

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 10-2734 JCH

JOHN CHARLES McCLUSKEY,

Defendant.

SPECIAL FINDINGS FORM FOR SELECTION PHASE

I. Findings Regarding Justification for a Death Sentence

A. Non-Statutory Aggravating Factors

The Government has alleged that the following non-statutory aggravating factors are present in this case. For each factor, answer "yes" or "no" according to whether you unanimously find that the Government proved the existence of the factor beyond a reasonable doubt.

1. Victim Impact

Do you unanimously find that the Government has proved beyond a reasonable doubt that as demonstrated by the victim's personal characteristics as an individual human being and the impact of the death upon the victim and the victim's family and friends, the defendant caused injury, harm, and loss to the victim and the victim's family and friends: Cathy Byus, Vivian Haas, Linda Rook, Sandra Roden Morgan, Talford Perkins, Erma Patrick, Jay Dee Patrick, Steve Walker, and Sheila Walker?

Gary Haas: YES NO

Linda Haas: YES NO

2. Contemporaneous Serious Criminal Acts

Do you unanimously find that the Government has proved beyond a reasonable doubt that the defendant killed each victim during a contemporaneous and continuing episode of serious criminal activity: the July 30, 2010, escape from Arizona State Prison - Kingman; the July 31, 2010, robbery and kidnapping of Prahbjeet Bains and Gurdeep Singh; and the August 11, 2010, armed robbery of the Kut and Kurl hair salon in Gentry, Arkansas?

Gary Haas: YES NO

Linda Haas: YES NO

3. Obstruction of Justice

Do you unanimously find that the Government has proved beyond a reasonable doubt that the defendant killed each victim with the intent to prevent the victim from providing information and assistance to law enforcement authorities in regard to the investigation or prosecution of another offense or offenses, including escape, kidnapping, carjacking, and robbery?

Gary Haas: YES NO

Linda Haas: YES NO

4. Future Dangerousness

Do you unanimously find that the Government has proved beyond a reasonable doubt that the defendant poses a future danger to the lives and safety of other persons—that is, that the defendant is likely to commit criminal acts of violence in the future that would constitute a continuing and serious threat to the lives and safety of others as evidenced by at least one or more of the following?

YES NO

a. Continuing Pattern of Violence

Do you unanimously find that the defendant has engaged in a continuing pattern of violence, attempted violence, and threatened violence?

YES NO

b. Low Rehabilitative Potential

Do you unanimously find that the defendant has demonstrated a low potential for rehabilitation?

YES NO

c. Lack of Remorse

Do you unanimously find that the defendant has not expressed genuine remorse for killing Gary Haas and Linda Haas?

YES NO

d. Callous Disregard for Human Life

Do you unanimously find that the defendant has demonstrated a callous disregard for human life?

YES NO

e. Escape Risk

Do you unanimously find that the defendant represents an escape risk?

YES NO

Regardless of your findings on these non-statutory aggravating factors, you must proceed to the next section (I-B) of this Form.

B. Mitigating Factors

The defendant has alleged that the following mitigating factors are present in this case. For each of these factors, answer "yes" or "no" according to whether any juror (or jurors) finds that the defendant has proved the existence of the factor by a preponderance of the evidence:

