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6/13/03

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

00-CR-269

LAVIN MATTHEWS AKA "L",
CHRISTOPHER MCMILLIAN AKA LLOYD, and
TEBIAH TUCKER, AKA BUDDHA,

Defendants.

VERDICT FORM

PLEASE NOTE - Each Juror will be provided with a Verdict Form in order to facilitate understanding of the charge. HOWEVER, YOUR VERDICT SHOULD BE REPORTED TO THE JUDGE ON ONLY ONE VERDICT FORM WHICH IS SIGNED BY THE JURY FOREPERSON AND, WHERE INDICATED, BY EACH JUROR. The remaining Verdict Forms should be returned to the courtroom deputy unsigned.

There should be a total of 55 pages in this Verdict Form Packet, including this sheet.

Be sure to follow all directions carefully.

I. Lavin Matthews**I(A). Count Two as to Lavin Matthews****Section I(A)(1). Threshold Statutory Aggravating Factor**

General directions for section I(A)(1):

- This section refers to: Count Two.

- Please indicate which one of the following threshold statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. Please choose only one of the following five responses.

1. _____ We do not unanimously find that any of the following threshold statutory aggravating factors have been proved beyond a reasonable doubt.

2. _____ We unanimously find that it has been proved beyond a reasonable doubt with regard to Count Two that Lavin Matthews intentionally killed Carlton Rose .

3. _____ We unanimously find that it has been proved beyond a reasonable doubt with regard to Count Two that Lavin Matthews intentionally inflicted serious bodily injury that resulted in the death of Carlton Rose.

4. _____ We unanimously find that it has been proved beyond a reasonable doubt with regard to Count Two that Lavin Matthews intentionally engaged in conduct intending that Carlton Rose be killed or that lethal force be employed against Carlton Rose, which resulted in the death of Carlton Rose.

5. _____ We unanimously find that it has been proved beyond a reasonable doubt with regard to Count Two that Lavin Matthews intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants of the offense; and resulted in the death of Carlton Rose.

Directions:

- If you marked choice 1 above, then your deliberations are over as to Count Two and should proceed to section I (B).

- If you have marked either choice 2, 3, 4, or 5 above, proceed to the next section; that is, Section I (A) (2).

Section I(A)(2). Statutory Aggravating Factors:

General directions for section I(A)(2):

- This section refers only to Count Two. Do not consider the statutory aggravating factors in this section with regard to Count Two if you have marked choice 1 in section I(A)(1).

- In this section, please indicate which, if any, of the following statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. While you may find that the government has not proven any of the following statutory aggravating factors, unlike the previous section, you are permitted to find that the government has proven more than one of the following statutory aggravating factors.

1. Lavin Matthews committed the offense described in Count Two of the superseding indictment after having previously been convicted of two State offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of serious bodily injury upon another person.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No _____ Yes ✓

2. Lavin Matthews committed the offense described in Count Two of the superseding indictment as consideration for the receipt or in the expectation of the receipt of something of pecuniary value, that is, narcotics, money and personal property.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No _____ Yes ✓

3. Lavin Matthews committed the offense described in Count Two of the superseding indictment after substantial planning and premeditation.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No _____ Yes ✓

4. Lavin Matthews committed the offense described in Count Two of the superseding indictment in an especially heinous, cruel or depraved manner in that it involved torture or serious physical abuse to Carlton Rose.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No _____ Yes

Directions:

- If you answered "NO" to ALL of the four statutory aggravating factors then your deliberations as to Count Two are over and you should proceed to section I (B).

- If you answered "YES" to any one or more of the above four aggravating statutory factors then proceed to the next section; that is Section I (A)(3).

Section I(A)(3). Non-Statutory Aggravating Factors

General directions for section I(A)(3):

- This section refers only to Count Two. You should only fill out this section if you found a threshold factor in section I(A)(1) and at least one statutory aggravating factor in section I(A)(2). Do not consider non-statutory aggravating factors in this section with regard to Count Two if you have not found at least one threshold factor in section I(A)(1) and at least one statutory aggravating factor in section I(A)(2).

- In this section, please indicate which, if any, of the following three non-statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. You may find that the government has proven none, one or more than one of the non-statutory aggravating factors.

