

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY CITY DIVISION

CRIMINAL NO. 4:98CR243

FILED
ASHEVILLE, N.C.

APR 15 1999

U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA)
)
)
vs.)
)
)
JAMES ANDREW FINLEY)
_____)

SPECIAL VERDICT FORM
REGARDING THE PUNISHMENT TO BE IMPOSED ON THE DEFENDANT
FOR THE KILLING OF DEREK ANDREW MARSTON IN COUNT ONE

PART ONE

FINDINGS ON REQUISITE MENTAL STATE

For each of the following, answer "Yes" or "No."

- A. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, intentionally killed Derek Andrew Marston?

Unanimous Yes ✓
Not Unanimous _____

- B. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, intentionally inflicted serious bodily injury which resulted in the death of Derek Andrew Marston?

Unanimous Yes ✓
Not Unanimous _____

- C. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, intentionally participated in an act with the contemplation that a life would be taken or intended that lethal

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force be used in connection with a person and Derek Andrew Marston was killed as a direct result?

Unanimous Yes ✓
Not Unanimous _____

- D. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, intentionally and specifically engaged in an act of violence with knowledge that the act created a grave risk of death to another person and with a reckless disregard for human life and Derek Andrew Marston died as a direct result of the act?

Unanimous Yes ✓
Not Unanimous _____

THIS the 15th day of April, 1999.

FOREPERSON

If you have checked "Not Unanimous" as to each of the above, the Foreperson should sign in the location above and you should proceed to Part Six, carefully read it and sign in the appropriate place if the statement contained in Part Six accurately reflects the manner in which each individual juror reached his or her decision. At this point, your deliberations are complete and you should advise the Court that you have reached a decision.

If you have checked "Unanimous Yes" to A, B, C, or D, continue with your deliberations in accordance with the Court's instructions and proceed to Part Two of this form.

PART TWO

FINDINGS AS TO STATUTORY AGGRAVATING FACTORS

For each of the following statutory aggravating factors, answer "Yes" or "No."

- A. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, committed the offense in Count One in the expectation of the receipt of something of pecuniary value?

Unanimous Yes ✓
Not Unanimous

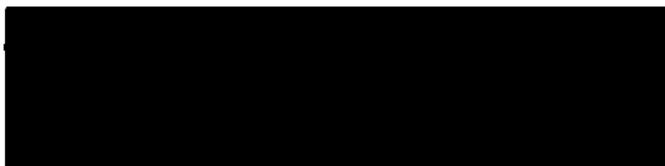
- B. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, committed the offense after substantial planning and premeditation to cause the death of Derek Andrew Marston?

Unanimous Yes ✓
Not Unanimous

- C. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, intentionally killed Tommi Danielle Byrd in addition to Derek Andrew Marston in a single criminal episode?

Unanimous Yes ✓
Not Unanimous

THIS the 15th day of April, 1999.



If you have checked "Not Unanimous" as to each of the above, the Foreperson should sign in the location above and you should proceed to Part Six, carefully read it and sign in the appropriate place if the statement contained in Part Six accurately reflects the manner in which each individual juror reached his or her decision. At this point, your deliberations are complete and you should advise the Court that you have reached a decision.

If you have checked "Unanimous Yes" to A, B, ¹C, ~~and~~, continue with your deliberations in accordance with the Court's instructions and proceed to Part Three of this form.

PART THREE**FINDINGS AS TO NON-STATUTORY AGGRAVATING FACTORS**

For each of the following non-statutory aggravating factors, answer "Yes" or "No."

- A. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt as to Count One the harmful effect of the offense on Derek Andrew Marston and his family?

Unanimous Yes ✓
Not Unanimous

- B. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to other persons?

Unanimous Yes
Not Unanimous ✓

Regardless of your answers to A and B of Part Three, proceed to deliberate on Part Four.

PART FOUR**FINDINGS AS TO MITIGATING FACTORS**

For each of the following alleged mitigating factors, in the space provided, indicate the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence as to Count One.