1. John McCluskey was helpful to friends and neighbors.

YES NO

2. John was a respectful child.

YES NO

3. John was well liked by his teachers.

YES NO

4. John's mother passed on her strong work ethic to John.

YES NO

5. As a teenager, John worked hard at the racetrack.

YES NO

6. John loved the horses at the racetrack.

YES NO

7. John was heartbroken when his father sold the family horses.

YES NO

8. John has a special kindness for animals.

YES NO

9. John was a hard worker on construction jobs.

YES NO

10. John was sought after for construction jobs.

YES NO

11. John worked hard in the Pennsylvania prisons.

YES NO

12. John never engaged in violent or assaultive behavior in the Pennsylvania prison system.

YES NO

13. John got along with inmates of other races in prison.

YES NO

14. John taught other inmates how to use and repair tools.

YES NO

15. John was liked by many staff members in the Pennsylvania prisons.

YES NO

16. John was trusted by many staff members in the Pennsylvania prisons.

YES NO

17. John was protective of staff members at the Pennsylvania prisons.

YES NO

18. John helped out his mother with whatever she needed at Jake's Corner.

YES NO

19. John was helpful to the elderly at Jake's Corner.

YES NO

20. John visited his mother almost daily when she was in the hospital.

YES NO

21. John helped his mother care for her home by doing maintenance and making improvements.

YES NO

22. John helped out Holly Vandewater with whatever chores she needed to have done.

YES NO

23. John has proven himself to be capable of acts of generosity and kindness.

YES NO

24. John lacked self-confidence.

YES NO

25. John tried to please others.

YES NO

26. John took the blame for others when they got into trouble.

YES NO

27. Other children bullied John.

YES NO

28. John's father forced John to fight other children.

YES NO

29. John's father forced John to fight his best friend, Stan Peterson.

YES NO

30. John's father taught John not to show weakness or let himself be pushed around.

YES NO

31. John's father humiliated John in front of school staff.

YES NO

32. John's father told John and others that John was not his son.

YES NO

33. John suffered emotional abuse at the hands of his father.

YES NO

34. As the Government has conceded, John suffered verbal abuse at the hands of his father.

YES NO

35. John suffered physical abuse at the hands of his father.

YES NO

36. John was not fostered by his father the way his father fostered his brother and sister.

YES NO

37. Despite her efforts, John's mother wasn't able to protect John from his father.

YES NO

38. John's mother lacked the skills and means to be an effective parent to John.

YES NO

39. John witnessed his father's emotional and verbal abuse of his mother.

YES NO

40. John lacked constructive parental supervision.

YES NO

41. John's father forced John to quit school during the ninth grade.

YES NO

42. Despite dropping out of school, John later obtained his GED in prison.

YES NO

43. John's father discouraged him from learning a trade.

YES NO

44. John's father was more concerned about his reputation in the community than with the well-being of his son.

YES NO

45. John was introduced to addictive drugs and alcohol while still a child.

YES NO

46. While growing up, John's environment was marked by many harmful factors that have been shown by the United States Department of Justice to increase the likelihood of violent behavior later in life.

YES NO

47. John's addiction to cocaine was a factor that contributed to his unlawful conduct in Pennsylvania.

YES NO

48. John completed a residential drug and alcohol treatment program at SCI Rockview.

YES NO

49. John was victimized while in prison.

YES NO

50. John has a hard time making decisions.

YES NO

51. John was dependent on Cassie Welch to help him make decisions in his everyday life.

YES NO

52. John occasionally spoke harshly to Cassie Welch because he was worried about her and felt powerless to protect her.

YES NO

53. As a child and young adult, John suffered from one or more head injuries.

YES NO

54. As an adolescent, John was a follower.

YES NO

55. Kevin Billingsley was a negative influence on John.

YES NO

56. John has brain damage.

YES NO

57. John suffers from brain dysfunction.

YES NO

58. John suffers from traumatic brain injury.

YES NO

59. John's brain is damaged in the regions regulating behaviors and emotions, social cognition, reward and conflict resolution.

YES NO

60. John's brain damage causes him to misinterpret danger signals.

YES NO

61. John's brain damage impedes his ability to control his response to danger signals.

YES NO

62. The volume of portions of John's brain is significantly reduced when compared to normal brains.

YES

NO

63. The activity of portions of John's brain is significantly reduced when compared to normal brains.

YES

NO

64. The portion of John's brain that controls flight-fight reactions, the amygdala, is active even when he is not facing threatening situations.

YES

NO

65. John suffers from Cerebellar Cognitive Affective Syndrome. This Syndrome impairs his ability to accurately recognize and appropriately respond to perceived threats.

