

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CRIMINAL ACTION

VERSUS

NO. 04-017

JOHN JOHNSON

SECTION: "C"

SELECTION PHASE
SPECIAL VERDICT FORM AS TO COUNT THREE
USE OF A FIREARM RESULTING IN THE DEATH OF
SIDNEY ZAFFUTO BY DEFENDANT JOHN JOHNSON

I. 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 the non-statutory aggravating factor alleged by the government that the defendant aided and abetted the taking of a hostage during the commission of the Iberia Bank bank robbery and that the factor tends to support the imposition of the death penalty?

YES

NO



Foreperson

Proceed to Question No. 2/2A.

2. With respect to the defendant's criminal record, do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant committed the following crimes:

A. First degree murder (killing during robbery) in Jefferson Parish, Louisiana in 1974

YES _____

NO _____

[Redacted]
Foreperson [Redacted]

Proceed to Question No. 2B.

B. Attempted bank robbery in New Orleans, Louisiana in 2003.

YES _____

NO _____

[Redacted]
Foreperson [Redacted]

Proceed to Question No. 3.

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt the non-statutory aggravating factor alleged by the government that the defendant has a substantial criminal record as evidenced by one or more of the following acts and that this factor tends to support imposition of the death penalty?

- A) Conviction for simple burglary in 1974;
- B) Conviction for the illegal carrying of a firearm by a convicted felon in Orleans Parish, Louisiana in 1977;
- C) Conviction for bank robbery in New Orleans in 1983;
- D) First degree murder (killing during robbery) in Jefferson Parish, Louisiana in 1974 (if found above to have been established in Section I, 2(A);
- E) Attempted bank robbery in New Orleans, Louisiana in 2003 (if found above to have been established in Section I, 2(B).

YES

NO

Foreperson

Proceed to Question No. 4.

4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt the non-statutory aggravating factor alleged by the government of victim impact, evidenced by the fact that the murder of Sidney Zaffuto has created harmful emotional and financial distress upon his wife and family and that this factor tends to support imposition of the death penalty?

YES

NO

Foreperson

Regardless of whether you answered "YES" or "NO" with respect to the Non-Statutory Aggravating Factors in this Section I, proceed to Section II, which follows.

II. MITIGATING FACTORS

Instructions: For each of the following mitigating factors, you have the option to 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. If you choose not to make these written findings, cross out each page of Section II with a large "X" and then continue your deliberations in accordance with the instructions of the court. 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. Johnson's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired by his use of and addiction to heroin, although he does not claim that his capacity was so impaired as to constitute a defense to the charge.

Number of jurors who so find 0

Proceed to Question No. 2.

2. He was under duress although he does not claim that it was of a degree as to constitute a defense to the charges.

Number of jurors who so find 0

Proceed to Question No. 3.

3. His co-defendant, Herbert Jones, was culpable in the crime, but would not have been punished by death or life imprisonment.

Number of jurors who so find 0

Proceed to Question No. 4.

4. He offered to plead guilty at the inception of the prosecution to a life sentence in prison and has never withdrawn the offer.

Number of jurors who so find 12

Proceed to Question No. 5.

5. While he entered the bank with a loaded firearm, he only shot his gun after he had been shot himself.

Number of jurors who so find 0

Proceed to Question No. 6.

6. He became addicted to heroin as a young person and struggled throughout his life to stop using drugs, being gainfully employed when he was off drugs but relapsing back to drugs and crime to support his addiction.

Number of jurors who so find 1

Proceed to Question No. 7.

7. He was raised in poverty by his mother.

Number of jurors who so find 12

Proceed to Question No. 8.

8. He lacked a positive male role model and father figure when growing up.

Number of jurors who so find 12

Proceed to Question No. 9.

9. His life has value in that he has been a good and loving son, brother, father and grandfather and his family will suffer greatly if he is executed.

Number of jurors who so find 1

Proceed to Question No. 10.

10. He is 57 years old.

Number of jurors who so find 12

Proceed to Question No. 11.

11. If he is not sentenced to death, he will spend the rest of his life in prison without the opportunity for release.

Number of jurors who so find 12

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors. If more space is needed, write "CONTINUED" and use the reverse side of this page. If none, write "NONE," line out the extra spaces with a large "X" and proceed to Section III.

Number of jurors who so find _____.

Number of jurors who so find _____.

Number of jurors who so find _____.

Number of jurors who so find _____.

Regardless of whether you chose to make written findings for the Mitigating Factors in Section II above, proceed to Section III(A), which follows.