A finding with respect to a mitigating factor may be made by one or more members of the Jury, and any member of the Jury who finds the existence of a mitigating factor must consider such a factor established in considering 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.

The statutory mitigating factors which the Defendant contends have been proved by a preponderance of the evidence are:

- A. The Defendant's, James Andrew Finley, capacity to appreciate the wrongfulness of his conduct was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

Number of Jurors who so find: 2

- B. The Defendant's, James Andrew Finley, capacity to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

Number of Jurors who so find: 0

- C. The Defendant, James Andrew Finley, did not have a significant prior history of other criminal conduct.

Number of Jurors who so find: 0

- D. The Defendant, James Andrew Finley, committed the offense under severe mental or emotional disturbance.

Number of Jurors who so find: 5

Other non-statutory mitigating factors which the Defendant contends have been proven by a preponderance of the evidence are:

- A. The Defendant, James Andrew Finley, was 21 years old at the time of these offenses.

Number of Jurors who so find: 3

- B. The Defendant, James Andrew Finley, had been treated for mental disorders since the age of 14.

Number of Jurors who so find: 7

- C. The Defendant's, James Andrew Finley, family life was disrupted at an early age and never reconstructed.

Number of Jurors who so find: 9

- D. The Defendant, James Andrew Finley, grew up without the nurturing and support of a stable family life.

Number of Jurors who so find: 6

- E. At the time of these offenses, the Defendant, James Andrew Finley, suffered from the mental illness of major depression.

Number of Jurors who so find: 4

- F. At the time of these offenses, the Defendant, James Andrew Finley, suffered from the mental illness of dysthymia.

Number of Jurors who so find: 4

- G. At the time of these offenses, the Defendant, James Andrew Finley, suffered from the mental disorder of drug dependence.

Number of Jurors who so find: 2

- H. At the time of these offenses, the Defendant, James Andrew Finley, was under the influence of controlled substances which affected his mental condition, thinking and behavior.

Number of Jurors who so find: 0

- I. The combination of major depression and long term drug use significantly affected his thinking and behavior at the time of the offenses.

Number of Jurors who so find: 3

- J. The Defendant, James Andrew Finley, was suicidal before and after these offenses.

Number of Jurors who so find: 4

- K. The Defendant, James Andrew Finley, has no previous history of violence to other persons.

Number of Jurors who so find: 5

- L. The Defendant, James Andrew Finley, has expressed remorse to many people for these offenses.

Number of Jurors who so find: 2

- M. The Defendant, James Andrew Finley, freely and voluntarily admitted his guilt to the police immediately after his arrest.

Number of Jurors who so find: 5

- N. The Defendant, James Andrew Finley, has accepted responsibility for these offenses.

Number of Jurors who so find: 5

- O. The Defendant, James Andrew Finley, did well at the Delancey Street program and has the capacity to adjust well to life in prison without the possibility of release.

Number of Jurors who so find: 5

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.

A. NONE

Number of Jurors who so find: _____

B. X

Number of Jurors who so find: _____

- C. _____
Number of Jurors who so find: _____
- D. _____
Number of Jurors who so find: _____
- E. _____
Number of Jurors who so find: _____

Regardless of whether you choose to make written findings for mitigating factors in Part Four, proceed to Part Five.

PART FIVE**DETERMINATION**

Based upon consideration of whether the aggravating factor or factors found to exist as to Count One sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factor or factors as to Count One are themselves sufficient to justify a sentence of death, indicate your recommendation using either A or B attached.

A. DEATH SENTENCE

Based upon consideration of whether the aggravating factor or factors found to exist as to Count One sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factor or factors as to Count One are themselves sufficient to justify a sentence of death, we, the Jury, recommend by unanimous vote that a sentence of death shall be imposed for the killing of Derek Andrew Marston in Count One.

YES _____

NO ✓

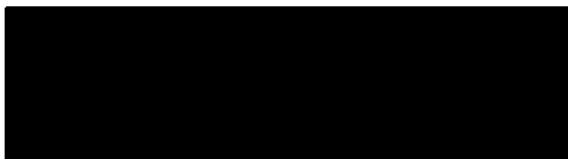
If you answer "YES," sign your names here and proceed to Part Six. If you answer "NO," the foreperson alone should sign, and you should proceed to B.