YES

NO

66. The government's testing shows that John's intellectual functioning is in the borderline range.

YES

NO

67. The government's testing shows that John's verbal skills and comprehension are impaired.

YES

NO

68. The government's testing shows that John has problems with impulse control.

YES

NO

69. John's brain dysfunction impairs his ability to function without guidance and support.

YES

NO

70. John suffers from a genetic susceptibility to substance abuse.

YES _____ NO

71. John was born with low numbers of reward receptors in his brain.

YES _____ NO

72. John's childhood use of alcohol reduced the number of reward receptors in his brain.

YES _____ NO

73. John used chewing tobacco and other tobacco products at an early age.

YES NO _____

74. John became addicted to alcohol when still a child.

YES _____ NO

75. The government's expert found that John has a moderate to severe history of alcohol abuse.

YES _____ NO

76. The government's expert found that John has a moderate to severe history of drug abuse.

YES _____ NO

77. John's childhood substance abuse affected his brain development.

YES _____ NO

78. John's substance abuse was the product of a disease process.

YES _____ NO

79. John's addictive disease suppressed his brain's ability to inhibit impulses.

YES _____ NO

80. John's addictive disease suppressed his ability to exercise good judgment.

YES _____ NO

81. John's addictive disease impaired the development of his decision-making capacity.

YES _____ NO

82. John's exposure to childhood traumas contributed to his susceptibility to addictive substances.

YES NO _____

83. John struggled to stay off drugs when he lived in Mesa, Arizona with Cassie Welch.

YES _____ NO

84. The childhood traumas and the childhood addictive cravings interacted to impair John's ability to tolerate stress.

YES _____ NO

85. The childhood traumas and the childhood addictive cravings interacted to sensitize John's emotion-generating structures of the brain.

YES _____ NO

86. As a child, John showed symptoms of inattention.

YES NO _____

87. As a child, John showed symptoms of hyperactivity.

YES _____ NO

88. As a child, John showed symptoms of impulsivity.

YES _____ NO

89. Neurocognitive testing shows John has problems in attention.

YES _____ NO

90. Neurocognitive testing shows John has difficulty solving problems that include emotions.

YES _____ NO

91. Neurocognitive testing shows that John has difficulty dividing his attention when required.

YES _____ NO

92. John had recognizable problems as a child which were not addressed.

YES _____ NO _____

93. The government's testing shows that John has negative feelings about himself.

YES _____ NO

94. The government's testing shows that John has general feelings of guilt.

YES _____ NO

95. John suffered a rape in prison at age 27 that made him prone to react strongly to threats to his safety.

YES _____ NO

96. The government's testing shows that John perceives the world as threatening.

YES NO

97. John has difficulty tolerating negative emotions.

YES NO

98. John often acted with bluster and spoke loudly due to a lack of confidence, lack of social skills and brain damage.

YES NO

99. The government's testing shows that John suffers from symptoms of depression.

YES NO

100. The government's testing shows that John has suffered from suicidal thoughts.

YES NO

101. John's attempted suicide is evidence of mental illness.

YES NO

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

YES NO

103. John's capacity to appreciate the wrongfulness of his conduct or to conform his 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.

YES NO

104. John was under internally generated duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

YES NO

105. John committed the offenses under some degree of mental or emotional disturbance.

YES NO

106. John committed one or more of his prior offenses under some degree of mental or emotional disturbance.

YES NO

107. John expressed remorse for the killing of the Haases.

YES NO

108. John expressed remorse to Tracy Province for the killings of the Haases.

YES NO

109. John expressed remorse to his mother for involving her in his escape.

YES NO

110. John's suicide attempt in 2010 shows remorse for his actions.

YES NO

111. John's life has value to his family.

YES NO

112. John's life has value to his friends.

YES NO

113. John's life has value.

YES NO

114. John's mother loves him.

YES NO

115. If allowed to live, John will have the opportunity to build relationships with his children and grandchildren.

YES NO

116. John never tried to escape from any Pennsylvania prison, despite having numerous opportunities to flee the Forestry Camp at SCI Rockview.

