

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

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§
§

versus

NO. 1:09-CR-15 (2)
(Judge Crone)

EDGAR BALTAZAR GARCIA

FILED

VERDICT OF THE JURY—PHASE TWO

P.M.
5-12 2010
DAVID J. MALAND, CLERK
U.S. DISTRICT COURT

SPECIAL FINDING I

By _____
DEPUTY

We, the jury, unanimously find that the Government

HAS HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia was eighteen (18) years of age or older at the time of the instant offense.

If you have found that the government has carried its burden with respect to Special Finding I, then proceed to Special Finding II-A. If you have found that the government has not carried its burden with respect to Special Finding I, then sign and date this Verdict Form and proceed to the Certification.

SPECIAL FINDING II

II-A. We, the jury, unanimously find that the government

HAS HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia intentionally killed Gabriel Rhone.

If you have found that the government has carried its burden with respect to Special Finding II-A, then proceed to Special Finding III. If you have found that the government has not carried its burden with respect to Special Finding II-A, then proceed to Special Finding II-B.

II-B. We, the jury, unanimously find that the government

HAS HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia intentionally inflicted serious bodily injury that resulted in the death of Gabriel Rhone.

If you have found that the government has carried its burden with respect to Special Finding II-B, then proceed to Special Finding III. If you have found that the government has not carried its burden with respect to Special Finding II-B, then proceed to Special Finding II-C.

II-C. We, the jury, unanimously find that the government

_____ HAS _____ HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and Gabriel Rhone died as a direct result of the act.

If you have found that the government has carried its burden with respect to Special Finding II-C, then proceed to Special Finding III. If you have found that the government has not carried its burden with respect to Special Finding II-C, then proceed to Special Finding II-D.

II-D. We, the jury, unanimously find that the government

_____ HAS _____ HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life, and Gabriel Rhone died as a direct result of the act.

If you have found that the government has carried its burden with respect to Special Finding II-D, then proceed to Special Finding III. If you have found that the government has not carried its burden with respect to Special Finding II-D, then sign and date this Verdict Form and proceed to the Certification.

SPECIAL FINDING III

III-A. We, the jury, unanimously find that the government

HAS _____ HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia has previously been convicted of two (2) or more Federal or State offenses, punishable by a term of imprisonment of more than one (1) year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

Regardless of how you answered Special Finding III-A, proceed to Special Finding III-B.

III-B. We, the jury, unanimously find that the government

HAS HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia, in the commission of the offense, knowingly created a grave risk of death to one (1) or more persons in addition to the victim of the offense, Gabriel Rhone.

Regardless of how you answered Special Finding III-B, proceed to Special Finding III-C.

III-C. We, the jury, unanimously find that the government

HAS HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia committed the offense in an especially heinous, cruel, and depraved manner in that it involved torture or serious physical abuse to Gabriel Rhone.

Regardless of how you answered Special Finding III-C, proceed to Special Finding III-D.

III-D. We, the jury, unanimously find that the government

HAS HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia committed the offense after substantial planning and premeditation to cause the death of a person.

Regardless of how you answered Special Finding III-D, proceed to Special Finding III-E.

III-E. We, the jury, unanimously find that the government

HAS HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia has been convicted of two (2) or more State or Federal offenses, punishable by a term of imprisonment of more than one (1) year, committed on different occasions, involving the distribution of a controlled substance.

Regardless of how you answered Special Finding III-E, proceed to Special Finding III-F.

III-F. We, the jury, unanimously find that the government

HAS HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia had previously been convicted of violating Title II or III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 for which a sentence of five (5) or more years may be imposed or had previously been convicted of engaging in a continuing criminal enterprise.

Regardless of how you answered Special Finding III-F, proceed to Special Finding III-G.

III-G. We, the jury, unanimously find that the government

HAS HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia intentionally killed or attempted to kill more than one (1) person in a single criminal episode.

Regardless of how you answered Special Finding III-G, sign and date this Verdict Form and proceed to the Certification.

Date: May 12, 2010

Jury Foreperson

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

versus

EDGAR BALTAZAR GARCIA

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NO. 1:09-CR-15 (2)
(Judge Crone)

VERDICT OF THE JURY—PHASE THREE

SPECIAL FINDING I

NON-STATUTORY AGGRAVATING FACTORS

FILED
P.M. 5-24-2010
DAVID J. MALAND, CLERK
U.S. DISTRICT COURT
DEPUTY

1. We, the jury, unanimously find that the government

HAS HAS NOT

proved beyond a reasonable doubt that Defendant Edgar Baltazar Garcia poses a continuing and serious threat to the lives and safety of others because it is likely that he will commit criminal acts of violence in the future and this factor is aggravating.

