors who so find 12

11. Martin ("Sassy") Aguilar will not face the death penalty for his role in the murder of Jose ("Tris") Fernandez.

Number of jurors who so find ~~12~~ 12

12. Quincie Martinez will not face the death penalty for her role in the murder of Jose ("Tris") Fernandez.

Number of jurors who so find 10

13. Jeffrey Taylor will not face the death penalty for his role in the murder of Jose ("Tris") Fernandez.

Number of jurors who so find 10

14. Armando Molina will not face the death penalty for her role in the murder of Edward ("E.M.") Cortes.

Jury change
[Redacted]

Number of jurors who so find 10

his

15. Joseph Navarro will not face the death penalty for her role in the murder of Edward ("E.M.") Cortes. *his*

Jury Charge
Number of jurors who so find 12

16. The proof as to the murder of Edward ("E.M.") Cortes is insufficiently certain to support a sentence of death.

Number of jurors who so find 0

17. The proof as to the murder of Jose ("Tris") Fernandez is insufficiently certain to support a sentence of death.

Number of jurors who so find 0

18. Edward Cortes's willing participation in criminal conduct was a circumstance contributing to his death.

Number of jurors who so find 7

19. Mr. Carballo has been courteous and respectful in his interactions with Bureau of Prisons personnel.

Number of jurors who so find 7

20. Mr. Carballo's positive adjustment to prison is likely to continue if he is sentenced to life in prison.

Number of jurors who so find 10

21. If not sentenced to death, Mr. Carballo will be incarcerated for the rest of his life in a federal prison.

Number of jurors who so find 12

22. Mr. Carballo's parents and extended family will suffer grief and loss if he is executed.

Number of jurors who so find 9

23. Mr. Carballo has showed respect and decorum in the courtroom throughout the trial.

Number of jurors who so find 10

24. Mr. Caraballo has shown compassion and generosity to others.

Number of jurors who so find 7

25. Mr. Caraballo has human qualities that make his life one of value.

Number of jurors who so find 10

The law does not limit your consideration of mitigating factors to those that have been proposed by the defendant. Therefore, you may consider during your deliberations any other factor or factors in the defendant's background, record, character, or any other circumstance of the offense that mitigate against imposition of the death penalty.

The following extra spaces are provided to write in additional mitigating factors, if any, found by one or more jurors by a preponderance of the evidence. If more space is needed, write "CONTINUED" and use the reverse side of the page.

ON GOING interaction with children (relatives & non relatives) before and after incarceration.

Number of jurors who so find: 7

Number of jurors who so find: _____

Number of jurors who so find: _____

C. Further Directions for Section IV:

After you have completed this section, whether or not you have found any mitigating factors, continue to Section V.

SECTION V
DETERMINATION OF SENTENCE

A. Directions for Section V:

As used in this section, the term "capital counts" refers only to those counts for which you have found the required preliminary 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.

B. Determination of Sentence

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

✓

We, the jury, unanimously find that the government has failed to prove beyond a reasonable doubt that death is the appropriate sentence for GILBERTO CARABALLO for any of the capital counts.

