

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) 98-CR-30044-MAP
)
KRISTEN GILBERT,)
 Defendant)

SPECIAL VERDICT FORM: PENALTY PHASE, PART II

Instructions: As much as possible, you should proceed through this special verdict form section by section in order.

I. Non-Statutory Aggravating Factors

INSTRUCTIONS: For each of the following non-statutory aggravating factors, answer "Unanimous Yes" or "Not Unanimous" as to whether you unanimously find that the Government has proven beyond a reasonable doubt the existence of that non-statutory aggravating factor for each count.

A. Henry Hudon

1. Defendant committed four murders in a series of criminal episodes.

Unanimous Yes X Not unanimous _____

2. Defendant phoned in a false bomb threat to the VAMC on or about September 26, 1996, a crime for which the defendant was charged and convicted in this court.

Unanimous Yes X Not unanimous _____

3. The defendant's offenses had an adverse effect on the victims' families.

Unanimous Yes X Not unanimous _____

B. Kenneth Cutting

1. Defendant committed four murders in a series of criminal episodes.

Unanimous Yes X Not unanimous _____

2. Defendant phoned in a false bomb threat to the VAMC on or about September 26, 1996, a crime for which the defendant was charged and convicted in this court.

Unanimous Yes X Not unanimous _____

3. The defendant's offenses had an adverse effect on the victims' families.

Unanimous Yes X Not unanimous _____

C. Edward Skwira

1. Defendant committed four murders in a series of criminal episodes.

Unanimous Yes X Not unanimous _____

2. Defendant phoned in a false bomb threat to the VAMC on or about September 26, 1996, a crime for which the defendant was charged and convicted in this court.

Unanimous Yes X Not unanimous _____

3. The defendant's offenses had an adverse effect on the victims' families.

Unanimous Yes X Not unanimous _____

II. MITIGATING FACTORS

INSTRUCTIONS: For each count listed below, you should 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 evidence.

A finding that a mitigating factor has been proven by a preponderance of the evidence may be made by one or more of the individual 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 concur that the factor has been established.

In addition to the twelve mitigating factors outlined by the court, this section also contains blank lines in which you may write any additional mitigating factors that any member or members of the jury may have found. You may write these additional mitigating factors on the blank lines. If you need additional space, simply write "continued" at the end of the blank lines and write additional factors on the back side of the paper. It is not necessary, however, for you to list a mitigating factor in order to consider it.

A. Henry Hudon

1. The evidence does not establish defendant's guilt with a sufficient degree of certainty to justify the death penalty.

3 Jurors so find.

2. The defendant was under mental and emotional disturbance when the crimes were committed.

7 Jurors so find.

3. Defendant is the mother of two children, who will be adversely affected if the defendant is executed.

12 Jurors so find.

4. Defendant's parents and grandparents will be adversely affected if she is executed.

12 Jurors so find.

5. Defendant was an asset to the hospital and the community before committing the crimes.

3 Jurors so find.

6. Defendant has no significant criminal history.

0 Jurors so find.

7. Given her prison and jail record, defendant will present no risk to prison officials or other inmates if she is sentenced to life in prison without possibility of release.

11 Jurors so find.

8. A sentence of life in prison without possibility of release is an adequately harsh alternative punishment that will protect society from any further risk of criminal conduct by the defendant.

12 Jurors so find.

9. The crimes were not committed in a particularly heinous, cruel or depraved manner in that they did not involve torture or serious physical abuse.

3 Jurors so find.

10. The execution of the defendant would have an adverse impact upon the children's relationship with their father.

9 Jurors so find.

11. Defendant demonstrated a reduced level of intent in committing the murders of Henry Hudon and Edward Skwira.

3 Jurors so find.

12. Other factors in Kristen Gilbert's childhood, background or character mitigate against imposition of the death penalty.

2 Jurors so find.

13. Defendant's sister will be adversely affected if she is executed.

12 jurors so find.

B. Kenneth Cutting

1. The evidence does not establish defendant's guilt with a sufficient degree of certainty to justify the death penalty.

2 Jurors so find.

2. The defendant was under mental and emotional disturbance when the crimes were committed.

6 Jurors so find.

3. Defendant is the mother of two children, who will be adversely affected if the defendant is executed.

12 Jurors so find.

4. Defendant's parents and grandparents will be adversely affected if she is executed.

12 Jurors so find.

5. Defendant was an asset to the hospital and the community before committing the crimes.

3 Jurors so find.

6. Defendant has no significant criminal history.

0 Jurors so find.

7. Given her prison and jail record, defendant will present no risk to prison officials or other inmates if she is sentenced to life in prison without possibility of release.

11 Jurors so find.

8. A sentence of life in prison without possibility of release is an adequately harsh alternative punishment that will protect society from any further risk of criminal conduct by the defendant.

12 Jurors so find.

9. The crimes were not committed in a particularly heinous, cruel or depraved manner in that they did not involve torture or serious physical abuse.

3 Jurors so find.

10. The execution of the defendant would have an adverse impact upon the children's relationship with their father.

9 Jurors so find.

11. Defendant demonstrated a reduced level of intent in committing the murders of Henry Hudon and Edward Skwira.

0 Jurors so find.

12. Other factors in Kristen Gilbert's childhood, background or character mitigate against imposition of the death penalty.