III. DETERMINATION

Based upon consideration of whether the aggravating 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 factors are themselves sufficient to justify a sentence of death, and whether death is therefore the appropriate sentence in this case:

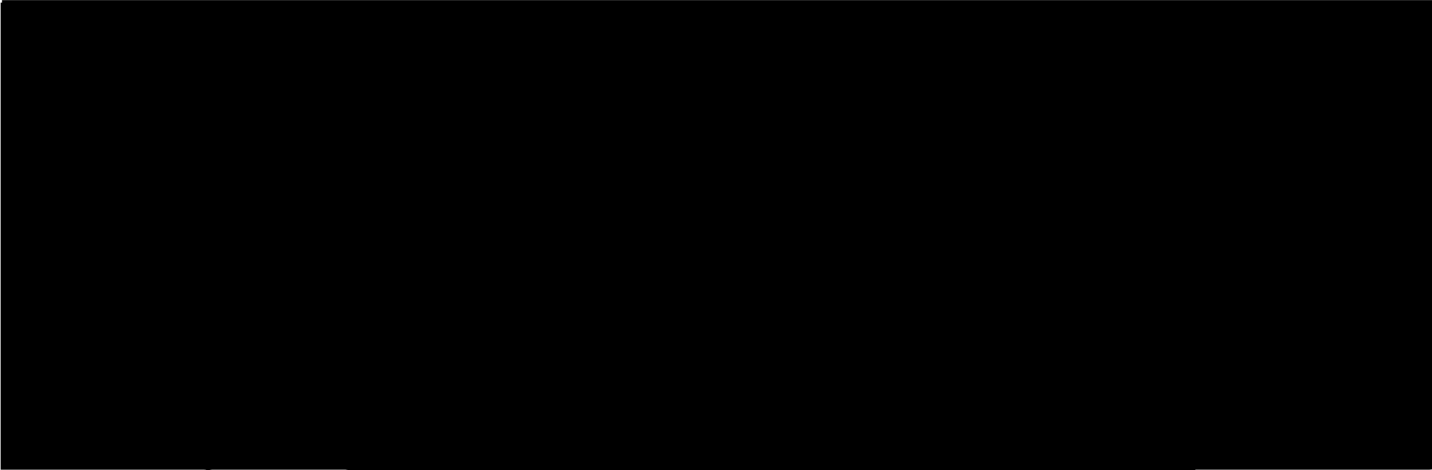
(A) Death Sentence

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

YES ✓

NO _____

If you answered "YES," all jurors must sign here, and you must then proceed to Section IV.
If you answered "NO," proceed to Section III (B).



FOREPERSON

Date: May 27, 2009
New Orleans, Louisiana

(B) Sentence of Life in Prison Without Possibility of Release

We determine, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed.

YES _____

NO _____

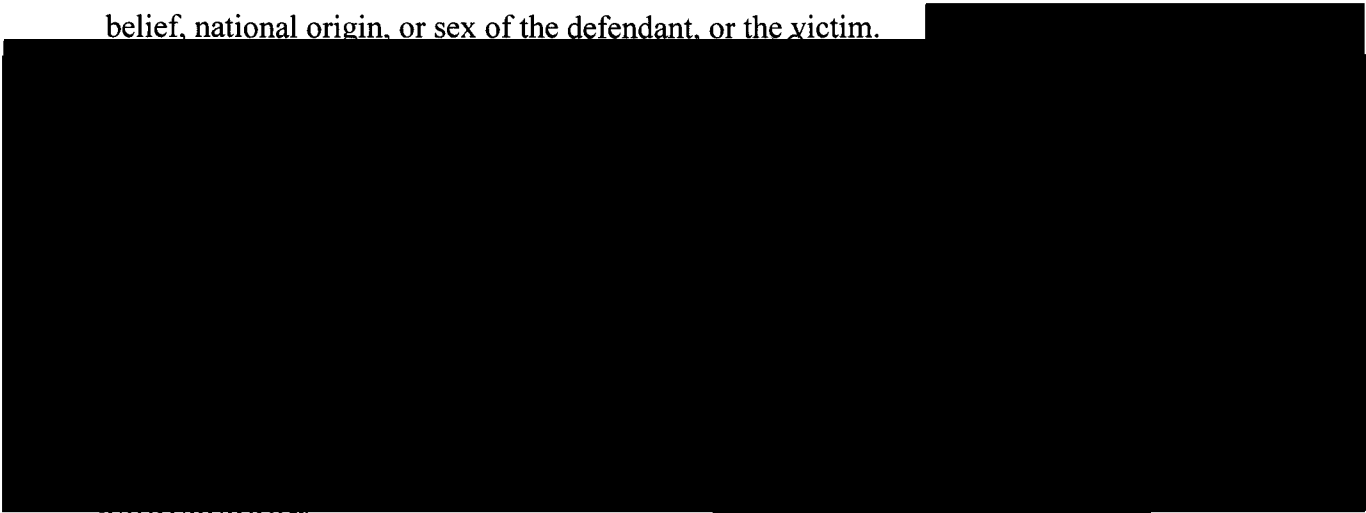
If you answered "YES" or "NO," the foreperson must sign here, and you should proceed no further with this form.

Foreperson

Date: _____, 2009
New Orleans, Louisiana

IV. 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 or crimes in question regardless of the race, color, religious belief, national origin, or sex of the defendant, or the victim.



FOREPERSON

Date: May 27, 2009
New Orleans, Louisiana

After you have completed both verdict forms, return them to the Courtroom.