

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PENGAD 1-800-831-6889
COURT'S
EXHIBIT NO. 34
IDENTIFICATION/EVIDENCE
DKT. # 04-cr-966
DATE: 2/9/07

-----X
UNITED STATES OF AMERICA,

-against-

Case No. 04-CR-966 (S-7)

KENNETH McGRIFF,

Defendant.

-----X

SPECIAL VERDICT FORM
PENALTY PHASE

SECTION I: PRELIMINARY FACTOR

1. Do you unanimously find that the government has proved beyond a reasonable doubt that the defendant, Kenneth McGriff, 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 the victim died as a direct result of the act

(a) with respect to Count Six (Eric Smith)?

YES _____ NO _____

(b) with respect to Count Eleven (Troy Singleton)?

YES _____ NO _____

If you answered "no" to both questions, stop your deliberations and complete only the certification contained in Section VI.

If you answered "yes" to either question, go on to Section II.

SECTION II: STATUTORY AGGRAVATING FACTORS

Complete Section II only with respect to those counts, if any, for which you answered "yes" in Section I.

1. Do you unanimously find that the government has proved beyond a reasonable doubt that Mr. McGriff committed the offense after substantial planning and premeditation to cause the death of another person

(a) with respect to Count Six (Eric Smith)?

YES _____ NO _____

(b) with respect to Count Eleven (Troy Singleton)?

YES _____ NO _____

2. Do you unanimously find that the government has proved beyond a reasonable doubt that Mr. McGriff procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value

(a) with respect to Count Six (Eric Smith)?

YES _____ NO _____

(b) with respect to Count Eleven (Troy Singleton)?

YES _____ NO _____

SECTION II: STATUTORY AGGRAVATING FACTORS (continued)

3. Do you unanimously find that the government has proved beyond a reasonable doubt that Mr. McGriff has previously been convicted of engaging in a continuing criminal enterprise

(a) with respect to Count Six (Eric Smith)?

YES _____

NO _____

(b) with respect to Count Eleven (Troy Singleton)?

YES _____

NO _____

4. Do you unanimously find that the government has proved beyond a reasonable doubt that in the commission of the offense, Mr. McGriff knowingly created a grave risk of death to one or more persons in addition to the victim of the offense

(a) with respect to Count Six (Eric Smith)?

YES _____

NO _____

If you answered "no" to all questions in Section II, stop your deliberations and complete only the certification contained in Section VI.

If you answered "yes" to any question in Section II, go on to Section III.

SECTION III: NON-STATUTORY AGGRAVATING FACTORS

Complete Section III only with respect to those counts, if any, for which you (a) answered "yes" in Section I, and (b) unanimously found in Section II at least one statutory aggravating factor proved beyond a reasonable doubt.

1. Do you unanimously find that the government has proved beyond a reasonable doubt that Mr. McGriff caused injury, harm, and loss to the victim, the victim's family, and the victim's friends

(a) with respect to Count Six (Eric Smith)?

YES _____ NO _____

(b) with respect to Count Eleven (Troy Singleton)?

YES _____ NO _____

2. Do you unanimously find that the government has proved beyond a reasonable doubt that if incarcerated for life without the possibility of release, Mr. McGriff poses a risk of future dangerousness

(a) with respect to Count Six (Eric Smith)?

YES _____ NO _____

(b) with respect to Count Eleven (Troy Singleton)?

YES _____ NO _____

Go on to Section IV.

SECTION IV: MITIGATING FACTORS

Complete Section IV only with respect to those counts, if any, for which you (a) answered "yes" in Section I, and (b) unanimously found in Section II at least one statutory aggravating factor proved beyond a reasonable doubt.

Mitigating factors #1-8 have been established. You must therefore consider them and decide how much weight they should be given in your individual sentencing decisions.

1. If not sentenced to death, Mr. McGriff will be punished by a sentence of lifetime imprisonment with no possibility of release.
2. Emanuel Mosley ("Manny Dog") will not be sentenced to death for his role in the murders of Eric Smith and Troy Singleton.
3. Barry Mungo ("Barry Broughton") will not be sentenced to death for his role in the murders of Eric Smith and Troy Singleton.
4. Alvin Smiley will not be sentenced to death for his role in the murders of Eric Smith and Troy Singleton.
5. Russell Allen ("Les") will not be sentenced to death for his role in the murder of Eric Smith.
6. Dennis Crosby ("How about") will not be sentenced to death for his role in the murders of Eric Smith and Troy Singleton.
7. Nicole Brown will not be sentenced to death for her role in the murder of Eric Smith.
8. Climmiette Jordan will not be sentenced to death for his role in the murder of Eric Smith.

SECTION IV: MITIGATING FACTORS (continued)

For mitigating factors #9-16, indicate the number of jurors, if any, who find that the defendant has proved by a preponderance of the evidence that the factor exists. Any juror who finds a mitigating factor so proved must consider it and decide how much weight it should be given in his or her individual sentencing decision.