1. On or about March 24, 1998, in Cumberland County, Fayetteville, North Carolina, Lavin Matthews and others, while armed with firearms including a sawed-off shotgun, did forcibly rob Rochell Graham in her residence and in the presence of Graham's young daughter of U.S. currency and personal property. During the course of this armed robbery, Lavin Matthews and the others bound and tied Rochell Graham's hands and feet while they blindfolded her. At gunpoint, Lavin Matthews and the others then ordered Rochell Graham and her child to lay on the floor.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No _____ Yes

2. On or about January 7, 2000, in Binghamton, New York, Lavin Matthews and others, while armed with a pistol, planned and committed the armed robbery of Tiffany Ward, Willis Bicham and Tiawanna Willard in a residential Binghamton apartment. Lavin Matthews and the others robbed the victims of narcotics, U.S. Currency, and personal property. During the course of the robbery, Willis Bicham was hit in the head with the pistol and required medical attention at a hospital.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No Yes

3. Victim impact, as evidenced by the impact of the murder of Carlton Rose upon Carlton Rose's family and the injury, harm and loss suffered by the Rose family.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No Yes

Directions:

- Proceed to the next section; that is, Section I(A)(4).

Section I(A)(4). Mitigating Factors

General directions for section I(A)(4):

- This section refers only to Count Two. You should only fill out this section if you found at least one threshold factor in section I(A)(1) and at least one statutory aggravating factor in section I(A)(2). Do not consider mitigating factors in this section with regard to Count Two if you have not found at least one threshold factor in section I(A)(1) and at least one statutory aggravating factor in section I(A)(2).

- Recall that your vote as a jury need not be unanimous with regard to each question in this section. 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 making his or her individual determination of 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.

- As to the mitigating factors which are listed below, please indicate which, if any you find that Lavin Matthews has proven that mitigating factor by a preponderance of the evidence. Also indicate the number of jurors, if any, who have found the existence of that mitigating factor to be proven by a preponderance of the evidence.

(1) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

Number of jurors who find 1. 0

(2) The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

Number of jurors who find 2. 0

(3) The defendant is punishable as a principal in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

Number of jurors who find 3. 0

(4) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of murder or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

Number of jurors who find 4. 0

(5) The defendant was youthful, although not under the age of 18.

Number of jurors who find 5. 0

(6) The defendant did not have a significant prior criminal record.

Number of jurors who find 6. 0

(7) The defendant committed the offense under severe mental or emotional disturbance.

Number of jurors who find 7. 0

(8) Another defendant or defendants, equally culpable in the crime, will not be punished by death.

Number of jurors who find 8. 12

(9) The victim consented to the criminal conduct that resulted in the victim's death.

Number of jurors who find 9. 0

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

Number of jurors who find 10. 12

(11) That Lavin Matthews was subjected to emotional abuse as a child.

Number of jurors who find 11. 12

(12) That Lavin Matthews was subjected to physical abuse as a child.

Number of jurors who find 12. 12

(13) That Lavin Matthews was subjected to abandonment and neglect as a child.

Number of jurors who find 13. 12

(14) That Lavin Matthews was deprived of parental guidance and protection as a child.

Number of jurors who find 14. 12

(15) That Lavin Matthews was exposed to addictive drugs and alcohol while still a child by his drug addicted and alcoholic mother and natural father and step-father and other relatives.

Number of jurors who find 15. 12

(16) That Lavin Matthews grew up in a household where his parents openly used drugs and abused alcohol.

Number of jurors who find 16. 12

(17) That Lavin Matthews was compelled to sell drugs by his step-father.

Number of jurors who find 17. 12

(18) That Lavin Matthews grew up in an impoverished, violent and brutal environment, and was exposed to extreme violence as a child and throughout his life.

Number of jurors who find 18. 11

(19) That Lavin Matthews grew up in a household where he witnessed his mother being physically abused by his step-father.

Number of jurors who find 19. 10

(20) That Lavin Matthews grew up in a household where he was forced to go out at night and during the early morning hours to collect cans so that money for drugs could be obtained.

Number of jurors who find 20. 12

The law does not limit your consideration of mitigating factors to those that can be articulated in advance. Therefore, you may consider during your deliberations any other factor or factors in Lavin Matthews's background, record, character, or any other circumstances of the offense that mitigate against imposition of a death sentence.

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.

LM should have drug rehab prison

Number of jurors who so find 12

Number of jurors who so find _____

Number of jurors who so find _____

Number of jurors who so find _____

Directions:

- After you have completed your findings in this section (whether or not you have found any mitigating factors in this section), continue the next section; that is, Section I(A)(5).

Section I(A)(5). Determination of Sentence

General directions for section I(A)(5):

- This section refers only Count Two. You may not impose a sentence of death on Count Two unless you have first found with regard to Count Two, unanimously and beyond a reasonable doubt, at least one threshold factor in section I(A)(1) and at least one statutory aggravating factor in section I(A)(2).

- In this section, enter your determination of Lavin Matthews's sentence with regard to Count Two. Your vote as a jury must be unanimous with regard to each question in this section.

After considering the information presented by both sides during the guilty and penalty phase and individually balancing the aggravating factors found to exist against the mitigating factors found to exist:

NA We, the jury, unanimously find beyond a reasonable doubt that a sentence of life in prison without possibility of release is the appropriate sentence for Lavin Matthews for Count Two.

