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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
DENNIS CYRUS, JR.,
Defendant.

No. CR 05-00324 MMC

SPECIAL VERDICT FORM

I. AGE OF DEFENDANT

Instructions: Answer "YES" or "NO" and have the foreperson sign with their name number.

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant was eighteen years of age or older at the time of the VICAR murder counts set forth below?

Count Five (Joseph Hearn): YES NO

Count Seven (Randy Mitchell): YES NO

Count Eight (Ray Jimmerson): YES NO

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Foreperson

Instructions: If you answered "NO" with respect to all of the determinations 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 with their name number 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 determinations in this Section, proceed to Section II which follows, as to those counts for which you answered "YES."

II. REQUISITE MENTAL STATE

Instructions: For each of the following, answer "YES" or "NO" and have the foreperson sign with their name number.

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally killed the victim(s) named in the corresponding count?

Count Five (Joseph Hearn): YES NO

Count Seven (Randy Mitchell): YES NO

Count Eight (Ray Jimmerson): YES NO

#65

Foreperson

1 2. Do you, the jury, unanimously find that the government has established beyond
2 a reasonable doubt that the defendant intentionally inflicted serious bodily injury which
3 resulted in the death of the victim(s) named in the corresponding count?

4
5 Count Five (Joseph Hearn): YES ✓ NO _____

6
7 Count Seven (Randy Mitchell): YES ✓ NO _____

8
9 Count Eight (Ray Jimmerson): YES ✓ NO _____

10
11 #65

12 Foreperson

13
14 3. Do you, the jury, unanimously find that the government has established beyond
15 a reasonable doubt that the defendant intentionally participated in an act, contemplating
16 that the life of a person would be taken and/or intending that lethal force would be used in
17 connection with a person, other than one of the participants in the offense, and that the
18 victim(s) named in the corresponding count died as a direct result of the act?

19
20 Count Five (Joseph Hearn): YES ✓ NO _____

21
22 Count Seven (Randy Mitchell): YES ✓ NO _____

23
24 Count Eight (Ray Jimmerson): YES ✓ NO _____

25
26 #65

27 Foreperson

28

1 4. Do you, the jury, unanimously find that the government has established beyond
2 a reasonable doubt that the defendant intentionally and specifically engaged in an act of
3 violence, knowing that the act created a grave risk of death to a person, other than one of
4 the participants in the offense, such that participation in the act constituted a reckless
5 disregard for human life and that the victim(s) named in the corresponding count died as a
6 direct result of the act?

7
8 Count Five (Joseph Hearn): YES ✓ NO _____
9
10 Count Seven (Randy Mitchell): YES ✓ NO _____
11
12 Count Eight (Ray Jimmerson): YES ✓ NO _____

13
14 #65

15 Foreperson

16
17 Instructions: If you answered "NO" with respect to all of the determinations in
18 this section, then stop your deliberations, cross out Sections III, IV, V, and VI of this
19 form, and proceed to Section VII. Each juror should carefully read the statement in
20 Section VII, and sign in the appropriate place if the statement accurately reflects the
21 manner in which he or she reached his or her decision. You should then advise the court
22 that you have reached a decision.

23 If you answered "YES" with respect to one or more of the determinations in this
24 Section, proceed to Section III which follows, as to those counts for which you answered
25 "YES."

26
27 **III. STATUTORY AGGRAVATING FACTORS**

28 Instructions: For each of the following, answer "YES" or "NO," and have the

1 foreperson sign with their name number.

2 1. Do you, the jury, unanimously find that the government has established beyond
3 a reasonable doubt that the defendant committed the offenses set forth below after
4 substantial planning and premeditation to cause the death of a person?

5
6 Count Five (Joseph Hearn): YES ✓ NO _____

7
8 Count Seven (Randy Mitchell): YES ✓ NO _____

9
10 Count Eight (Ray Jimmerson): YES ✓ NO _____

11
12 #65

13 Foreperson

14
15 2. Do you, the jury, unanimously find that the government has established beyond
16 a reasonable doubt that the defendant committed the offense set forth below in an
17 especially heinous, cruel, or depraved manner in that it involved torture or serious
18 physical abuse to the victim, Joseph Hearn?