THIS the 15th day of April, 1999.

**B. SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT POSSIBILITY OF
RELEASE**

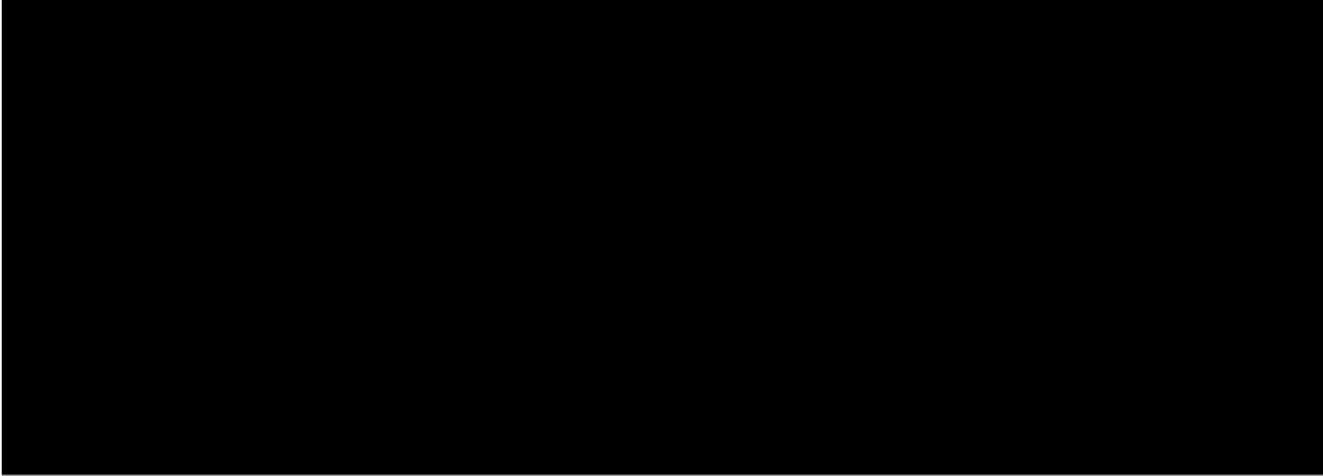
Having failed to determine unanimously that the Defendant shall be sentenced to death, we, the Jury, impose a sentence of imprisonment for life without the possibility of release.



THIS the 15th day of April, 1999.

PART SIX**CERTIFICATION**

We, the Jury, hereby certify that consideration of the race, color, religious beliefs, national origin, or sex of the Defendant, James Andrew Finley, or the victim, Derek Andrew Marston, 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 no matter what the race, color, religious beliefs, national origin or sex of the Defendant, James Andrew Finley, or the victim, Derek Andrew Marston, may have been.



THIS the 15th day of April, 1999.

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U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA)

vs.)

JAMES ANDREW FINLEY)

SPECIAL VERDICT FORM
REGARDING THE PUNISHMENT TO BE IMPOSED ON THE DEFENDANT
FOR THE KILLING OF TOMMI DANIELLE BYRD IN COUNT THREE

PART ONE

FINDINGS ON REQUISITE MENTAL STATE

For each of the following, answer "Yes" or "No."

- A. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, intentionally killed Tommi Danielle Byrd?

Unanimous Yes ☒
Not Unanimous

- B. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, intentionally inflicted serious bodily injury which resulted in the death of Tommi Danielle Byrd?

Unanimous Yes ☒
Not Unanimous

- C. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, intentionally participated in an act with the contemplation that a life would be taken or intended that lethal

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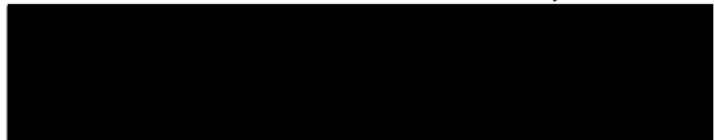
force be used in connection with a person and Tommi Danielle Byrd was killed as a direct result?