NO We, the jury, unanimously find that the Government has proven beyond a reasonable doubt that death is the appropriate sentence for Lavin Matthews for Count Two.

YES

We, the jury, are unable to reach a unanimous verdict either in favor of a life sentence or in favor of a death sentence, for Count Two. We understand that the consequence of this is that Lavin Matthews will be sentenced to life imprisonment without the possibility of release.

Each juror must sign his or her name below, indicating that the above sentence determination reflects the jury's unanimous decision:

Juror 1: _____

Juror 7: _____

Juror 2: _____

Juror 8: _____

Juror 3: _____

Juror 9: _____

Juror 4: _____

Juror 10: _____

Juror 5: _____

Juror 11: _____

Juror 6: _____

Juror 12: _____

Foreperson _____

The foreperson shall indicate the date of signing:

Date: _____, 2003

Directions:

After you have completed your sentence determination in this section, continue on to Section I(B).

I(B). Count Four - Lavin Matthews

Section I(B)(1). Gateway Factors:

General directions for section I(B)(1):

- This section refers to: Count Four.

- Please indicate which, if any, of the following gateway factors you unanimously find that the Government has proven beyond a reasonable doubt. For each of the four gateway factors listed below, you must mark one of the responses. You may find that the government has proven none, one or more of the gateway factors beyond a reasonable doubt.

1. That Lavin Matthews intentionally killed Carlton Rose.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes ✓

2. That Lavin Matthews intentionally inflicted serious bodily injury that resulted in the death of Carlton Rose.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes ✓

3. That Lavin Matthews 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 Carlton Rose died as a direct result of the act.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes ✓

4. That Lavin Matthews 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 Carlton Rose died as a direct result of the act.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes ✓

Directions:

-If you marked "NO" for ALL of the four gateway factors your deliberations as to Count Four are over. You should proceed to Section I(C).

- If you marked "YES" for any of the four gateway factors listed above proceed to the next section; that is, Section I (B)(2).

Section I(B)(2). Statutory Aggravating Factors:**General directions for Section I(B)(2):**

- This section refers only to Count Four. Do not consider statutory aggravating factors in this section if you marked "NO" for all of the four choices in the previous section.

- In this section, please indicate which, if any, of the following statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. You may find that the government has proven none, one or more statutory aggravating factors.

1. Lavin Matthews committed the offense described in Count Four of the superseding indictment after having previously been convicted of a State offense punishable by a term of imprisonment of more than one year, involving the use or attempted or threatened use of a firearm against another person.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes ✓

2. Lavin Matthews committed the offense described in Count Four of the superseding indictment after having previously been convicted of two State offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of serious bodily injury upon another person.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes ✓

3. Lavin Matthews committed the offense described in Count Four of the superseding indictment in an especially heinous, cruel or depraved manner in that it involved torture or serious physical abuse to Carlton Rose.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes ✓

4. Lavin Matthews committed the offense described in Count Four of the superseding indictment as consideration for the receipt or in the expectation of the receipt of something of pecuniary value, that is, narcotics, money and personal property.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes

5. Lavin Matthews committed the offense described in Count Four of the superseding indictment after substantial planning and premeditation.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes

Directions:

- If you answered "NO" to ALL of the five statutory aggravating factors then your deliberations as to Count Four are over and you should proceed to section I(C).

- If you answered "YES" to any one or more of the above five aggravating statutory factors then proceed to the next section; that is, Section I(B)(3).

Section I(B)(3). Non-Statutory Aggravating Factors

General directions for section I(B)(3):

- This section refers only to Count Four. You should only fill out this section if you found at least one gateway factor in section I(B)(1) and at least one statutory aggravating factor in section I(B)(2). Do not consider non-statutory aggravating factors in this section with regard to Count Four if you have not found at least one gateway factor in section I(B)(1) and at least one statutory aggravating factor in section I(B)(2).

- In this section, please indicate which, if any, of the following three non-statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. You may find that the government has proven none of the non-statutory aggravating factors listed below, or you may find that the government has proven one or more of the non-statutory aggravating factors.

1. On or about March 24, 1998, in Cumberland County, Fayetteville, North Carolina, Lavin Matthews and others, while armed with firearms including a sawed-off shotgun, did forcibly rob Rochell Graham in her residence and in the presence of Graham's young daughter of U.S. currency and personal property. During the course of this armed robbery, Lavin Matthews and the others bound and tied Rochell Graham's hands and feet while they blindfolded her. At gunpoint, Lavin Matthews and the others then ordered Rochell Graham and her child to lay on the floor.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes

2. On or about January 7, 2000, in Binghamton, New York, Lavin Matthews and others, while armed with a pistol, planned and committed the armed robbery of Tiffany Ward, Willis Bicham and Tiawanna Willard in a residential Binghamton apartment. Lavin Matthews and the others robbed the victims of narcotics, U.S. Currency, and personal property. During the course of the robbery, Willis Bicham was hit in the head with the pistol and required medical attention at a hospital.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes

3. Victim impact, as evidenced by the impact of the murder of Carlton Rose upon Carlton Rose's family and the injury, harm and loss suffered by the Rose family.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Four? No _____ Yes

Directions:

-After you have completed your findings in this section (whether or not you have found any non-statutory aggravating factors) proceed to the next section; that is, Section I(B)(4).