YES NO

117. John had no disciplinary write-ups from 2000 to 2007.

YES NO

118. John had only three write-ups, all minor, from 1993 to 2000.

YES NO

119. John made an effort to avoid conflict in the Pennsylvania prisons.

YES NO

120. John was a model inmate in Pennsylvania.

YES NO

121. John suffers from Crohn's disease, a debilitating life-long condition.

YES NO

122. John suffers from Hepatitis C, a disease that destroys the liver.

YES NO

123. John suffers from Gout, a painful disease of the joints.

YES NO

124. John's age and poor health means he has less tendency towards violence in prison.

YES NO

125. John is able to perform well in highly structured settings.

YES NO

126. If sentenced to life without possibility of release, John will be housed in a highly structured setting of prison.

YES NO

127. If John is sentenced to life without the possibility of release, the Bureau of Prisons has the capability of safely and securely confining him.

YES NO

128. If sentenced to life in prison without the possibility of release, John will not be a danger to other inmates or prison staff.

YES NO

129. Life imprisonment without the possibility of release is a severe punishment.

YES NO

130. John had never killed anyone before.

YES NO

131. The victims of John's prior convictions were not physically injured.

YES NO

132. John pleaded guilty to three cases charged as statutory aggravators and accepted responsibility for them.

YES NO

133. John McCluskey is not an indiscriminate killer.

YES NO

134. The Haases were not tortured.

YES NO

135. The Haases were dead before the trailer was set on fire.

YES NO

136. The failure of the Arizona Department of Corrections to properly supervise its private contractor, MTC, contributed to the occurrence of the offenses.

YES NO

137. The failure of MTC to follow proper security policy contributed to the occurrence of the offenses.

YES NO

138. The offenses would not have occurred had the Arizona Department of Corrections properly supervised its private contractor, MTC.

YES NO

139. The offenses would not have occurred had MTC followed proper security policy.

YES NO

140. John has not been previously convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

YES NO

141. John, in the commission of the offenses, or in escaping apprehension for the violation of the offenses, did not knowingly create a grave risk of death to 1 or more persons in addition to the victims of the offenses.

YES NO

142. John did not commit the offenses in an especially heinous, cruel, or depraved manner in that they did not involve torture or serious physical abuse to the victims.

YES NO

143. John did not procure the commission of the offenses by payment, or promise of payment, of anything of pecuniary value.

YES NO

144. John did not commit the offenses as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

YES NO

145. John did not commit the offenses after substantial planning and premeditation to cause the death of a person or commit an act of terrorism.

YES _____ NO

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

YES _____ NO

147. John got involved in drug smuggling in the Arizona prisons to help Casslyn Welch.

YES _____ NO

148. No one else involved in the murder of the Haases who is eligible for the death penalty, including those responsible for arranging, coordinating and carrying out the escape and carjacking, will be sentenced to death.

YES _____ NO

149. Cassie Welch, who bought and practiced with the guns used in the escape, targeted the Haases for kidnapping and stole the guns from the Haases' trailer, will not be punished by death.

YES _____ NO

150. Tracy Province, who was already serving a life sentence for murder and threatened to shoot Gary Haas while holding a gun on him, will not be punished by death.

YES _____ NO _____

151. The government primarily relied upon cooperator testimony to establish its case against John, and that testimony is of questionable reliability.

YES _____ NO

152. The co-defendants had more involvement in the crimes than what they have testified to.

YES _____ NO

153. Ms. Welch exercised more control and had more influence than her courtroom testimony indicates.

YES _____ NO

154. As the government admitted, Cassie Welch is a liar.

YES NO _____

155. John has not attempted to save his life by offering to help secure a death sentence against his co-defendants.

YES _____ NO

156. A life sentence for an equally culpable co-defendant who was already serving two consecutive life sentences is meaningful punishment.

YES _____ NO

157. The death penalty is a penalty of last resort.

YES _____ NO

158. The death penalty is final and absolute.

YES _____ NO

159. Other factors in John's background, record, or character or any other circumstance of the offense mitigate against imposition of the death sentence.

YES _____ NO

160. Under all the facts and circumstances, the jury wishes to show mercy.

YES _____ NO

When you have completed your findings regarding mitigation, proceed to the next section (I-C) of this Form, where you will weigh the aggravating factors with the mitigating factors, if any, that you have found to be present in this case.