9. The favorable plea agreements offered to the cooperating witnesses in this case is something that weighs against imposition of a sentence of death for Mr. McGriff.

Number of jurors who find #9: 5

10. By voluntarily choosing to engage in violent criminal conduct, the victims in this case willingly participated in dangerous and illegal activities, a circumstance that contributed to their unfortunate deaths.

Number of jurors who find #10: 11

11. The murders in this case were motivated, in part, by Mr. McGriff's sincere belief that the victims, and others, were out to kill him.

Number of jurors who find #11: 7

12. The evidence does not establish Mr. McGriff's guilt of the capital crimes with sufficient certainty to justify imposition of a sentence of death.

Number of jurors who find #12: 7

13. If Mr. McGriff is executed, his friends and family will suffer grief and loss.

Number of jurors who find #13: 2

14. Mr. McGriff has proven himself to be capable of acts of generosity and kindness.

Number of jurors who find #14: 5

SECTION IV: MITIGATING FACTORS (continued)

15. At the time of the murders, Mr. McGriff was attempting to move his life in a positive direction.

Number of jurors who find #15: 4

16. Mr. McGriff's life has value.

Number of jurors who find #16: 9

The following extra spaces are provided to write in additional mitigating factors, if any, found by one or more jurors by a preponderance of the evidence. If no additional mitigating factors are found, write "NONE." If more space is needed, write "CONTINUED" and use the reverse side of the page.

IF TRIED IN A NEW YORK STATE COURT, EXECUTION
WOULD NOT BE AN OPTION

Number of jurors who so find: 3

Number of jurors who so find: _____

Number of jurors who so find: _____

Go on to Section V.

SECTION V: DETERMINATION OF SENTENCE

Complete Section V only with respect to those counts, if any, for which you (a) answered "yes" in Section I, and (b) unanimously found in Section II at least one statutory aggravating factor proved beyond a reasonable doubt.

Count Six (Eric Smith)

_____ We, the jury, unanimously find beyond a reasonable doubt that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factors such that death is the appropriate sentence for Mr. McGriff on Count Six. We therefore unanimously find that Mr. McGriff should be sentenced to death.

_____ We, the jury, unanimously find that the government has failed to prove beyond a reasonable doubt that death is the appropriate sentence for Mr. McGriff on Count Six. We therefore unanimously find that Mr. McGriff should be sentenced to life imprisonment without the possibility of release.

✓
_____ We, the jury, having carefully considered and answered the questions in Sections I through IV of this Special Verdict Form in accordance with the Court's instructions, and having engaged in careful and thorough deliberation and discussion, are nonetheless unable to reach a unanimous verdict as to whether death is the appropriate sentence for Mr. McGriff on Count Six. We understand that the consequence of this is that Mr. McGriff will be sentenced to life imprisonment without the possibility of release.

SECTION V: DETERMINATION OF SENTENCE (continued)

Count Eleven (Troy Singleton)

_____ We, the jury, unanimously find beyond a reasonable doubt that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factors such that death is the appropriate sentence for Mr. McGriff on Count Eleven. We therefore unanimously find that Mr. McGriff should be sentenced to death.

_____ We, the jury, unanimously find that the government has failed to prove beyond a reasonable doubt that death is the appropriate sentence for Mr. McGriff on Count Eleven. We therefore unanimously find that Mr. McGriff should be sentenced to life imprisonment without the possibility of release.

✓
_____ We, the jury, having carefully considered and answered the questions in Sections I through IV of this Special Verdict Form in accordance with the Court's instructions, and having engaged in careful and thorough deliberation and discussion, are nonetheless unable to reach a unanimous verdict as to whether death is the appropriate sentence for Mr. McGriff on Count Eleven. We understand that the consequence of this is that Mr. McGriff will be sentenced to life imprisonment without the possibility of release.

Each juror must sign his or her juror number below, indicating that the above sentence determinations reflect the jury's decision:

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The foreperson shall indicate the date of signing: February 9, 2007

Go on to Section VI.

SECTION VI: CERTIFICATION

By signing below (using only your juror number), each of you individually certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or the victim was not involved in reaching your individual decision. Each of you further certifies that you, as an individual, would have made the same recommendation regarding a sentence for the crime or crimes in question regardless of the race, color, religious beliefs, national origin, or sex of the defendant, or the victim.

One
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The foreperson shall indicate the date of signing:

February 9, 2007

After you have completed this form, you will each be given a new certification, headed Juror No. ____, and an envelope which bears your juror number on the outside. Please sign that certificate using your real name, place the certificate in the envelope, seal the envelope and give the envelope to the Marshal. All of the certificates bearing your real name will be kept by the Court under seal.