I(B)(4). Mitigating Factors

General directions for section I(B)(4):

- This section refers only to Count Four.

- Recall that your vote as a jury need not be unanimous with regard to each question in this section. 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 making his or her individual determination of 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.

- As to the mitigating factors which are listed below, please indicate which, if any you find that Lavin Matthews has proven by a preponderance of the evidence, as well as, the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence with regard to Count Four.

(1) Impaired capacity: The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

Number of jurors who find 1. 0

(2) Duress: The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

Number of jurors who find 2. 0

(3) Minor participation: The defendant is punishable as a principal in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

Number of jurors who find 3. 0

(4) Equally culpable defendants: Another defendant or defendants, equally culpable in the crime, will not be punished by death.

Number of jurors who find 4. ~~0~~ 12

(5) No prior criminal record: The defendant did not have a significant prior criminal record.

Number of jurors who find 5. 0

(6) Disturbance: The defendant committed the offense under severe mental or emotional disturbance.

Number of jurors who find 6. 0

(7) Victim's consent: The victim consented to the criminal conduct that resulted in the victim's death.

Number of jurors who find 7. 0

(8) Other factors: That other factors in the defendant's background or character mitigate against the imposition of the death sentence.

Number of jurors who find 8. ~~0~~ 12

(9) That Lavin Matthews was subjected to emotional abuse as a child.

Number of jurors who find 9. 12

(10) That Lavin Matthews was subjected to physical abuse as a child.

Number of jurors who find 10. 12

(11) That Lavin Matthews was subjected to abandonment and neglect as a child.

Number of jurors who find 11. 12

(12) That Lavin Matthews was deprived of parental guidance and protection as a child.

Number of jurors who find 12. 12

(13) That Lavin Matthews was exposed to addictive drugs and alcohol while still a child by his drug addicted and alcoholic mother and natural father and step-father and other relatives.

Number of jurors who find 13. 12

(14) That Lavin Matthews grew up in a household where his parents openly used drugs and abused alcohol.

Number of jurors who find 14. 12

(15) That Lavin Matthews was compelled to sell drugs by his step-father.

Number of jurors who find 15. 12

(16) That Lavin Matthews grew up in an impoverished, violent and brutal environment, and was exposed to extreme violence as a child and throughout his life.

Number of jurors who find 16. 11

(17) That Lavin Matthews grew up in a household where he witnessed his mother being physically abused by his step-father.

Number of jurors who find 17. 10

(18) That Lavin Matthews grew up in a household where he was forced to go out at night and during the early morning hours to collect cans so that money for drugs could be obtained.

Number of jurors who find 18. 12

The law does not limit your consideration of mitigating factors to those that can be articulated in advance. Therefore, you may consider during your deliberations any other factor or factors in Lavin Matthews's background, record, character, or any other circumstances of the offense that mitigate against imposition of a death sentence.

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.

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Number of jurors who so find 12

Number of jurors who so find _____

Number of jurors who so find _____

Number of jurors who so find _____

Directions:

- After you have completed your findings in this section (whether or not you have found any mitigating factors), continue on to the next section; that is, Section I(B)(5).

Section I(B)(5). Determination of Sentence

General directions for section I(B)(5):

- This section refers only to Count Four. You may not impose a sentence of death on Count Four unless you have first found with regard to Count Four, unanimously and beyond a reasonable doubt, at least one gateway factor in Section I(B)(1) and at least one statutory aggravating factor in Section I(B)(2).

- In this section, enter your determination of Lavin Matthews's sentence with regard to Count Four. Your vote as a juror must be unanimous with regard to each question in this section.

After considering the information presented by both sides during the penalty phase and individually balancing the aggravating factors found to exist against the mitigating factors found to exist:

NO We, the jury, unanimously find beyond a reasonable doubt that a sentence of life in prison without possibility of release is the appropriate sentence for Lavin Matthews for Count Four.

NO We, the jury, unanimously find that the Government has proven beyond a reasonable doubt that death is the appropriate sentence for Lavin Matthews for Count Four.

YES We, the jury, are unable to reach a unanimous verdict either in favor of a life sentence or in favor of a death sentence, for Count Four. We understand that the consequence of this is that Lavin Matthews will be sentenced to life imprisonment without the possibility of release.