C. Weighing Process

The question you must answer at this stage of your deliberations is whether the proven aggravating factors sufficiently outweigh the proven mitigating factors and information to justify a sentence of death or, if you have not found any mitigation present, whether the aggravating factors considered alone justify a death sentence. You must perform this weighing process for each count listed below. If you unanimously find that the weight of the aggravating factors is sufficient to justify a sentence of death, answer "yes" below, record your verdict on Verdict—Sentence of Death (Section II-A), certify your decision as described in Section III, and notify the court that you have reached a decision. If you do not unanimously find that a death sentence is justified, answer "no" below, record your verdict on Verdict—Life Imprisonment (Section II-B), certify your decision as described in Section III, and notify the court that you have reached a decision.

Gary Haas

- Count 2 (carjacking resulting in death): YES _____ NO ✓
- Count 4 (tampering with a witness by killing): YES _____ NO ✓
- Count 9 (causing death through the use of a firearm during and in relation to a crime of violence—conspiracy to commit carjacking): YES _____ NO ✓
- Count 11 (causing death through the use of a firearm during and in relation to a crime of violence—carjacking): YES _____ NO ✓
- Count 13 (causing death through the use of a firearm during and in relation to a crime of violence—tampering with a witness): YES _____ NO ✓
- Count 15 (causing death through the use of a firearm during and in relation to a crime of violence—conspiracy to interfere with commerce): YES _____ NO ✓
- Count 17 (causing death through the use of a firearm during and in relation to a crime of violence—interference with commerce): YES _____ NO ✓

Linda Haas

- Count 3 (carjacking resulting in death): YES _____ NO ✓
- Count 5 (tampering with a witness by killing): YES _____ NO ✓

Count 10 (causing death through the use of a firearm during and in relation to a crime of violence—conspiracy to commit carjacking):

YES _____ NO

Count 12 (causing death through the use of a firearm during and in relation to a crime of violence—carjacking):

YES _____ NO

Count 14 (causing death through the use of a firearm during and in relation to a crime of violence—tampering with a witness):

YES _____ NO

Count 16 (causing death through the use of a firearm during and in relation to a crime of violence—conspiracy to interfere with commerce):

YES _____ NO

Count 18 (causing death through the use of a firearm during and in relation to a crime of violence—interference with commerce):

YES _____ NO

II. Imposition of Sentence

This is the last step in your deliberations. You must record your verdict for each count that is listed. If you have unanimously concluded that a sentence of death is justified and therefore must be imposed on the defendant, record your decision in Section II-A, Verdict—Sentence of Death below, sign the verdict, sign the certification that follows in Section III, and notify the court that you have reached a decision. If you have not unanimously concluded that a sentence of death is justified and therefore must be imposed, record your decision in Section II-B, Verdict—Life Imprisonment below, sign the verdict, sign the certification in Section III, and notify the court that you have reached a decision.

II-A. VERDICT—SENTENCE OF DEATH

Based upon our consideration of the evidence and in accordance with the Court's instructions, we find by unanimous vote that a sentence of death shall be imposed on the defendant for the following counts (circle those counts that apply, if any):

Gary Haas Linda Haas

Count 2 Count 3

Count 4 Count 5

Count 9 Count 10

Count 11 Count 12

Count 13 Count 14

Count 15 Count 16

Count 17 Count 18

9 names redacted

Foreperson

Date: _____

II-B. VERDICT—LIFE IMPRISONMENT

Based upon our consideration of the evidence and in accordance with the Court's instructions, we find that a sentence of life imprisonment without release shall be imposed on the defendant for the following counts (circle those that apply, if any):

Gary Haas Linda Haas

Count 2 Count 3

Count 4 Count 5

Count 9 Count 10

Count 11 Count 12

Count 13 Count 14

Count 15 Count 16

Count 17 Count 18

3 names redacted

Date: 11 DEC 13

III. Certification

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or gender 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 decision regarding the appropriate sentence for the offense in question regardless of the race, color, religious beliefs, national origin, or gender of the defendant or the victim.

12 names redacted

Date: 11 DEC 13