

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

OCT 31 2007
By: *James W. McCormack*
JAMES W. MCCORMACK, CLERK
DEP. CLERK

UNITED STATES OF AMERICA)
)
 v.)
)
 VERTIS CLAY)

CRIMINAL NO. 4:04CR00035-02 WRW

SPECIAL VERDICT FORM

MURDER OF DARRYL JOHNSON BY DEFENDANT VERTIS CLAY

I. AGE OF DEFENDANT

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

VERTIS CLAY was eighteen years of age or older at the time of the offense.

YES X NO _____

Instructions: If you answered "YES" with respect to the determination in this Section I, proceed to Section II which follows.

If you answered "NO" with respect to the determination in this section, then stop your deliberations, cross out Sections II, III, IV, V and VI of this form, and proceed to Section VII. 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 advise the court that you have reached a decision.

II. REQUISITE MENTAL STATE

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

1(A). Do you, the jury, unanimously find that the Prosecution has established beyond a reasonable doubt that VERTIS CLAY intentionally killed Darryl Johnson.

YES X NO _____

1(B). Do you, the jury, unanimously find that the Prosecution has established beyond a reasonable doubt that VERTIS CLAY intentionally inflicted serious bodily injury which resulted in the death of Darryl Johnson.

YES X NO _____

Instructions: If you answered "YES" with respect to one or more of the determinations in this Section II, proceed to Section III which follows.

If you answered "NO" with respect to all of the determinations in this section, then stop your deliberations, cross out Sections III, IV, V, and VI of this form, and proceed to Section VII. 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 advise the court that you have reached a decision.

III. STATUTORY AGGRAVATING FACTORS

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

1. Do you, the jury, unanimously find that the Prosecution has established beyond a reasonable doubt that VERTIS CLAY committed the offense described in Count 4 in an especially heinous, cruel, and depraved manner in that it involved torture or serious physical abuse to and severe mental pain and suffering of the victim, as set out in Instruction No. 5?

YES _____

NO _____

2. Do you, the jury, unanimously find that the Prosecution has established beyond a reasonable doubt that VERTIS CLAY committed the offense in Count 4 as consideration for the receipt, and in expectation of the receipt, of anything of pecuniary (monetary) value, as set out in Instruction No. 6?

YES _____

NO _____

3. Do you, the jury, unanimously find that the Prosecution has established beyond a reasonable doubt that VERTIS CLAY committed the offense described in Count 4 after substantial planning and premeditation to cause the death of a person, as set out in Instruction No. 7?

YES X NO _____

Instructions: If you found the requisite age in Section I, the requisite 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 which follows.

If you answered "NO" with respect to all of the Statutory Aggravating Factors in this Section III, then stop your deliberations, cross out Sections IV, V, and VI of this form, and proceed to Section VII of this form. 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 advise the court that you have reached a decision.

IV. NON-STATUTORY AGGRAVATING FACTOR

Instructions: Answer "YES" or "NO."

1. Do you, the jury, unanimously find that the Prosecution has established beyond a reasonable doubt that VERTIS CLAY would be a danger in the future to the lives and safety of other persons, as evidenced by his lack of remorse, and that his dangerousness tends to support imposition of the death penalty, as set out in Instruction No. 8?

YES _____

NO ~~_____~~

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

V. MITIGATING FACTORS

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 such a factor established in considering whether or not a sentence of death will 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:

1. Mr. Clay is punishable as a principal in the offense, which was committed by another, but his participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

NONE Number of jurors who find this to be a mitigating factor (if none, write "none").

2. Another defendant, equally culpable in the crime, will not be punished by death.

2 Number of jurors who find this to be a mitigating factor (if none, write "none").

3. Mr. Clay does not have a significant prior history of criminal conduct.

1 Number of jurors who find this to be a mitigating factor (if none, write "none").

4. The victim consented to the criminal conduct that resulted in the victim's death.

3 Number of jurors who find this to be a mitigating factor (if none, write "none").

5. Darryl Walker was intimately involved in the murder of Darryl Johnson, but Walker has made a deal with the Prosecution to not only avoid the death penalty, but a sentence of life imprisonment.

3 ~~X~~ Number of jurors who find this to be a mitigating factor (if none, write "none").