Each juror must sign his or her name below, indicating that the above sentence determination reflects the jury's unanimous decision:

Juror 1: _____

Juror 7: _____

Juror 2: _____

Juror 8: _____

Juror 3: _____

Juror 9: _____

Juror 4: _____

Juror 10: _____

Juror 5: _____

Juror 11: _____

Juror 6: _____

Juror 12: _____

Foreperson _____

The foreperson shall indicate the date of signing:

Date: _____, 2003

Directions: Proceed to Section I(C).

I(C). Count Five - Lavin Matthews**Section I(C)(1). Gateway Factors:**

General directions for Section I(C)(1):

- This section refers only to Count Five.

- Please indicate which, if any, of the following gateway factors you unanimously find that the Government has proven beyond a reasonable doubt. You may find that the government has proven none, one or more of the gateway factors.

1. That Lavin Matthews intentionally killed Carlton Rose.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No _____ Yes

2. That Lavin Matthews intentionally inflicted serious bodily injury that resulted in the death of Carlton Rose.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No _____ Yes

3. That Lavin Matthews 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 Carlton Rose died as a direct result of the act.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No _____ Yes

4. That Lavin Matthews 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 Carlton Rose died as a direct result of the act.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No _____ Yes

Directions:

-If you marked "NO" for ALL of the four gateway factors your deliberations as to Count Five are over. You should proceed to Section II(A).

- If you marked "YES" for any of the four gateway factors listed above proceed to the next section; that is, Section I (C)(2).

Section I(C)(2). Statutory Aggravating Factors:

General directions for section I(C)(2):

- This section refers only to Count Five. You should only fill out this section if you found at least one gateway factor in Section I(C)(1). Do not consider statutory aggravating factors in this section with regard to Count Five if you did not answer "YES" to at least one factor in the previous section.

- In this section, please indicate which, if any, of the following statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. You may find that the government has proven none of the statutory aggravating factors or you may find that the government has proven one or more of the statutory aggravating factors.

1. Lavin Matthews committed the offense described in Count Five of the superseding indictment after having previously been convicted of a State offense punishable by a term of imprisonment of more than one year, involving the use or attempted or threatened use of a firearm against another person.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No _____ Yes ✓

2. Lavin Matthews committed the offense described in Count Five of the superseding indictment after having previously been convicted of two State offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of serious bodily injury upon another person.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No _____ Yes ✓

3. Lavin Matthews committed the offense described in Count Five of the superseding indictment in an especially heinous, cruel or depraved manner in that it involved torture or serious physical abuse to Carlton Rose.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No _____ Yes ✓

4. Lavin Mathews committed the offense described in Count Five of the superseding indictment as consideration for the receipt or in the expectation of the receipt of something of pecuniary value, that is, narcotics, money and personal property.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No _____ Yes ✓

5. Lavin Mathews committed the offense described in Count Five of the superseding indictment after substantial planning and premeditation.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No _____ Yes ✓

Directions:

- If you answered "NO" to ALL of the five statutory aggravating factors then your deliberations as to Count Five are over and you should proceed to Section II(A).

- If you answered "YES" to any one or more of the above five aggravating statutory factors then proceed to the next section; that is, Section I (C)(3).

Section I(C)(3). Non-Statutory Aggravating Factors

General directions for section I(C)(3):

- This section refers only to Count Five. You should only fill out this section if you found at least one gateway factor in section I(C)(1) and at least one statutory aggravating factor in section I(C)(2). Do not consider non-statutory aggravating factors in this section with regard to Count Five if you have not found at least one gateway factor in section I(C)(1) and at least one statutory aggravating factor in I(C)(2).

- In this section, please indicate which, if any, of the following three non-statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. You may find that the government has proven none, one or more of the non-statutory aggravating factors.

1. On or about March 24, 1998, in Cumberland County, Fayetteville, North Carolina, Lavin Matthews and others, while armed with firearms including a sawed-off shotgun, did forcibly rob Rochell Graham in her residence and in the presence of Graham's young daughter of U.S. currency and personal property. During the course of this armed robbery, Lavin Matthews and the others bound and tied Rochell Graham's hands and feet while they blindfolded her. At gunpoint, Lavin Matthews and the others then ordered Rochell Graham and her child to lay on the floor.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No _____ Yes

2. On or about January 7, 2000, in Binghamton, New York, Lavin Matthews and others, while armed with a pistol, planned and committed the armed robbery of Tiffany Ward, Willis Bicham and Tiawanna Willard in a residential Binghamton apartment. Lavin Matthews and the others robbed the victims of narcotics, U.S. Currency, and personal property. During the course of the robbery, Willis Bicham was hit in the head with the pistol and required medical attention at a hospital.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No Yes _____

3. Victim impact, as evidenced by the impact of the murder of Carlton Rose upon Carlton Rose's family and the injury, harm and loss suffered by the Rose family.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Five? No _____ Yes

Directions:

- After you have completed your findings in this section (whether or not you have found any of the above non-statutory aggravating factors to have been proved), continue to the next section; that is, Section 1(C)(4)).