2. We, the jury, unanimously find that the government

HAS HAS NOT

proved beyond a reasonable doubt that the victim, Gabriel Rhone, was particularly vulnerable due to the fact that he was locked in a cell and devoid of any means with which to defend himself from the armed defendant, Edgar Baltazar Garcia, and this factor is aggravating.

May 24, 2010
Date

Jury Foreperson

Regardless of whether you answered "HAS" or "HAS NOT" in response to either question in Section I, proceed to Section II, which follows.

SPECIAL FINDING II

MITIGATING FACTORS

For each of the following proposed non-statutory mitigating factors, indicate in the space provided the number of jurors who find that the defendant has proved by a preponderance of the evidence the existence of such factor and that it is mitigating.

1. Edgar Baltazar Garcia's mother, Graciela Kirkham, was beaten and kicked in her abdomen by her husband and mother-in-law while she was pregnant with Edgar Baltazar Garcia, and she was forced to sleep on the floor.

Number of jurors who so find 0 .

2. Graciela Kirkham's mother-in-law, an abortionist, and her husband tried to convince her to abort Edgar Baltazar Garcia, but she refused.

Number of jurors who so find 0 .

3. Upon going into labor with Edgar Baltazar Garcia, Graciela Kirkham's sister-in-law took her to the hospital after her husband refused to do so.

Number of jurors who so find 0 .

4. At 2 months of age, Edgar Baltazar Garcia's paternal grandmother attempted to kill him by performing Brujeria (Mexican witchcraft) rituals and setting fire to the stairwell to create smoke.

Number of jurors who so find 0 .

5. Edgar Baltazar Garcia was placed in ICU and suffered respiratory failure (Code Blue) and seizures. His mother was told that he may have suffered brain damage and that his survival was questionable.

Number of jurors who so find 0 .

6. As a child, Edgar Baltazar Garcia had multiple allergies and was "sickly."

Number of jurors who so find 0 .

7. Edgar Baltazar Garcia's paternal grandmother practiced Brujeria (Mexican witchcraft) and called Edgar Baltazar Garcia names because of his crossed eye.

Number of jurors who so find 0.

8. Some of Edgar Baltazar Garcia's extended family left Juarez, Mexico, to escape violence.

Number of jurors who so find 0.

9. Edgar Baltazar Garcia's father turned his grandfather's successful black bass business into a drug trafficking business.

Number of jurors who so find 0.

10. Edgar Baltazar Garcia's father was a drug trafficker.

Number of jurors who so find 4.

11. At age 7, Edgar Baltazar Garcia's father taught and paid him to lower gas tanks on cars to hide drugs for transport.

Number of jurors who so find 0.

12. Edgar Baltazar Garcia's father exposed him to alcohol at a young age.

Number of jurors who so find 0.

13. At age 9, Edgar Baltazar Garcia was abruptly moved from Juarez, Mexico, to Texas. His family was forced to run to avoid his father's trouble in Mexico.

Number of jurors who so find 0.

14. Edgar Baltazar Garcia's father verbally and physically abused his mother.

Number of jurors who so find 0.

15. Although unfaithful to his wife, Edgar Baltazar Garcia's father threatened to harm his mother if she left him.

Number of jurors who so find 0.

16. Edgar Baltazar Garcia's father enjoyed drinking and the company of his friends and associates over his family and was frequently gone from home.

Number of jurors who so find 0.

17. Edgar Baltazar Garcia's father abandoned his family for another woman, leaving them with \$50 and told the landlord to evict them.

Number of jurors who so find 0.

18. Edgar Baltazar Garcia's mother was fully aware of the drug/criminal environment when she sent him to live with his father while he was in middle school. Edgar Baltazar Garcia was then recruited and groomed for his father's drug business.

Number of jurors who so find 1.

19. Edgar Baltazar Garcia idolized his father, but when he went to live with him at age 13-14, he was rejected by his stepmother. Edgar Baltazar Garcia's father made him live alone in a drug house with no electricity.

Number of jurors who so find 0.

20. During his impressionable adolescence, Edgar Baltazar Garcia's father modeled the upside of drug trafficking with guns, drugs, expensive cars, and a party lifestyle.

Number of jurors who so find 0.

21. Edgar Baltazar Garcia's mother initially refused to allow him to come home to Abilene, Texas, and his father did not enroll him in school.

Number of jurors who so find 0.

22. At age 13-14, Edgar Baltazar Garcia's father sent him traveling alone to pick up drug money.

Number of jurors who so find 0.

23. Edgar Baltazar Garcia was exposed and indoctrinated by his father into a criminal culture.

Number of jurors who so find 8.