Unanimous Yes ✓
Not Unanimous

- D. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, intentionally and specifically engaged in an act of violence with knowledge that the act created a grave risk of death to another person and with a reckless disregard for human life and Tommi Danielle Byrd died as a direct result of the act?

Unanimous Yes ✓
Not Unanimous

THIS the 15th day of April, 1999.



If you have checked "Not Unanimous" as to each of the above, the Foreperson should sign in the location above and you should proceed to Part Six, carefully read it and sign in the appropriate place if the statement contained in Part Six accurately reflects the manner in which each individual juror reached his or her decision. At this point, your deliberations are complete and you should advise the Court that you have reached a decision.

If you have checked "Unanimous Yes" to A, B, C, or D, continue with your deliberations in accordance with the Court's instructions and proceed to Part Two of this form.

PART TWO

FINDINGS AS TO STATUTORY AGGRAVATING FACTORS

For each of the following statutory aggravating factors, answer "Yes" or "No."

- A. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, committed the offense in Count Three in the expectation of the receipt of something of pecuniary value?

Unanimous Yes ✓
Not Unanimous

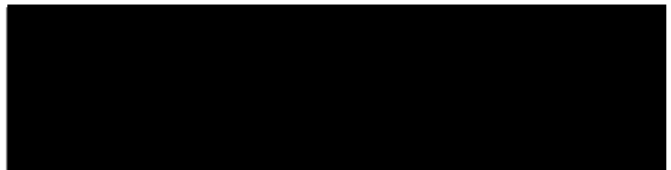
- B. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, committed the offense after substantial planning and premeditation to cause the death of Tommi Danielle Byrd?

Unanimous Yes ✓
Not Unanimous


- C. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, intentionally killed Derek Andrew Marston in addition to Tommi Danielle Byrd in a single criminal episode?

Unanimous Yes ✓
Not Unanimous

THIS the 15th day of April, 1999.



If you have checked "Not Unanimous" as to each of the above, the Foreperson should sign in the location above and you should proceed to Part Six, carefully read it and sign in the appropriate place if the statement contained in Part Six accurately reflects the manner in which each individual juror reached his or her decision. At this point, your deliberations are complete and you should advise the Court that you have reached a decision.

If you have checked "Unanimous Yes" to A, B, ^{or} C, , continue with your deliberations in accordance with the Court's instructions and proceed to Part Three of this form.

PART THREE**FINDINGS AS TO NON-STATUTORY AGGRAVATING FACTORS**

For each of the following non-statutory aggravating factors, answer "Yes" or "No."

- A. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt as to Count Three the harmful effect of the offense on Tommi Danielle Byrd and her family?

Unanimous Yes ✓
 Not Unanimous _____

- B. Do you, the Jury, unanimously find that the government has proved beyond a reasonable doubt that the Defendant, James Andrew Finley, is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to other persons?

Unanimous Yes _____
 Not Unanimous ✓

Regardless of your answers to A and B of Part Three, proceed to deliberate on Part Four.

PART FOUR**FINDINGS AS TO MITIGATING FACTORS**

For each of the following alleged mitigating factors, in the space provided, indicate the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence as to Count Three.

A finding with respect to a mitigating factor may be made by one or more members of the Jury, and any member of the Jury who finds the existence of a mitigating factor must consider such a factor established in considering 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.

The statutory mitigating factors which the Defendant contends have been proved by a preponderance of the evidence are:

- A. The Defendant's, James Andrew Finley, capacity to appreciate the wrongfulness of his conduct was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

Number of Jurors who so find: 2

- B. The Defendant's, James Andrew Finley, capacity to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

Number of Jurors who so find: 0

- C. The Defendant, James Andrew Finley, did not have a significant prior history of other criminal conduct.

Number of Jurors who so find: 0

- D. The Defendant, James Andrew Finley, committed the offense under severe mental or emotional disturbance.

Number of Jurors who so find: 5

Other non-statutory mitigating factors which the Defendant contends have been proven by a preponderance of the evidence are:

- A. The Defendant, James Andrew Finley, was 21 years old at the time of these offenses.

