

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

WALTER DIAZ.

Defendant.

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

FEB 28 1996

AT O'CLOCK

GEORGE A. RAY, CLERK
BINGHAMTON

PENALTY PHASE, SPECIAL
FINDINGS PACKET FOR
WALTER DIAZ: COUNT 3

94-CR-328

Hon. T.J. McAvoy

PLEASE NOTE -- Each Juror will be provided with a Special Findings Packet in order to facilitate deliberations as to each factor. HOWEVER, YOUR SPECIAL FINDINGS SHOULD BE REPORTED TO THE JUDGE ON ONLY ONE PACKET THAT MUST BE SIGNED IN TWO PLACES BY ALL JURORS. The remaining Special Findings Packets should be returned to the courtroom deputy unsigned.

There should be a total of 13 pages in this Special Findings Packet (please verify this before commencing).

AS TO WALTER DIAZ'S CONVICTION ON COUNT THREE, FOR AN INTENTIONAL KILLING WHILE ENGAGED IN A CONSPIRACY PUNISHABLE UNDER 21 U.S.C. SECTION 841(b) (1) (A),
WE, THE JURY, FIND:

I. CATEGORY ONE STATUTORY AGGRAVATING FACTORS

(You may find none or one (but ONE only) of the following two factors, but only if one of the factors has been proven to your unanimous satisfaction beyond a reasonable doubt)

a. That Walter Diaz intentionally killed Michael Monsour:

-Proved to the jury's unanimous satisfaction: _____

-Unable to reach a unanimous verdict: X

N/A

(proceed to the next factor (I(b)), only if you were unable to reach unanimous agreement on factor I(a). If, however, factor I(a) was proven to the jury's unanimous satisfaction, proceed directly to Section II)

b. That Walter Diaz intentionally engaged in conduct intending that Michael Monsour be killed and that lethal force be employed against Michael Monsour, which resulted in Michael Monsour's death:

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict: _____

(Proceed to the next section (Section II) only if you have unanimously found one of these factors proven beyond a reasonable doubt. If you have not found one of these Section I factors proven beyond a reasonable doubt proceed directly to Section V on page 11 and complete alternative V(i))

II CATEGORY TWO STATUTORY AGGRAVATING FACTORS

(You may find none, one, any two, or all three of these Section II factors, but you may only find any of these factors if the factor has been proven to your unanimous satisfaction beyond a reasonable doubt)

a. That Walter Diaz, in committing the offense described in Count Three of the indictment, knowingly created a grave risk of death to one or more other persons in addition to the victim Michael Monsour, namely, Anne Marie Johnson, and/or Michelle Johnson, and/or Miledy Figueroa, and/or Anna Griffin.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next factor)

b. That Walter Diaz committed the offense described in Count Three of the indictment as consideration for the receipt, or in the expectation of the receipt, of something of pecuniary value, namely drugs and money.

-Proved to the jury's unanimous satisfaction:

-Unable to reach a unanimous verdict: X

(proceed to the next factor)

c. That Walter Diaz committed the offense described in Count Three of the indictment after substantial planning and premeditation.

-Proved to the jury's unanimous satisfaction:

-Unable to reach a unanimous verdict: X

(Proceed to the next section (Section III) only if you have unanimously found at least one of the Section II factors proven beyond a reasonable doubt. If you have not unanimously found at least one of these Section II factors proven beyond a reasonable doubt, AND one of the factors from Section I, proceed directly to Section V on page 11 and complete alternative V(i))

III. CATEGORY THREE NON-STATUTORY AGGRAVATING FACTORS

(You may find none, any number, or all of these Section III factors, but you may only find any of these factors if the factor has been proven to your unanimous satisfaction beyond a reasonable doubt)

a. On or about February 23, 1993, at approximately 8:50 a.m., in the course of an attempted armed robbery, Walter Diaz directly participated in the killing of Ms. Bonnie Bear in Manhattan, New York.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next factor)

b. On or about February 23, 1993, at approximately 12:50 P.M., Walter Diaz attempted to rob Mr. Herbert Muskin in Brooklyn, New York, at which time a gunshot was fired at Mr. Muskin at close range, and for which attempted robbery Walter Diaz was convicted in Brooklyn, New York.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next factor)

c. Walter Diaz has previously been convicted of one felony narcotics offense punishable by a term of imprisonment of more than one year, in that on November 1, 1991, in the Supreme Court of Sullivan County, New York, Walter Diaz was convicted of Criminal Possession of a Controlled Substance, resulting from the possession of twenty-four packets of cocaine on October 3, 1991.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next factor)

d. The impact of the murder upon Michael Monsour's family.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next factor)