19
20 Count Five (Joseph Hearn): YES ✓ NO _____

21
22 #65

23 Foreperson

24
25 3. Do you, the jury, unanimously find that the government has established beyond
26 a reasonable doubt that the defendant, in the commission of the offenses set forth below,
27 knowingly created a grave risk of death to one or more persons in addition to the victim
28 of each offense?

1 Count Seven (Randy Mitchell): YES NO

2
3 Count Eight (Ray Jimmerson): YES NO

4
5 #65

6 Foreperson

7
8 Instructions: If you answered "NO" with respect to all of the Statutory
9 Aggravating Factors in this Section, then stop your deliberations, cross out Sections IV,
10 V, and VI of this form, and proceed to Section VII of this form. Each juror should then
11 carefully read the statement in Section VII, and sign in the appropriate place if the
12 statement accurately reflects the manner in which he or she reached his or her decision.
13 You should then advise the court that you have reached a decision.

14 If, for any count of conviction, you found the requisite age in Section I, one or
15 more of the requisite mental states in Section II and answered "Yes" with respect to one
16 or more of the statutory aggravating factors in this Section, proceed to Section IV which
17 follows as to any such count.

18
19 **IV. NON-STATUTORY AGGRAVATING FACTORS**

20 Instructions: For each of the following, answer "YES" or "NO," and have the
21 foreperson sign with their name number.

22 1. *Impact of the Victim's Death:* Do you, the jury, unanimously find that the
23 government has established beyond a reasonable doubt that the defendant caused injury,
24 harm, and loss to the family of the victim named in the corresponding count below
25 because of his personal characteristics as an individual human being and the impact of his
26 deaths upon his family, and that this factor tends to support imposition of the death
27 penalty for the corresponding count below?

28

1 Count Five (Joseph Hearn): YES NO

2
3 Count Seven (Randy Mitchell): YES NO

4
5 Count Eight (Ray Jimmerson): YES NO

6
7 #65

8 Foreperson

9
10 2. *Participation in Other Serious Crimes of Violence:* Do you, the jury,
11 unanimously find that the government has established beyond a reasonable doubt that the
12 defendant participated in two other VICAR murders in addition to the VICAR murder of
13 the victim named in the corresponding count below, and participated in the VICAR
14 attempted murder of Marcus Atkinson, and that this factor tends to support imposition of
15 the death penalty for the corresponding count below?

16
17 Count Five (Joseph Hearn): YES NO

18
19 Count Seven (Randy Mitchell): YES NO

20
21 Count Eight (Ray Jimmerson): YES NO

22
23 #65

24 Foreperson

25
26 3. *Contemporaneous Criminal Conduct:* Do you, the jury, unanimously find that
27 the government has established beyond a reasonable doubt that, aside from the
28 commission of the two other VICAR murders in addition to the VICAR murder of the

1 victim named in the corresponding count below and the VICAR attempted murder of
2 Marcus Atkinson, the defendant was engaged in a RICO conspiracy and committed drug
3 offenses, and that this factor tends to support imposition of the death penalty for the
4 corresponding count below?

5
6 Count Five (Joseph Hearn): YES _____ NO ✓

7
8 Count Seven (Randy Mitchell): YES ✓ NO _____

9
10 Count Eight (Ray Jimmerson): YES ✓ NO _____

11
12 #65

13 Foreperson

14
15 4. *Future Dangerousness of the Defendant:* Do you, the jury, unanimously find
16 that the government has established beyond a reasonable doubt that the defendant
17 represents a continuing danger to the lives and safety of other persons and that the
18 defendant is likely to commit criminal acts of violence in the future that would constitute
19 a continuing and serious threat to the lives and safety of others, as demonstrated by one or
20 more of the following:

21 (a) *Continuing Pattern of Violence:* The defendant has engaged in a continuing
22 pattern of violence, attempted violence, and threatened violence, including the
23 crimes alleged against defendant in the Indictment.

24 (b) *Lack of Remorse:* The defendant has demonstrated a lack of remorse for the
25 capital offenses committed in this case, as indicated by defendant's statements and
26 actions during the course of and following the offenses alleged in the Indictment.

27 (c) *Low Rehabilitative Potential:* The defendant has demonstrated a low potential
28 for rehabilitation as evidenced by his longstanding involvement in criminal

1 activities, including drug trafficking and violence.

2 (d) *Membership in a Criminal Enterprise*: The defendant has demonstrated an
3 allegiance to and active membership in the Page Street Gang, a criminal enterprise
4 falling within the definition of 18 U.S.C. § 1962(d).