Section I(C)(4). Mitigating Factors

General directions for section I(C)(4):

- This section refers only to Count Five. You should only fill out this section if you found at least one gateway factor in section I(C)(1) and at least one statutory aggravating factor in section I(C)(2). Do not consider mitigating factors in this section with regard to Count Five if you have not found at least one gateway factor in section I(C)(1) and at least one statutory aggravating factor in section I(C)(2).

- As to the mitigating factors which are listed below, please indicate which, if any you find that Lavin Matthews has proven by a preponderance of the evidence, as well as, the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence with regard to Count Five.

(1) Impaired capacity: The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

Number of jurors who find 1. 0

(2) Duress: The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

Number of jurors who find 2. 0

(3) Minor participation: The defendant is punishable as a principal in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

Number of jurors who find 3. 0

(4) Equally culpable defendants: Another defendant or defendants, equally culpable in the crime, will not be punished by death.

Number of jurors who find 4. 12

(5) No prior criminal record: The defendant did not have a significant prior criminal record.

Number of jurors who find 5. 11

(6) Disturbance: The defendant committed the offense under severe mental or emotional disturbance.

Number of jurors who find 6. 11

(7) Victim's consent: The victim consented to the criminal conduct that resulted in the victim's death.

Number of jurors who find 7. 11

(8) Other factors: That other factors in the defendant's background or character mitigate against the imposition of the death sentence.

Number of jurors who find 8. 12

(9) That Lavin Matthews was subjected to emotional abuse as a child.

Number of jurors who find 9. 12

(10) That Lavin Matthews was subjected to physical abuse as a child.

Number of jurors who find 10. 12

(11) That Lavin Matthews was subjected to abandonment and neglect as a child.

Number of jurors who find 11. 12

(12) That Lavin Matthews was deprived of parental guidance and protection as a child.

Number of jurors who find 12. 12

(13) That Lavin Matthews was exposed to addictive drugs and alcohol while still a child by his drug addicted and alcoholic mother and natural father and step-father and other relatives.

Number of jurors who find 13. 12

(14) That Lavin Matthews grew up in a household where his parents openly used drugs and abused alcohol.

Number of jurors who find 14. 12

(15) That Lavin Matthews was compelled to sell drugs by his step-father.

Number of jurors who find 15. 12

(16) That Lavin Matthews grew up in an impoverished, violent and brutal environment, and was exposed to extreme violence as a child and throughout his life.

Number of jurors who find 16. 11

(17) That Lavin Matthews grew up in a household where he witnessed his mother being physically abused by his step-father.

Number of jurors who find 17. 10

(18) That Lavin Matthews grew up in a household where he was forced to go out at night and during the early morning hours to collect cans so that money for drugs could be obtained.

Number of jurors who find 18. 12

The law does not limit your consideration of mitigating factors to those that can be articulated in advance. Therefore, you may consider during your deliberations any other factor or factors in Lavin Matthews's background, record, character, or any other circumstances of the offense that mitigate against imposition of a death sentence.

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.

See page 8

Number of jurors who so find 12

Number of jurors who so find _____

Number of jurors who so find _____

Number of jurors who so find _____

Directions:

- After you have completed your findings in this section (whether or not you have found any mitigating factors), continue to the next section; that is, Section I(C)(5).

Section I(C)(5). Determination of Sentence

General directions for section I(C)(5):

- This section refers only to Count Five. You may not impose a sentence of death on Count Five unless you have first found with regard to Count Five, unanimously and beyond a reasonable doubt, at least one gateway factor in section I(C)(1) and at least one statutory aggravating factor in section I(C)(2).

- In this section, enter your determination of Lavin Matthews's sentence with regard to Count Five. Your vote as a jury must be unanimous with regard to each question in this section.

After considering the information presented by both sides during the guilt and penalty phase and individually balancing the aggravating factors found to exist against the mitigating factors found to exist:

No We, the jury, unanimously find beyond a reasonable doubt that a sentence of life in prison without possibility of release is the appropriate sentence for Lavin Matthews for Count Five.

No We, the jury, unanimously find that the Government has proven beyond a reasonable doubt that death is the appropriate sentence for Lavin Matthews for Count Five.

Yes We, the jury, are unable to reach a unanimous verdict either in favor of a life sentence or in favor of a death sentence, for Count Five. We understand that the consequence of this is that Lavin Matthews will be sentenced to life imprisonment without the possibility of release.