24. Upon his arrival in Texas, Edgar Baltazar Garcia spoke no English but had to attend English-speaking schools.

Number of jurors who so find 0.

25. Edgar Baltazar Garcia's life was marked by frequent moves and conflicting values.

Number of jurors who so find 0.

26. After Edgar Baltazar Garcia's parents divorced, his mother worked multiple jobs to pay the bills and left him unsupervised.

Number of jurors who so find 0.

27. Edgar Baltazar Garcia was devastated when his father left. He had little contact with his father until he was a teenager.

Number of jurors who so find 0.

28. Edgar Baltazar Garcia's mother did not show any affection toward him.

Number of jurors who so find 0.

29. Edgar Baltazar Garcia's extended family kept many secrets from each other and the outside world.

Number of jurors who so find 0.

30. At age 16-17, Edgar Baltazar Garcia could no longer live with his mother, was a high school dropout, and was faced with the responsibilities of taking care of his wife and child. Serving as his father's drug connection in Abilene seemed the only way Edgar Baltazar Garcia could take care of his family.

Number of jurors who so find 0.

31. At the age of 22, Edgar Baltazar Garcia faced 40 years in prison where he would develop hyper-vigilant behavior. This time in prison caused feelings of helplessness and a fear he would lose his family.

Number of jurors who so find 0.

32. In prison, Edgar Baltazar Garcia felt the need to develop a tough persona so that he would not be victimized.

Number of jurors who so find 0.

33. Edgar Baltazar Garcia has intellectual curiosity.

Number of jurors who so find 0.

34. Edgar Baltazar Garcia exercises his mind by learning more about current events.

Number of jurors who so find 0.

35. Edgar Baltazar Garcia has the ability to learn and seek out new ideas.

Number of jurors who so find 0.

36. Edgar Baltazar Garcia has the intelligence and talent to communicate what the prison experience is like to help others.

Number of jurors who so find 0.

37. Edgar Baltazar Garcia has found ways to bring beauty into his existence through art and creativity. He uses his creativity to deal with the stress of incarceration.

Number of jurors who so find 0.

38. Edgar Baltazar Garcia is reaching the age and maturity where he realizes what is important in his life.

Number of jurors who so find 0.

39. Edgar Baltazar Garcia is loyal to his family. He knows his children deserve a better father than he is, but he tries his best to be there for them. He calls his children regularly, and he provides a positive example of respect for his children's mother.

Number of jurors who so find 0.

40. Edgar Baltazar Garcia forgives his mother for her inability to show love and continues to reach out to her. He encourages a relationship between his mother and his children to give her the opportunity to experience a warm, affectionate relationship which they never shared.

Number of jurors who so find 0.

41. Edgar Baltazar Garcia has insight into the pain he has caused his family.

Number of jurors who so find 0.

42. Edgar Baltazar Garcia writes his children and creates art for their enjoyment.

Number of jurors who so find 0.

43. Edgar Baltazar Garcia is interested in his children's day-to-day lives.

Number of jurors who so find 0.

44. Edgar Baltazar Garcia instills in his children a sense of doing the right thing and not making his same mistakes.

Number of jurors who so find 3.

45. Edgar Baltazar Garcia encourages his children to do well in school. He gives them tips and encouragement in sports, school, and music.

Number of jurors who so find 0.

46. Edgar Baltazar Garcia encourages his children to visit so they can maintain a close familial relationship, and he offers his children unconditional love.

Number of jurors who so find 0.

47. As an inmate in the Bureau of Prisons ("BOP"), Gabriel Rhone was a behavior management problem.

Number of jurors who so find 0.

48. Gabriel Rhone engaged in defiant behavior.

Number of jurors who so find 0.

49. Gabriel Rhone's behavior was unpredictable.
Number of jurors who so find 0.
50. Gabriel Rhone displayed a negative and angry approach to others.
Number of jurors who so find 0.
51. Edgar Baltazar Garcia heard Gabriel Rhone threaten to kill Mark Isaac Snarr on or about November 27, 2007.
Number of jurors who so find 0.
52. Gabriel Rhone threatened to kill Edgar Baltazar Garcia on November 27, 2007, if he could get into his cell.
Number of jurors who so find 0.
53. Gabriel Rhone provoked the incident by screaming racial insults at Edgar Baltazar Garcia the night of November 27, 2007, and until 3:00 a.m. on November 28, 2007.
Number of jurors who so find 0.
54. Edgar Baltazar Garcia heard Gabriel Rhone scream insults the night of November 27, 2007, and until 3:00 a.m. on November 28, 2007.
Number of jurors who so find 0.
55. Gabriel Rhone ejaculated onto Correctional Officer Dawn Gallagher's shoe on November 12, 2007, and Edgar Baltazar Garcia was aware of the incident.
Number of jurors who so find 0.
56. Gabriel Rhone provoked the incident when he threatened Mark Isaac Snarr's family in Edgar Baltazar Garcia's presence by saying that he was "going to fuck [his] mother and give her a black baby."
Number of jurors who so find 0.
57. Gabriel Rhone provoked the incident when he threatened Mark Isaac Snarr's family in Edgar Baltazar Garcia's presence by saying that he was "going to rape [his] sister and give her a black baby."
Number of jurors who so find 0.