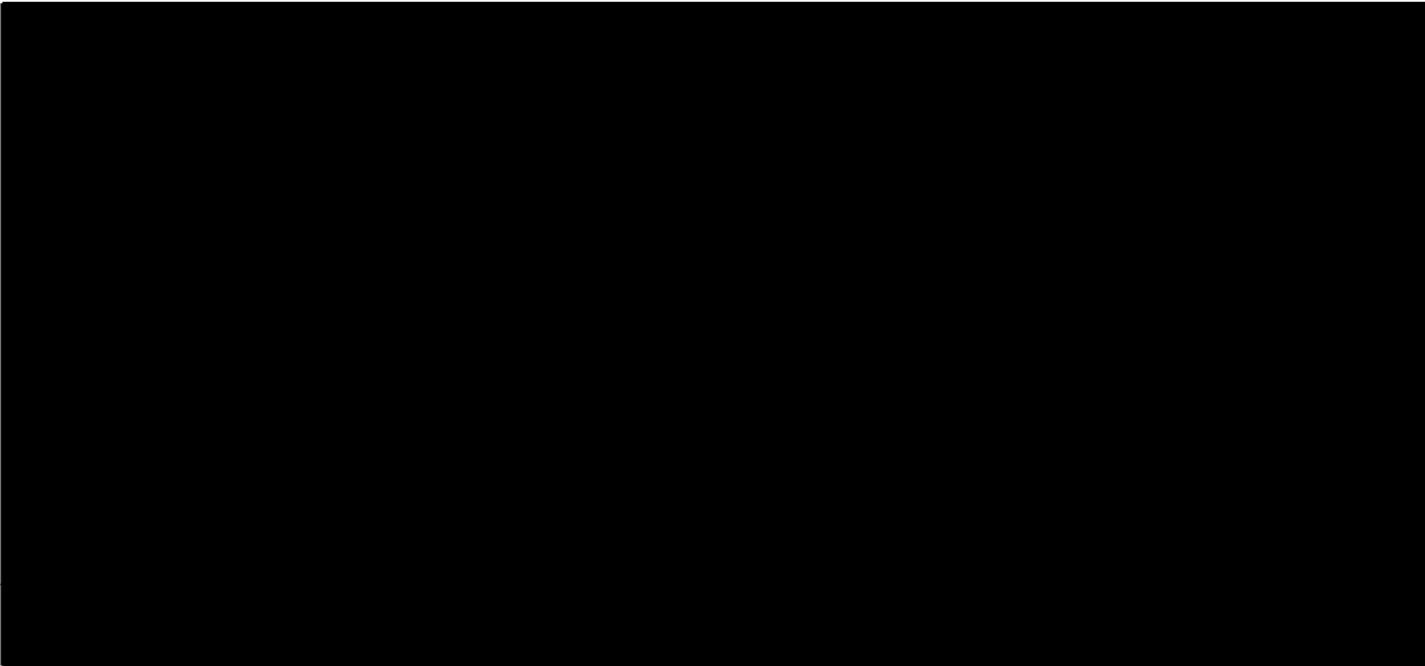
We, the jury, unanimously find beyond a reasonable doubt, for all of the capital counts, that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist or, in the absence of any mitigating factors, that the aggravating factor or factors are themselves sufficient – so that death is the appropriate sentence for GILBERTO CARABALLO. We vote unanimously that GILBERTO CARABALLO should be sentenced to death separately as to each count.

We, the jury, unanimously find beyond a reasonable doubt that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist or, in the absence of any mitigating factors, that the aggravating factor or factors are themselves sufficient – so that death is the appropriate sentence for GILBERTO CARABALLO with regard to each of the following capital counts only (identify each count by count number):

We, the jury, having carefully considered Sections I through IV of this Special Verdict Form, having made any appropriate findings in accordance with the Court's instructions, and having engaged in careful and thorough deliberation and discussion, are nonetheless unable to reach a unanimous verdict as to whether death is the appropriate sentence for GILBERTO CARABALLO with regard to any of the capital counts. We understand that the consequence of this is that the defendant will be sentenced to life imprisonment without the possibility of release.

C. Further Directions for Section V:

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



The foreperson shall indicate the date of signing:

Date: 3/13/08

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

SECTION VI
CERTIFICATION

By signing your name and juror number below, each of you individually certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or the victim 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 of the victim.

The foreperson shall indicate the date of signing:

Date: 03/13/08

After you have completed this form, you will each be given a new certification, headed Juror No. _____, and an envelope which bears your juror number on the outside. Please sign that certificate using your real name, place the certificate in the envelope, seal the envelope and give the envelope to the Marshal. All of the certificates bearing your real name will be kept by the Court under seal.