

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED - GR

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U.S. DISTRICT COURT
WESTERN DISTRICT MICH
BY ddk/ddk

UNITED STATES OF AMERICA,

Plaintiff,

File No. 1:99-CR-76

v.

HON. ROBERT HOLMES BELL

MARVIN CHARLES GABRION, II,

Defendant.

~~SEALED~~

**PENALTY PHASE
SPECIAL VERDICT FORM**

UNSEALED

I. GATEWAY INTENT FACTOR

3/25/02

Instructions: Answer "YES" or "NO."

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally killed Rachel Timmerman as explained in Instruction No. 5?

Yes

No


Jury Foreperson

Instructions: If you answered "NO" with respect to the determination in this section, then stop your deliberations, cross out Sections II, III, IV and V of this form, and proceed to Section VI. Each juror should carefully read the statement in Section VI, and sign in the

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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 the determination in this Section I, proceed to Section II which follows.

II. 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 committed the murder of Rachel Timmerman in an especially heinous, cruel and depraved manner, as set out in Instruction No. 7?

Yes

No

Jury Foreperson

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant committed the offense of murder after substantial planning and premeditation to cause the death of a person, as set out in Instruction No. 8?

Yes

No

Jury Foreperson

Instructions: If you answered "NO" with respect to both of the Statutory Aggravating Factors in this Section II, then stop your deliberations, cross out Sections III, IV and V of this form, and proceed to Section VI of this form.

If you found the requisite mental state in Section I and answered "YES" with respect to one or both of the aggravating factors in this Section II, proceed to Section III which follows.

III. 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 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, and that such future dangerousness is an aggravating factor, as set out in Instruction 10?

Yes

No

Jury Foreperson

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the personal characteristics of Rachel Timmerman and her uniqueness as an individual human being were such that her death has resulted in a loss to society, and has caused injury and loss to her family, and that such victim impact evidence is an aggravating factor, as set out in Instruction 11?

Yes

No

Jury Foreperson

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that in committing the offense, the defendant caused the death or disappearance of Rachel Timmerman's infant daughter Shannon VerHage, and that such death or disappearance is an aggravating factor, as set forth in Instruction No. 12?

Yes

No

Jury Foreperson

4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant obstructed justice by murdering Rachel Timmerman because she was the complaining witness in a criminal sexual conduct charge against him, and that such obstruction of justice is an aggravating factor, as set forth in Instruction No. 13?

Yes

No

Jury Foreperson

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

IV. 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 shall be imposed, regardless of the number of other jurors who agree that the factor has been established:

1. Defendant grew up in an impoverished and violent environment, and was the victim of abandonment, neglect, and emotional, psychological and physical abuse as a child.

Number of jurors who so find 12

2. Defendant was not provided with the necessary parental guidance as an adolescent which prevented him from acquiring the necessary social skills and maturity to deal with adult situations and traumas.

Number of jurors who so find 3

3. Defendant's upbringing, early family life, and childhood contributed to his adult psychological deficits and criminal conduct.

Number of jurors who so find 6

4. Defendant was not a disciplinary problem in school and does not have any history of criminal conduct before the age of 23.

Number of jurors who so find 12

5. Defendant's abuse of drugs, alcohol and chemical inhalants contributed to his criminal conduct.

Number of jurors who so find 9

6. Defendant suffers from an organically acquired personality disorder.

Number of jurors who so find 4

7. Defendant has features of several personality disorders, including histrionic personality disorder, narcissistic personality disorder, and borderline personality disorder.

Number of jurors who so find 12

8. Defendant has suffered traumatic brain injuries which have led to neurological impairments, including Geschwind syndrome.

Number of jurors who so find 0

9. Defendant suffers from a brain dysfunction which has impaired his ability to control his conduct and to function in the absence of strong support and guidance.

Number of jurors who so find 0

10. Defendant committed the offense under severe mental or emotional disturbance.

Number of jurors who so find 0

11. Defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired, regardless of whether his capacity was so impaired as to constitute a defense to the charge.

Number of jurors who so find 2

12. Defendant will not be a danger in the future if he is confined in a highly structured and secure federal prison.

Number of jurors who so find 0

Please identify any other factors about the commission of the crime or about the defendant's background or character, that mitigate against imposition of the death penalty:

1. LOSS OF DEFENDANT'S LIFE WILL BE SIGNIFICANT TO HIS FAMILY

Number of jurors who so find 12

2. _____

Number of jurors who so find _____

3. _____

Number of jurors who so find _____

4. _____

Number of jurors who so find _____

(If more space is needed, simply write below and on the back of this sheet. Please remember that you need not be able to articulate a mitigating factor with specificity to consider it in your deliberations.)