5 and do you, the jury, unanimously find that the government has established beyond a
6 reasonable doubt that this factor tends to support imposition of the death penalty for the
7 corresponding count below?

8
9 Count Five (Joseph Hearn): YES ✓ NO _____

10
11 Count Seven (Randy Mitchell): YES ✓ NO _____

12
13 Count Eight (Ray Jimmerson): YES ✓ NO _____

14
15 #65

16 Foreperson

17
18 5. *Obstruction of Justice*: Do you, the jury, unanimously find that the government
19 has established beyond a reasonable doubt that the defendant committed the offense set
20 forth in the count below with the intent to prevent the victim, Ray Jimmerson, from, or
21 retaliate against him for, providing information and assistance to law enforcement
22 authorities in regard to the investigation or prosecution of the commission or possible
23 commission of another offense and that this factor tends to support imposition of the
24 death penalty for the count set forth below?

25
26 Count Eight (Ray Jimmerson): YES ✓ NO _____

27
28 #65

Foreperson

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

4

5 **V. MITIGATING FACTORS**

6 Instructions: For each of the following mitigating factors, indicate, in the space
7 provided, the number of jurors between 0 and 12 who have found the existence of that
8 mitigating factor to be proven by a preponderance of the evidence.

9 A finding with respect to a mitigating factor may be made by one or more of the
10 members of the jury, and any member of the jury who finds the existence of a mitigating
11 factor may consider such a factor established in considering whether or not a sentence of
12 death shall be imposed, regardless of the number of other jurors who agree that the factor
13 has been established. Further, any juror may also weigh a mitigating factor found by
14 another juror, even if he or she did not also find that mitigating factor to exist:

15

16 1. That his capacity to conform his conduct to the requirements of the law was
17 significantly impaired by drugs and/or alcohol, regardless of whether his capacity was so
18 impaired as to constitute a defense to the charge.

19

20 Number of jurors who so find 1 .

21

22 2. That another defendant or defendants, equally culpable in the crime, will not be
23 punished by death.

24

25 Number of jurors who so find 0 .

26

27 3. That the defendant does not have a significant prior history of other criminal
28 conduct.

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Number of jurors who so find 0.

4. The defendant's youthful age at the time of the offenses, since he had turned 18 years old on June 11, 2002, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 2.

5. The defendant's lack of adult and parental guidance and support throughout his developmental period, his childhood, and teenage years, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 10.

6. That the defendant used alcohol and drugs during his developmental period, teenage years, and during the latter part of 2001, and most of 2002, until he was arrested, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 3.

7. That the defendant was raised in poverty with resulting deprivations, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 4.

8. That the defendant was neglected by his parents during his developmental period and teenage years, and that this tends to indicate that he should not be sentenced to death.

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Number of jurors who so find 8.

9. That the defendant was raised by a parent addicted to crack cocaine, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 3.

10. That the defendant was exposed to a lifestyle in which drug use, drug sales, and possession of weapons was common, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 5.

11. That the defendant was raised in a community in which violence was common, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 11.

12. That the defendant lost his older brother, Chris Clark, at a young age, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find ~~3~~ 3 #65.

13. That the defendant was not exposed to positive role models during pre-arrest life, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 9.

1 14. The defendant's association with Lacy Jackson, Raymon Hill, and others,
2 considerably older than he was, and their influence over him, and that this tends to
3 indicate that he should not be sentenced to death.

4
5 Number of jurors who so find 4.

6
7 15. The defendant's vulnerability due to his relatively young age, and that this
8 tends to indicate that he should not be sentenced to death.

9
10 Number of jurors who so find 3.

11
12 16. The failure of the defendant's peers, associates, and family to intervene, and to
13 provide help and guidance after the Marcus Atkinson shooting, and that this tends to
14 indicate that he should not be sentenced to death.

15
16 Number of jurors who so find 7.

17
18 17. The defendant's positive and peaceful adjustment while incarcerated as
19 demonstrated by:

- 20 a. his positive and disciplinary free placement at the Youth Guidance Center
- 21 (Juvenile Hall) and Camp Sweeney;
- 22 b. his positive and disciplinary free adjustment to incarceration while at the Log
- 23 Cabin Ranch School, and his good relationship with staff, such as BJ Duhon;
- 24 c. his positive and disciplinary free adjustment to jail and his good relationship
- 25 with staff, such as jail Deputies; and
- 26 d. the defendant's positive response to the structured environment of
- 27 incarceration;

28 and that this tends to indicate that he should not be sentenced to death.