Each juror must sign his or her name below, indicating that the above sentence determination reflects the jury's unanimous decision:

Juror 1: _____

Juror 7: _____

Juror 2: _____

Juror 8: _____

Juror 3: _____

Juror 9: _____

Juror 4: _____

Juror 10: _____

Juror 5: _____

Juror 11: _____

Juror 6: _____

Juror 12: _____

Foreperson _____

The foreperson shall indicate the date of signing:

Date: _____, 2003

Directions:

- After you have completed your sentence determination in this section (regardless of what that determination was), continue to the next section; that is, Section II(A).

II. Tebiah Tucker

II(A). Count Two

Section II(A)(1). Threshold Statutory Aggravating Factor

General directions for section II(A)(1):

- This section refers to: Count Two.

- Please indicate which one of the following threshold statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. Please choose only one of the following five responses.

1. _____ We do not unanimously find that any of the following threshold statutory aggravating factors have been proved beyond a reasonable doubt.
2. _____ We unanimously find that it has been proved beyond a reasonable doubt with regard to Count Two that Tebiah Tucker intentionally killed Carlton Rose .
3. _____ We unanimously find that it has been proved beyond a reasonable doubt with regard to Count Two that Tebiah Tucker intentionally inflicted serious bodily injury that resulted in the death of Carlton Rose.
4. _____ We unanimously find that it has been proved beyond a reasonable doubt with regard to Count Two that Tebiah Tucker intentionally engaged in conduct intending that Carlton Rose be killed or that lethal force be employed against Carlton Rose, which resulted in the death of Carlton Rose.
5. _____ We unanimously find that it has been proved beyond a reasonable doubt with regard to Count Two that Tebiah Tucker intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants of the offense; and resulted in the death of Carlton Rose.

Directions:

- If you marked choice 1 above, then your deliberations are over as to Count Two and should proceed to section II (B).
- If you have marked either choice 2, 3, 4, or 5 above, proceed to the next section; that is, Section II(A)(2).

II(A)(2). Statutory Aggravating Factors:**General directions for section II(A)(2):**

- This section refers only to Count Two. Do not consider statutory aggravating factors in this section with regard to Count Two if you have marked choice 1 in section II(A)(1).
- In this section, please indicate which, if any, of the following statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. While you may find that the government has not proven any of the following statutory aggravating factors, unlike the previous section, you are permitted to find that the government has proven more than one of the following statutory aggravating factors.

1. Tebiah Tucker committed the offense described in Count Two of the superseding indictment as consideration for the receipt or in the expectation of the receipt of something of pecuniary value, that is, narcotics, money and personal property.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No _____ Yes ✓

2. Tebiah Tucker committed the offense described in Count Two of the superseding indictment after substantial planning and premeditation.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No _____ Yes ✓

3. Tebiah Tucker committed the offense described in Count Two of the superseding indictment in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Carlton Rose.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No _____ Yes ✓

Directions:

- If you answered "NO" to ALL of the three statutory aggravating factors then your deliberations as to Count Two are over and you should proceed to section II (B).

- If you answered "YES" to any one or more of the above three aggravating statutory factors then proceed to the next section; that is, Section II (A)(3).

Section II(A)(3). Non-Statutory Aggravating Factors**General directions for Section II(A)(3):**

- This section refers only to Count Two. You should only fill out this section if you found a threshold factor in section II (A)(1) and at least one statutory aggravating factor in section II (A)(2). Do not consider non-statutory aggravating factors in this section with regard to Count Two if you have not found at least one threshold factor in section II (A)(1) and at least one statutory aggravating factor in section II (A)(2).

- In this section, please indicate which, if any, of the following two non-statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. You may find that the government has proven none, one or both of the non-statutory aggravating factors.

1. On or about January 7, 2000, in Binghamton, New York, Tebiah Tucker and others, while armed with a pistol, planned and committed the armed robbery of Tiffany Ward, Willis Bicham and Tiawanna Willard in a residential Binghamton apartment. The defendant and the others robbed the victims of narcotics, U.S. Currency, and personal property. During the course of the robbery, Willis Bicham was hit in the head with the pistol and required medical attention at a hospital.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No _____ Yes ✓

2. Victim impact, as evidenced by the impact of the murder of Carlton Rose upon Carlton Rose's family and the injury, harm and loss suffered by the Rose family.

Do you unanimously find that this factor has been proved beyond a reasonable doubt with regard to Count Two? No _____ Yes ✓

Directions:

- Proceed to the next section; that is, Section II(A)(4).

Section II(A)(4). Mitigating Factors

General directions for section II(A)(4):

- This section refers only to Count Two. You should only fill out this section if you found at least one threshold factor in section II(A)(1) and at least one statutory aggravating factor in section II(A)(2). Do not consider mitigating factors in this section with regard to Count Two if you have not found at least one threshold factor in section II(A)(1) and at least one statutory aggravating factor in section II(A)(2).