III. CATEGORY THREE NON-STATUTORY AGGRAVATING FACTORS (cont.)

e. Future dangerousness based upon the probability that Walter Diaz would commit serious criminal acts of violence that would constitute a continuing threat to society, as evidenced by one or more of the following:

1. On or about August 25, 1990, in Sullivan County, New York, Walter Diaz illegally possessed a loaded firearm.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

2. On or about August 25, 1990, in Sullivan County, New York, Walter Diaz possessed a dangerous weapon, that is, a double-edged dagger.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

3. Walter Diaz was on parole from the New York State Parole Board at the time that he participated in the Monsour, Bear and Muskin incidents.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

4. While incarcerated in the Federal Correctional Institution in Otisville, New York, Walter Diaz set a fire in his jail cell on or about January 31, 1995.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

Considering the foregoing, Walter Diaz presents a continuing danger to society.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(Proceed to the next section (Section IV))

IV. MITIGATING FACTORS

The following mitigating factors concern Walter Diaz' life, background, or character, or the circumstances surrounding his capital crime. As I have instructed you, the defendant you are considering need only establish these mitigating factors by a preponderance of the evidence -- a lesser standard of proof under the law than proof beyond a reasonable doubt.

A finding may be made as to a mitigating factor by one or more jurors, and any mitigating factor found must be considered by that juror or jurors, regardless of the number of other jurors who concur.

a. That at the time of the capital crime, Walter Diaz was youthful, although not under the age of eighteen.

-Number of jurors who so find by a
preponderance of the evidence 6

(proceed to the next factor)

b. Another defendant or defendants, equally culpable in the crime, (referring to Tony Walker and/or Tyrone Walker) will not be sentenced to death.

-Number of jurors who so find by a
preponderance of the evidence 4

(proceed to the next factor)

c. Walter Diaz is punishable as a principal in the offense, which was committed by another, but Walter Diaz' participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

-Number of jurors who so find by a
preponderance of the evidence 5

(proceed to the next factor)

d. If he is not sentenced to death, Walter Diaz will be punished by a sentence of life imprisonment without the possibility of release or parole. (you must all accept this factor as proven)

-Number of jurors who so find by a
preponderance of the evidence 12 ^{2.00.96}

(proceed to the next factor)

IV. MITIGATING FACTORS (cont.)

e. Walter Diaz was not one of the two men in the house at the scene of the Michael Monsour murder.

-Number of jurors who so find by a
preponderance of the evidence 0

(proceed to the next factor)

f. Walter Diaz did not personally shoot Michael Monsour.

-Number of jurors who so find by a
preponderance of the evidence 12

(proceed to the next factor)

g. Walter Diaz did not personally shoot Bonnie Bear.

-Number of jurors who so find by a
preponderance of the evidence 12

(proceed to the next factor)

h. Others involved in planning the events that led up to the murder of Michael Monsour will go unpunished (referring to Josh Pettway, Frankie Lee Peterson a.k.a. "Stag Lee," and/or any others that are found to fit this category).

-Number of jurors who so find by a
preponderance of the evidence 10

(proceed to the next factor)

i. Walter Diaz suffered from Attention Deficit/Hyperactivity Disorder.

-Number of jurors who so find by a
preponderance of the evidence 4

(proceed to the next factor)

IV. MITIGATING FACTORS (cont.)

j. Walter Diaz' Attention Deficit/Hyperactivity Disorder was inadequately treated when he was a child.

**-Number of jurors who so find by a
preponderance of the evidence** 4

(proceed to the next factor)

k. Walter Diaz was an emotionally disturbed child.

**-Number of jurors who so find by a
preponderance of the evidence** 12

(proceed to the next factor)

l. Walter Diaz was raised in a physical environment which was harsh, unsafe and/or unsanitary.

**-Number of jurors who so find by a
preponderance of the evidence** 12

(proceed to the next factor)

m. Walter Diaz was deprived of the parental guidance and protection which he needed as a child.

**-Number of jurors who so find by a
preponderance of the evidence** 12

(proceed to the next factor)

n. Walter Diaz' mother abused drugs and alcohol, engaged in criminal behavior, and was emotionally unstable.