2 Jurors so find.

13. Defendant's sister will be adversely affected if she is executed.

12 jurors so find.

C. Edward Skwira

1. The evidence does not establish defendant's guilt with a sufficient degree of certainty to justify the death penalty.

5 Jurors so find.

2. The defendant was under mental and emotional disturbance when the crimes were committed.

9 Jurors so find.

3. Defendant is the mother of two children, who will be adversely affected if the defendant is executed.

12 Jurors so find.

4. Defendant's parents and grandparents will be adversely affected if she is executed.

12 Jurors so find.

5. Defendant was an asset to the hospital and the community before committing the crimes.

3 Jurors so find.

6. Defendant has no significant criminal history.

0 Jurors so find.

7. Given her prison and jail record, defendant will present no risk to prison officials or other inmates if she is sentenced to life in prison without possibility of release.

11 Jurors so find.

8. A sentence of life in prison without possibility of release is an adequately harsh alternative punishment that will protect society from any further risk of criminal conduct by the defendant.

12 Jurors so find.

9. The crimes were not committed in a particularly heinous, cruel or depraved manner in that they did not involve torture or serious physical abuse.

3 Jurors so find.

10. The execution of the defendant would have an adverse impact upon the children's relationship with their father.

9 Jurors so find.

11. Defendant demonstrated a reduced level of intent in committing the murders of Henry Hudon and Edward Skwira.

3 Jurors so find.

12. Other factors in Kristen Gilbert's childhood, background or character mitigate against imposition of the death penalty.

2 Jurors so find.

13. Defendant's sister will be adversely affected if she is executed.
12 jurors so find.

III. DECISION

A. Henry Hudon

1. Sentence of Life Imprisonment without the Possibility of Release.

We the jury decide, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed upon Kristen Gilbert for the murder of Henry Hudon.

Yes _____ No _____

If you answer "Yes", sign your names here, and then proceed to Section III B. of this form. Leave Section III A.2 blank. If

you answer "No," the foreperson alone should sign, and you should proceed to Section III A.2.

_____	_____
_____	_____
_____	_____
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_____	_____
_____	_____

FOREPERSON

2. Death Sentence

We the jury decide, by unanimous vote, that a sentence of death shall be imposed upon Kristen Gilbert for the murder of Henry Hudon.

Yes _____ No _____

If you answer "Yes", sign your names here, and then proceed to the Section III.B.1. of this form. If you answer "No," the foreperson alone should sign, and you should proceed to Section III.A.3.

_____	_____
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FOREPERSON

3. Lack of Unanimity

After making all reasonable efforts, the jury has been unable to reach a unanimous verdict regarding the proper and justified sentence to be imposed upon Kristen Gilbert for the murder of Henry Hudon.

B. Kenneth Cutting

1. Sentence of Life Imprisonment without the Possibility of Release.

We the jury decide, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed upon Kristen Gilbert for the murder of Kenneth Cutting.

Yes _____ No _____

If you answer "Yes", sign your names here, and then proceed to Section III.C.1. of this form. Leave Section III.B.2. blank. If you answer "No," the foreperson alone should sign, and you should proceed to Section III.B.2.

_____	_____
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FOREPERSON

2. Death Sentence

We the jury decide, by unanimous vote, that a sentence of death shall be imposed upon Kristen Gilbert for the murder of Kenneth Cutting.

Yes _____ No _____

If you answer "Yes", sign your names here, and then proceed to Section III.C.1. of this form. If you answer "No," the foreperson alone should sign, and you should proceed to Section III.B.3.

_____	_____
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FOREPERSON

3. Lack of Unanimity

After making all reasonable efforts, the jury has been unable to reach a unanimous verdict regarding the proper and justified sentence to be imposed upon Kristen Gilbert for the murder of Kenneth Cutting.

C. Edward Skwira

1. Sentence of Life Imprisonment without the Possibility of Release.

We the jury decide, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed upon Kristen Gilbert for the murder of Edward Skwira.

Yes _____ No _____

If you answer "Yes", sign your names here, and stop. Leave Section III.C.2. blank. If you answer "No," the foreperson alone should sign, and you should proceed to Section III.C.2.

_____	_____
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_____	_____

FOREPERSON

2. Death Sentence

We the jury decide, by unanimous vote, that a sentence of death shall be imposed upon Kristen Gilbert for the murder of Edward Skwira.

Yes _____ No _____

If you answer "Yes", sign your names here and stop. If you answer "No," the foreperson alone should sign, and you should proceed to Section III.C.3.

FOREPERSON

3. Lack of Unanimity

After making all reasonable efforts, the jury has been unable to reach a unanimous verdict regarding the proper and justified sentence to be imposed upon Kristen Gilbert for the murder of Edward Skwira.

Note: If you have unanimously decided to impose the death penalty, proceed to Section IV. If you have not imposed the death penalty, leave Section IV blank. The foreperson should, in any event, sign the verdict slip and date it.

IV. CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or a victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding the sentence for the defendant for the murder of Henry Hudon, Kenneth Cutting, and Edward Skwira, no matter what the race, color, religious beliefs, national origin, or sex of the defendant, or the victim, would have been. All jurors and foreperson sign below:

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

FOREPERSON

DATE: 3/26/01