- Recall that your vote as a jury need not be unanimous with regard to each question in this section. 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 making his or her individual determination of 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.

- As to the mitigating factors which are listed below, please indicate which, if any you find that Tebiah Tucker has proven by a preponderance of the evidence, as well as, the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence with regard to Count Two.

(1) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

Number of jurors who find 1. 0

(2) The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

Number of jurors who find 2. 0

(3) The defendant is punishable as a principal in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

Number of jurors who find 3. 0

(4) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of murder or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

Number of jurors who find 4. 0

(5) The defendant was youthful, although not under the age of 18.

Number of jurors who find 5. 0

(6) The defendant did not have a significant prior criminal record.

Number of jurors who find 6. 0

(7) The defendant committed the offense under severe mental or emotional disturbance.

Number of jurors who find 7. 0

(8) Another defendant or defendants, equally culpable in the crime, will not be punished by death.

Number of jurors who find 8. 12

(9) The victim consented to the criminal conduct that resulted in the victim's death.

Number of jurors who find 9. 0

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

Number of jurors who find 10. 12

(11) Tebiah Tucker's mother used illegal drugs while pregnant with him and his early formative years with his biological parents were chaotic and dysfunctional;

Number of jurors who find 11. 12

(12) Tebiah Tucker made efforts to overcome his background to create a stable and close family of his own as a young adult.

Number of jurors who find 12. 1

(13) Tebiah was a loving and helpful man in his relationships with his friends and relatives.

Number of jurors who find 13. 10

(14) The children and family of Tebiah Tucker love him and will suffer if he is sentenced to death.

Number of jurors who find 14. 12

(15) Lloyd McMillian was a negative influence on Tebiah Tucker, especially after the traumatic death of his brother Kazzie, and was a significant influence on his criminal conduct.

Number of jurors who find 15. 10

(16) Tebiah Tucker has positively adjusted to the type of structured and institutional environment in which he will live for the rest of his life if given a sentence of life in prison without the possibility of parole.

Number of jurors who find 16. 1

(17) Tebiah Tucker has the potential for rehabilitation in prison and for contributing affirmatively to the lives of his family, friends and fellow inmates.

Number of jurors who find 17. 10

(18) Tebiah Tucker was solicited by others to participate in the murder, did not occupy a position of leadership and did not induce others to participate in the murder.

Number of jurors who find 18. 12

(19) Tebiah Tucker will be sentenced to life in prison without the possibility of release if he is not sentenced to death.

Number of jurors who find 19. 12

The law does not limit your consideration of mitigating factors to those that can be articulated in advance. Therefore, you may consider during your deliberations any other factor or factors in Tebiah Tucker's background, record, character, or any other circumstances of the offense that mitigate against imposition of a death sentence.

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.

NO

Number of jurors who so find _____

Number of jurors who so find _____

Number of jurors who so find _____

Number of jurors who so find _____

Directions:

- After you have completed your findings in this section (whether or not you have found any mitigating factors in this section), continue the next section; that is, Section II(A)(5).

II(A)(5). Determination of Sentence

General directions for section II(A)(5):

- This section refers only Count Two. You may not impose a sentence of death on Count Two unless you have first found with regard to Count Two, unanimously and beyond a reasonable doubt, at least one threshold factor in section II(A)(1) and at least one statutory aggravating factor in section II(A)(2).

- In this section, enter your determination of Tebiah Tucker's sentence with regard to Count Two. Your vote as a jury must be unanimous with regard to each question in this section.

After considering the information presented by both sides during the guilt and penalty phase and individually balancing the aggravating factors found to exist against the mitigating factors found to exist:

NO We, the jury, unanimously find beyond a reasonable doubt that a sentence of life in prison without possibility of release is the appropriate sentence for Tebiah Tucker for Count Two.

NO We, the jury, unanimously find that the Government has proven beyond a reasonable doubt that death is the appropriate sentence for Tebiah Tucker for Count Two.

YES We, the jury, are unable to reach a unanimous verdict either in favor of a life sentence or in favor of a death sentence, for Count Two. We understand that the consequence of this is that Tebiah Tucker will be sentenced to life imprisonment without the possibility of release.

Each juror must sign his or her name below, indicating that the above sentence determination reflects the jury's unanimous decision:

Juror 1: _____

Juror 7: _____

Juror 2: _____

Juror 8: _____

Juror 3: _____

Juror 9: _____

Juror 4: _____

Juror 10: _____

Juror 5: _____

Juror 11: _____

Juror 6: _____

Juror 12: _____

Foreperson: _____

The foreperson shall indicate the date of signing:

Date: _____, 2003

Directions:

After you have completed your sentence determination in this section, continue on to section II(B).