**-Number of jurors who so find by a
preponderance of the evidence** 11

(proceed to the next factor)

IV. MITIGATING FACTORS (cont.)

o. The family of Walter Diaz, instead of valuing him as a child, treated him as a source of revenue.

**-Number of jurors who so find by a
preponderance of the evidence** 0

(proceed to the next factor)

p. Walter Diaz was the product of a dysfunctional family which subjected him to physical and emotional abuse and neglect.

**-Number of jurors who so find by a
preponderance of the evidence** 12

(proceed to the next factor)

q. Walter Diaz' mother interfered with efforts of social services agencies' workers to provide him a better chance in life.

**-Number of jurors who so find by a
preponderance of the evidence** 9

(proceed to the next factor)

r. The impact of the execution of Walter Diaz on members of his family as a mitigating factor.

**-Number of jurors who so find by a
preponderance of the evidence** 2

(proceed to the next factor)

s. Other factors in Walter Diaz' background or character, or the circumstances of the offense, mitigate against imposition of the death sentence.

**-Number of jurors who so find by a
preponderance of the evidence** 5

(proceed to the next factor)

IV. MITIGATING FACTORS (cont.)

If any juror or jurors find/s that as to Walter Diaz, a mitigating factor not listed above has been proven to exist by a preponderance of the evidence, please identify that mitigating factor below, together with the number of jurors who so find. Remember, however, that you need not be able to articulate a mitigating factor with specificity to consider it in your deliberations.

Factor: Walter apparently looked to Tyrone Walker as his
hero/mentor and was following along with him.

-Number of jurors who so find by a
preponderance of the evidence 10

Factor: _____

-Number of jurors who so find by a
preponderance of the evidence _____

Factor: _____

-Number of jurors who so find by a
preponderance of the evidence _____

(if additional space is required, please use the back of this page)

You have now completed the special findings you are required to return as to Walter Diaz. You must now consider whether, beyond a reasonable doubt, any aggravating factors, including the aggravating factors from both statutory categories and any non-statutory aggravating factors, you have found to exist sufficiently outweigh any mitigating factor or factors you have found to exist, or, in the absence of mitigating factors, whether the aggravating factors are themselves sufficient, to justify a sentence of death. You should have found only ONE, if any, and you should take special care to weigh only ONE, of the Section I, first category factors.

Please review the Decision Form which follows (Section V), containing alternatives i, ii, iii and iv, and complete the ONE appropriate alternative as you conclude your deliberations.

V. DECISION FORM (complete one of i, ii, iii, or iv)

i. We, the jury, do not unanimously find proven beyond a reasonable doubt the existence of both required statutory aggravating factors as to the capital crime and, therefore, do not consider the death penalty as to Walter Diaz.

N/A

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Foreperson

ii. We, the jury, unanimously find beyond a reasonable doubt that the aggravating factors proven in this case (both statutory and, if any, non-statutory), so outweigh any mitigating factors, and are themselves so serious that justice requires a sentence of death. We vote unanimously that Walter Diaz shall be sentenced to death.

N/A

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Foreperson

V. DECISION FORM (cont.)

iii. We, the jury, do not unanimously find that the aggravating factors proven in this case so outweigh the mitigating factors that justice requires a sentence of death. Therefore, we return a decision that Walter Diaz not be sentenced to death.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Foreperson

iv. We, the jury, having considered and evaluated the evidence presented in light of the instructions of the court, nevertheless, are not unanimously persuaded that a death sentence should be imposed in this case. Therefore, we return a decision that Walter Diaz not be sentenced to death.

(after completing the single appropriate Decision Form alternative proceed to Section VI and complete the certification thereat)

VII. CERTIFICATE

By signing below, each juror individually certifies as follows:

I hereby certify that consideration of the race, color, religious beliefs, national origin, or sex of the defendant Walter Diaz, and of the victim, Michael Monsour, was not involved in reaching my individual decision in this case as to this defendant.

I further certify that I would have made the same recommendation regarding the sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant Walter Diaz, or the victim, Michael Monsour,



Dated, 2 -28- 1996.

WHEN YOU HAVE CONCLUDED YOUR DELIBERATIONS AS TO BOTH DEFENDANTS
AND ALL COUNTS INFORM THE MARSHALL THAT YOUR DELIBERATIONS ARE
COMPLETED