6. Mr. Clay has not engaged in any violent behavior while in custody.

10 Number of jurors who find this to be a mitigating factor (if none, write "none").

7. Mr. Clay has adjusted well to imprisonment.

10 Number of jurors who find this to be a mitigating factor (if none, write "none").

8. Mr. Clay has been a model inmate while incarcerated.

11 Number of jurors who find this to be a mitigating factor (if none, write "none").

9. A sentence of life imprisonment without the possibility of release would be a significant punishment, particularly because Mr. Clay will be left for years to contemplate his wrongdoing and to feel the loss of his children, friends, and family.

7 Number of jurors who find this to be a mitigating factor (if none, write "none").

10. Mr. Clay's children, family, and friends will be adversely affected if he is executed.

10 Number of jurors who find this to be a mitigating factor (if none, write "none").

11. Mr. Clay is a father, and his children will suffer if he is executed.

10 Number of jurors who find this to be a mitigating factor (if none, write "none").

12. Mr. Clay has acted as a father figure to other children, who will also suffer if he is executed.

1 Number of jurors who find this to be a mitigating factor (if none, write "none").

13. The favorable plea agreements offered to cooperating witnesses in this case are factors that weigh against imposition of a sentence of death for Mr. Clay.

5 Number of jurors who find this to be a mitigating factor (if none, write "none").

14. Mr. Clay has proven himself to be capable of acts of generosity and kindness.

None Number of jurors who find this to be a mitigating factor (if none, write "none").

15. Mr. Clay was raised in a decent and wholesome environment.

1 Number of jurors who find this to be a mitigating factor (if none, write "none").

16. Other than the conduct charged in this indictment, Mr. Clay has led a decent life.

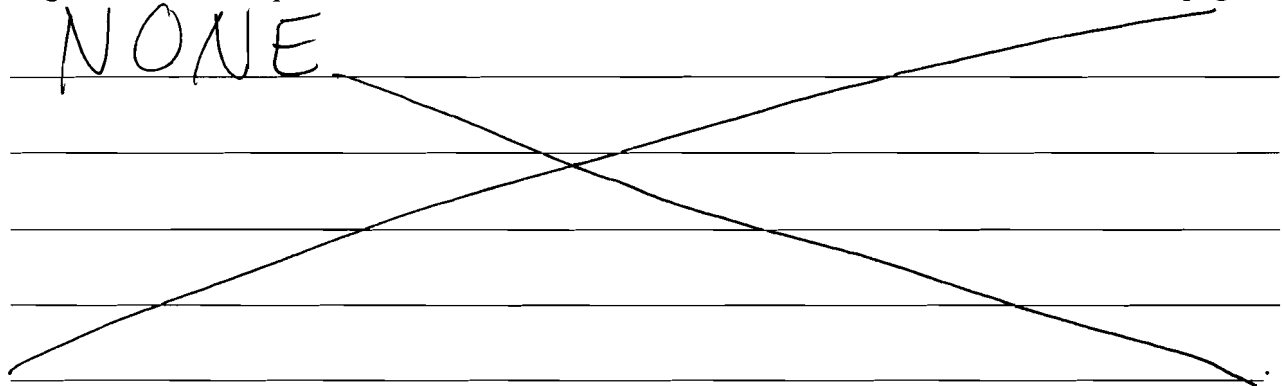
2 Number of jurors who find this to be a mitigating factor (if none, write "none").

17. Other than the circumstances of this case, Mr. Clay has used his size and strength to protect others.

1 Number of jurors who find this to be a mitigating factor (if none, write "none").

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 page.

NONE



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 and Section VII which follow.

VI. DETERMINATION

Based upon consideration of whether the aggravating factors found to exist 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:

A. Death Sentence

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

YES _____

NO X

If you answer "YES," the Presiding Juror must sign here, and you must then proceed to Section VII.

If you answer "NO," the Presiding Juror must sign, and you must then proceed to Section VI(B):

Date: 31st October, 2007.

B. Sentence of Life in Prison Without Possibility of Release

We determine, by unanimous vote, that a sentence of life imprisonment without possibility of release must be imposed.

YES X

NO _____

If you answer "YES," the Presiding Juror must sign here, and then you must proceed to Section VII.

If you answer "NO," the Presiding Juror must sign here, and then you must proceed to Section VII.

Date: 31st October, 2007.

VII. CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of VERTIS CLAY or the victim 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 the defendant, or the victim.

Date: 31st October, 2007.