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Number of jurors who so find 1.

18. The defendant's positive attitude toward maintaining relationships with family and friends during his present and future incarceration, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find ~~1~~ 1 #65

19. The positive attitude of the defendant's family towards maintaining a relationship with the defendant and the efforts made by family members to maintain communication and contact with Mr. Cyrus, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 4.

20. That the defendant's unstable early childhood and dysfunctional family resulted in his having a home life without structure and emotional and financial support, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 12.

21. That the defendant's father had a violent temper and physically and emotionally abused his family and the defendant, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 4.

22. That the defendant's mother and father had a long-term history of alcohol and

1 substance abuse, and that this tends to indicate that he should not be sentenced to death.

2
3 Number of jurors who so find 4.

4
5 23. That the defendant had been raised in a neglectful, and violent, family
6 atmosphere, and that this tends to indicate that he should not be sentenced to death.

7
8 Number of jurors who so find 7.

9
10 24. That the defendant witnessed family violence, and that this tends to indicate
11 that he should not be sentenced to death.

12
13 Number of jurors who so find 7.

14
15 25. The defendant's helpful acts, generosity, loving relationships, and kindness
16 with friends and family, and that this tends to indicate that he should not be sentenced to
17 death.

18
19 Number of jurors who so find 0.

20
21 26. The defendant's potential for rehabilitation and leading a useful and
22 meaningful life while incarcerated, and that this tends to indicate that he should not be
23 sentenced to death.

24
25 Number of jurors who so find 0.

26
27 27. That, prior to the defendant's birth, his mother was using drugs, and that this
28 tends to indicate that he should not be sentenced to death.

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Number of jurors who so find 2.

28. The defendant's premature birth and his childhood health problems, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 0.

29. The defendant's potential for contributing affirmatively to the lives of his family, friends, and fellow inmates, and that this tends to indicate that he should not be sentenced to death.

Number of jurors who so find 1.

30. That other factors in the background or character of the defendant suggest that life without the possibility of release is the most appropriate punishment.

Number of jurors who so 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, 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 form.

31. _____
_____.

Number of jurors who so find _____.

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32. _____

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Number of jurors who so find _____.

33. _____

_____.

Number of jurors who so find _____.

34. _____

_____.

Number of jurors who so find _____.

Instructions: Proceed to Section VI and Section VII which follow.

VI. DETERMINATION

Based upon consideration of whether the aggravating factor or 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 factor or factors found to exist are themselves sufficient to justify a sentence of death, and whether death is therefore the appropriate sentence in this case:

A. Sentence of Death

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

Count Five (Joseph Hearn): YES _____ NO ✓

1 Count Seven (Randy Mitchell): YES _____ NO ✓

2
3 Count Eight (Ray Jimmerson): YES _____ NO ✓

4
5 If you answer "YES" to all of the counts set forth above, the foreperson must sign here
6 with their name number and you must then proceed to Section VII. If you answer "NO"
7 to any of the counts set forth above, the foreperson must sign here with their name
8 number, and you must then proceed to Section VI(B) as to those counts for which you
9 have answered "NO":

10
11 #65

Date: 6/26/09

12 Foreperson

13
14 B. Sentence of Life Imprisonment Without Possibility of Release

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

17
18 Count Five (Joseph Hearn): YES ✓ NO _____

19
20 Count Seven (Randy Mitchell): YES ✓ NO _____

21
22 Count Eight (Ray Jimmerson): YES ✓ NO _____

23
24 If you answer "YES" to any of the counts set forth above, the foreperson must sign here
25 with their name number, and you must then proceed to Section VII:

26
27 #65

Date: 6/26/09

28 Foreperson

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VII. CERTIFICATION

By signing below with your name number, 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, 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.

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|-------------|-----------------------|
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| <u>#26</u> | <u>#91</u> |
| <u>#73</u> | <u>#62</u> |
| <u>#99</u> | <u>#33</u> |
| <u>#150</u> | <u>#63</u> |
| <u>#108</u> | <u>#65</u> |

FOREPERSON

Date: 6/26/09