

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 4:01cr8BN

JAMES ERNEST FRYE, JR.
a/k/a James E. Frye

SPECIAL VERDICT FORM - PENALTY PHASE

I. AGE OF DEFENDANT

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

The defendant, **JAMES ERNEST FRYE, JR.** was eighteen years of age or older at the time of the offense.

YES X
NO _____

Instructions: If you answered "NO" with respect to the determination in this section, proceed to Section VII.

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

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II. REQUISITE MENTAL STATE

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

1(A) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant, **JAMES ERNEST FRYE, JR.** intentionally killed **LOTTIE ANDERSON MARSHALL**.

YES _____

NO X

1(B) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant, **JAMES ERNEST FRYE, JR.** intentionally participated in an act, contemplating that the life of a person would be taken and/or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim **LOTTIE ANDERSON MARSHALL** died as a direct result of the act.

YES X

NO _____

Instructions: If you answered "NO" with respect to all of the determinations in Section II, then stop your deliberations. Proceed to Section VII.

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

III. STATUTORY AGGRAVATING FACTORS

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

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant, **JAMES ERNEST FRYE, JR.**, committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim, **LOTTIE ANDERSON MARSHALL**, as set out in the Court's instructions?

YES X

NO _____

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant, **JAMES ERNEST FRYE, JR.**, committed the offense after substantial planning and premeditation to cause the death of Lottie Anderson Marshall, as set out in the Court's Instructions?

YES X

NO _____

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant, **JAMES ERNEST FRYE, JR.**, intentionally killed Lottie Anderson Marshall and Willie Hatten, III, in a single criminal episode, as set out in the Court's instructions?

YES X

NO _____

Instructions: If you answered "NO" with respect to all of the Statutory Aggravating Factors in this Section III, then stop your deliberations and proceed to Section VII of this form.

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.

IV. NON-STATUTORY AGGRAVATING FACTORS

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

1. Do you, the jury unanimously find that the government has established beyond a reasonable doubt that the defendant, **JAMES ERNEST FRYE, JR.**, is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of others within a prison environment?

YES _____

NO X _____

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant, **JAMES ERNEST FRYE, JR.**, caused injury, harm, and loss to the victim's family because of the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family and that this factor tends to support imposition of the death penalty?

YES X _____

NO _____

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant, **JAMES ERNEST FRYE, JR.**, committed the offense with the intent to prevent the victim, **LOTTIE ANDERSON MARSHALL**, from providing information and assistance to law enforcement authorities in regards to the investigation or prosecution of the commission or possible commission of another offense, that is the murder of Willie Hatten III?

YES X _____

NO _____

Instructions: Regardless of whether you answered "YES" or "NO" with respect to the Non-Statutory Aggravating Factors 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, if any, 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 shall 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. Frye was under duress at the time of the offense, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

Number of jurors who so find 0.

(2) Another person or persons, equally culpable in the crime will not be punished by death.

Number of jurors who so find 12.

(3) Should the jury not impose the death penalty, Mr. Frye will be sentenced to life in prison without any possibility of release.

Number of jurors who so find 12.

(4) Mr. Frye was abusing drugs at or near the time of the offense.

Number of jurors who so find 7.

(5) Mr. Frye has responded well to structured environments, and would likely make an excellent adaptation to prison if he were sentenced to life imprisonment.

Number of jurors who so find 0.

(6) Mr. Frye was under the substantial domination of another person at the time of the crime.

Number of jurors who so find 5.

(7) Mr. Frye provided assistance to authorities while in prison.

Number of jurors who so find 1.

(8) Mr. Frye is a loving father.

Number of jurors who so find 6.

(9) Mr. Frye was a good husband prior to his substance abuse.

Number of jurors who so find 6.

(10) That other factors in Mr. Frye's childhood, background or character mitigate against imposition of the death sentence.

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". If more space is needed, write "CONTINUED" and use the reverse side of this page.

None

Number of jurors who so find _____.

Number of jurors who so find _____.

Number of jurors who so find _____.

6

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 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 is or are sufficient to justify a sentence of death, and whether death is therefore the appropriate sentence in this case:

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

X We cannot agree, by unanimous vote, that the death penalty should be imposed.

(If you mark "We cannot agree, by unanimous vote, that the death penalty should be imposed", the Court will sentence the Defendant to life imprisonment without possibility of release.)

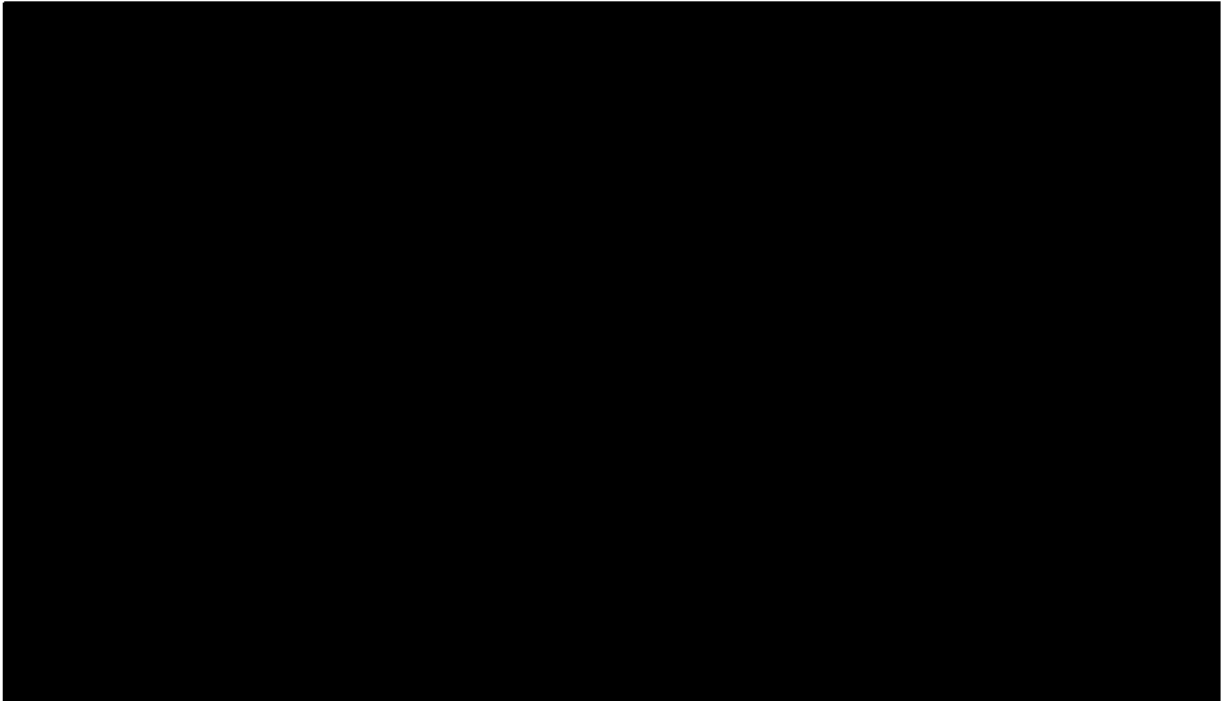
Proceed to Section VII. Each juror should then carefully read the statement in Section VII and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision.

VII. CERTIFICATION

By signing below, 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 in question regardless of the race, color, religious beliefs, national origin, or sex of the defendant, or the victim.

Also, by signing below, each juror certifies the verdict as marked above properly reflects the determinations made by the jury.

This the 10th day of February, 2005.



FOREPERSON