Number of Jurors who so find: 3

- B. The Defendant, James Andrew Finley, had been treated for mental disorders since the age of 14.

Number of Jurors who so find: 7

- C. The Defendant's, James Andrew Finley, family life was disrupted at an early age and never reconstructed.

Number of Jurors who so find: 9

- D. The Defendant, James Andrew Finley, grew up without the nurturing and support of a stable family life.

Number of Jurors who so find: 6

- E. At the time of these offenses, the Defendant, James Andrew Finley, suffered from the mental illness of major depression.

Number of Jurors who so find: 4

- F. At the time of these offenses, the Defendant, James Andrew Finley, suffered from the mental illness of dysthymia.

Number of Jurors who so find: 4

- G. At the time of these offenses, the Defendant, James Andrew Finley, suffered from the mental disorder of drug dependence.

Number of Jurors who so find: 2

- H. At the time of these offenses, the Defendant, James Andrew Finley, was under the influence of controlled substances which affected his mental condition, thinking and behavior.

Number of Jurors who so find: 0

- I. The combination of major depression and long term drug use significantly affected his thinking and behavior at the time of the offenses.

Number of Jurors who so find: 3

- J. The Defendant, James Andrew Finley, was suicidal before and after these offenses.

Number of Jurors who so find: 4

- K. The Defendant, James Andrew Finley, has no previous history of violence to other persons.

Number of Jurors who so find: 5

- L. The Defendant, James Andrew Finley, has expressed remorse to many people for these offenses.

Number of Jurors who so find: 2

- M. The Defendant, James Andrew Finley, freely and voluntarily admitted his guilt to the police immediately after his arrest.

Number of Jurors who so find: 5

- N. The Defendant, James Andrew Finley, has accepted responsibility for these offenses.

Number of Jurors who so find: 5

- O. The Defendant, James Andrew Finley, did well at the Delancey Street program and has the capacity to adjust well to life in prison without the possibility of release.

Number of Jurors who so find: 5

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.

A. NONE

Number of Jurors who so find: _____

B. X

Number of Jurors who so find: _____

- C. _____
Number of Jurors who so find: _____
- D. _____
Number of Jurors who so find: _____
- E. _____
Number of Jurors who so find: _____

Regardless of whether you choose to make written findings for mitigating factors in Part Four, proceed to Part Five.

PART FIVE**DETERMINATION**

Based upon consideration of whether the aggravating factor or factors found to exist as to Count Three sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factor or factors as to Count Three are themselves sufficient to justify a sentence of death, indicate your recommendation using either A or B attached.

A. DEATH SENTENCE

Based upon consideration of whether the aggravating factor or factors found to exist as to Count Three sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factor or factors as to Count Three are themselves sufficient to justify a sentence of death, we, the Jury, recommend by unanimous vote that a sentence of death shall be imposed for the killing of Tommi Danielle Byrd in Count Three.

YES _____

NO ✓

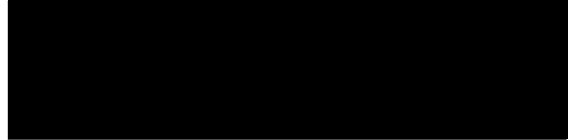
If you answer "YES," sign your names here and proceed to Part Six. If you answer "NO," the foreperson alone should sign, and you should proceed to B.

FOREPERSON

THIS the _____ day of April, 1999.

**B. SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT POSSIBILITY OF
RELEASE**


Having failed to determine unanimously that the Defendant shall be sentenced to death, we, the Jury, impose a sentence of imprisonment for life without the possibility of release.



THIS the 15th day of April, 1999.

PART SIX**CERTIFICATION**

We, the Jury, hereby certify that consideration of the race, color, religious beliefs, national origin, or sex of the Defendant, James Andrew Finley, or the victim, Tommi Danielle Byrd, 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 no matter what the race, color, religious beliefs, national origin or sex of the Defendant, James Andrew Finley, or the victim, Tommi Danielle Byrd, may have been.



THIS the 15th day of April, 1999.