58. Gabriel Rhone would sharpen his shank on his cell wall and ask Edgar Baltazar Garcia if he could hear it.

Number of jurors who so find 0.

59. Gabriel Rhone yelled "all non-Muslims can suck my dick."

Number of jurors who so find 0.

60. Gabriel Rhone was disrespectful to Correctional Officers.

Number of jurors who so find 0.

61. Gabriel Rhone was disrespectful to other inmates.

Number of jurors who so find 0.

62. Gabriel Rhone did not respect himself.

Number of jurors who so find 0.

63. Gabriel Rhone was a loud and obnoxious inmate.

Number of jurors who so find 0.

64. Gabriel Rhone was not a peaceful and law abiding inmate.

Number of jurors who so find 0.

65. Gabriel Rhone was a racist.

Number of jurors who so find 0.

66. Gabriel Rhone frequently yelled religious slurs at non-Muslim inmates.

Number of jurors who so find 0.

67. Gabriel Rhone was a District of Columbia inmate, and District of Columbia inmates are the most disrespectful and brutal inmates in federal prison.

Number of jurors who so find 0.

68. The BOP Beaumont facility lacked proper leadership.

Number of jurors who so find 0.

69. The BOP Beaumont facility leaders failed to post orders.
Number of jurors who so find 0.
70. The BOP Beaumont facility leaders failed to properly staff the Special Housing Unit ("SHU").
Number of jurors who so find 0.
71. Correctional Officers sometimes allowed the inmates to police themselves in the SHU facility.
Number of jurors who so find 0.
72. The BOP Beaumont facility employees habitually failed to follow proper policies.
Number of jurors who so find 3.
73. The BOP Beaumont facility employees failed to properly shackle Edgar Baltazar Garcia.
Number of jurors who so find 7.
74. The BOP Beaumont facility employees failed to properly escort Edgar Baltazar Garcia.
Number of jurors who so find 10.
75. The BOP Beaumont facility failed to keep Edgar Baltazar Garcia separate from the other inmates.
Number of jurors who so find 4.
76. The failure of the BOP Beaumont facility employees to follow proper policies contributed to the occurrence of the offense.
Number of jurors who so find 5.
77. The internal investigation of the BOP following the incident concluded that the BOP Beaumont SHU facility's numerous failures permitted the event to occur.
Number of jurors who so find 0.

78. The offense would not have occurred if the BOP Beaumont facility had followed proper policies.

Number of jurors who so find 2.

79. The BOP delayed Edgar Baltazar Garcia's transfer to ADX prior to the offense on November 28, 2007.

Number of jurors who so find 0.

80. Edgar Baltazar Garcia was transferred to ADX immediately following the incident.

Number of jurors who so find 0.

81. Gabriel Rhone provoked the incident by making threats to Edgar Baltazar Garcia.

Number of jurors who so find 5.

82. Edgar Baltazar Garcia did not kill Gabriel Rhone for any racial reason.

Number of jurors who so find 0.

83. Edgar Baltazar Garcia stated that the officers were merely victims of circumstance.

Number of jurors who so find 0.

84. Edgar Baltazar Garcia had no intent to kill the correctional officers.

Number of jurors who so find 0.

85. After the death of Gabriel Rhone, Edgar Baltazar Garcia voluntarily surrendered his knife to correctional officers.

Number of jurors who so find 0.

86. After the death of Gabriel Rhone, Edgar Baltazar Garcia voluntarily submitted to restraint and handcuffs.

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 _____.

Number of jurors who so find _____.

Number of jurors who so find _____.

Number of jurors who so find _____.

Number of jurors who so find _____.

May 24, 2010
Date

Jury Foreperson

Regardless of how you answered in response to Section II, proceed to Section III, which follows.

SPECIAL FINDING III

SELECTION OF PUNISHMENT

Based upon our consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor(s) found to exist, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, and whether death is therefore the appropriate sentence in this case, we, the jury, determine by unanimous vote, that the following sentence shall be imposed on Defendant Edgar Baltazar Garcia as to Count I of the Indictment:

DEATH PENALTY

LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF RELEASE

May 24, 2010
Date

After each juror has signed Section III, proceed to Section IV, which follows.