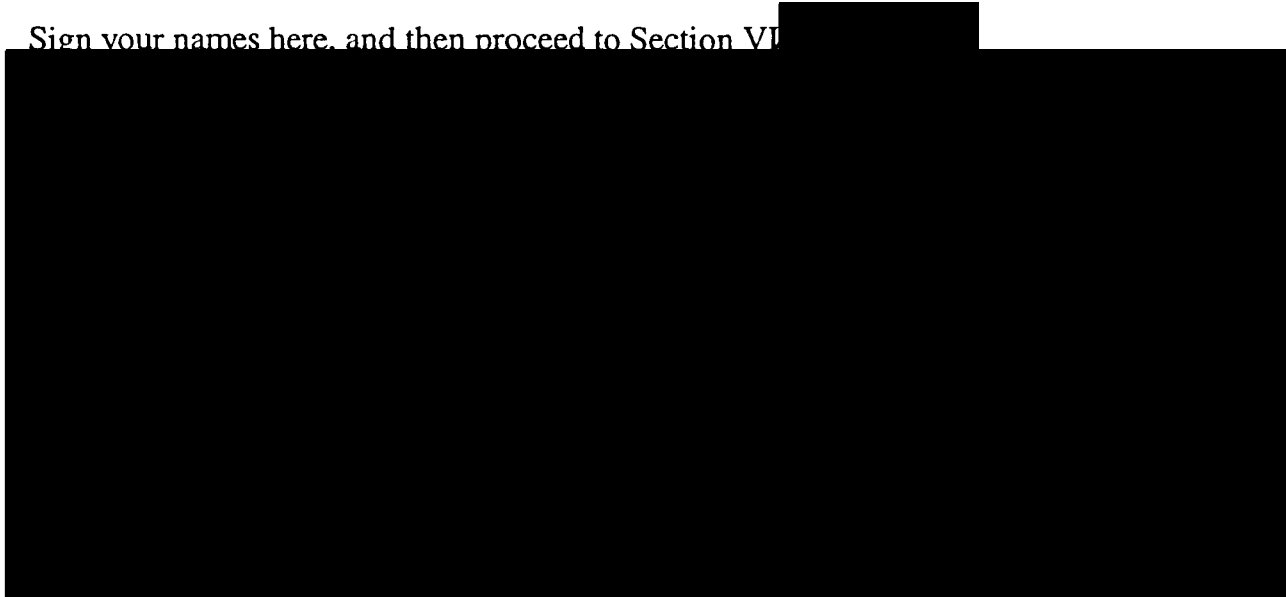
V. DETERMINATION

Please check one of the two boxes below, sign your names, and then proceed to Section VI.

We, the jury, after weighing the aggravating and mitigating factors, unanimously find that the aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, and unanimously recommend that the defendant be sentenced to death.

We, the jury, after weighing the aggravating and mitigating factors, and considering the evidence and the law, recommend that the defendant be sentenced to life imprisonment without the possibility of release.

Sign your names here, and then proceed to Section VI

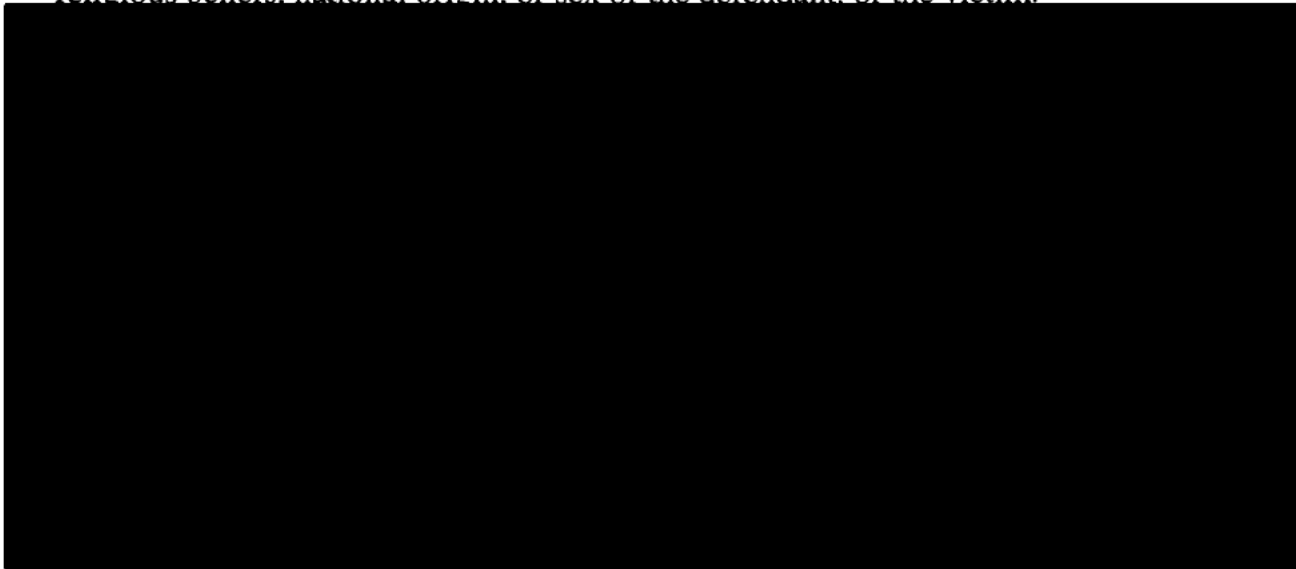


Date: 3-16-02

[Redacted]
Jury Foreperson [Redacted]

VI. CERTIFICATION

By signing below, each juror certifies that neither the defendant's nor the victim's race, color, religious beliefs, national origin, or sex was considered 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.



Date: 3-16-02

[Redacted Signature]
Jury Foreperson