

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 25 2007 ★

BROOKLYN OFFICE

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Plaintiff,

05 CR 401(S7) (ILG)

-against-

SPECIAL VERDICT FORM

JAMES McTIER, also known as  
"JD,"

Defendant.

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### **SECTION I. PRELIMINARY INTENT FACTORS**

General Instructions for Section I: For each of the following, indicate the appropriate finding by the jury.

#### **Age of the Defendant**

We, the jury, unanimously find that James McTier was 18 years of age or older at the time of the offenses.

Count Ten

YES       ✓      

NO                 

Count Fourteen

YES       ✓      

NO                 

Count Eighteen

YES       ✓      

NO

**First Gateway Intent Factor - Rick Tubens:**

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier intentionally killed Ricky Tubens.

Count Ten

YES

NO

**Second Gateway Intent Factor - Rick Tubens:**

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier intentionally participated in an act, contemplating that the life of a person would be taken and/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 Ricky Tubens died as a direct result of the act.

Count Ten

YES

NO

**Third Gateway Intent Factor - Rick Tubens:**

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier 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 the victim Ricky Tubens died as a direct result of the act.

Count Ten

YES

NO

**First Gateway Intent Factor - Shamel Ayatollah:**

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier intentionally killed Shamel Ayatollah.

Count Fourteen

YES       ✓      

NO                 

**Second Gateway Intent Factor - Shamel Ayatollah:**

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier intentionally participated in an act, contemplating that the life of a person would be taken and/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 Shamel Ayatollah died as a direct result of the act.

Count Fourteen

YES       ✓      

NO                 

**Third Gateway Intent Factor - Shamel Ayatollah:**

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier 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 the victim Shamel Ayatollah died as a direct result of the act.

Count Fourteen

YES       ✓      

NO

**First Gateway Intent Factor - Tabitha Buckman:**

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier intentionally participated in an act, contemplating that the life of a person would be taken and/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 Tabitha Buckman died as a direct result of the act.

Count Eighteen

YES

NO

**Second Gateway Intent Factor - Tabitha Buckman:**

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier 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 the victim Tabitha Buckman died as a direct result of the act.

Count Eighteen

YES

NO

**Further Instructions for Section I:**

If you indicated that the government has not established at least one of the Preliminary Intent Factors as to any of the capital offenses in this Section I, then stop your deliberations as to that offense.

If you indicated that the government has established at least one or more of the Gateway Intent Factors in this Section I, proceed to Section II which follows.

**SECTION II. STATUTORY AGGRAVATING FACTORS**

General Instructions for Section II: For each of the following, indicate the appropriate finding by the jury.

1. Previous Conviction of a Violent Felony Involving a Firearm

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier has 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, specifically robbery in the first degree, a class B felony, in New York State Supreme Court.

Count Ten

YES       ✓      

NO                 

Count Fourteen

YES       ✓      

NO                 

Count Eighteen

YES       ✓      

NO

2. Grave Risk of Death to Additional Persons

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier knowingly created a grave risk of death to one or more persons in addition to the victim Tabitha Buckman.

Count Eighteen

YES

NO

3. Substantial Planning and Premeditation - Tabitha Buckman

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier committed the offense after substantial planning and premeditation to cause the death of a person.

Count Eighteen

YES

NO

Further Instructions for Section II: If you indicated that the government has not established at least one of the Statutory Aggravating Factors in this Section II, then stop your deliberations, cross out Sections III, IV and V of this form, and proceed to Section VI of this form. Each juror should then carefully read the statement in Section VI, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the court that you have reached a decision.

If you indicated that the government has established at least one or more of the Preliminary Intent Factors in Section I, and indicated that the government has established at least one of the Statutory Aggravating Factors in this Section II, then proceed to Section III which follows.

### **SECTION III. NON-STATUTORY AGGRAVATING FACTORS**

General Instructions for Section III: For each of the following indicate the appropriate finding by the jury.

#### **1. Future Dangerousness of the Defendant**

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier represents a continuing danger to the lives and safety of other persons. 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.

Count Ten

YES

NO

Count Fourteen

YES

NO

Count Eighteen

YES

NO

2. Contemporaneous Convictions

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant faces contemporaneous convictions for other serious acts of violence.

Count Ten

YES

NO

Count Fourteen

YES

NO

Count Eighteen

YES

NO

3. Lack of Remorse

We, the jury, unanimously find that the government has established beyond a reasonable doubt that during and after the commission of the offenses charged in the Indictment, the defendant James McTier, through his actions and statements, demonstrated a lack of remorse over his participation in the offenses.

Count Ten

YES

NO

Count Fourteen

YES

NO

Count Eighteen

YES

NO

4. Victim Impact Evidence

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant James McTier caused loss, injury and harm to the victim or victims and their families.

Count Ten

YES

NO

Count Fourteen

YES

NO

Count Eighteen

YES

NO

Further Instruction for Section III: Regardless of whether you found that the government has established one or more of the Non-Statutory Aggravating Factors in this Section III, proceed to Section IV, which follows.

#### **SECTION IV. MITIGATING FACTORS**

General Instructions for Section IV: for each of the following mitigating factors indicate, in the space provided, the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence.

Your vote with respect to a mitigating factor need not be unanimous. A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established in considering whether or not a sentence of death shall be imposed, regardless of the number of other jurors who agree that the factor has been established.

1. If he is not executed, James McTier will spend the rest of his life in federal prison, without the possibility of release.

Number of jurors who so find: 11.

2. James McTier did not personally shoot Tabitha Buckman.

Number of jurors who so find: 5.

3. Juma Cain (a/k/a "Ateba: a/k/a "Satan"), who shot and killed Tabitha Buckman, will not be sentenced to die because he was less than 18 years of age at the time that he murdered Tabitha Buckman. The parties have stipulated to this.

Number of jurors who so find: 6.

4. Gareth Vialva ("a/k/a "Volvo"), who was the driver of the vehicle that was used by Juma Cain to kill Tabitha Buckman, will not be sentenced to death for his role in the murder of Tabitha Buckman. The parties have stipulated to this.

Number of jurors who so find: 5.

5. The favorable plea agreements offered to the cooperating witnesses in this case is something that weighs against a sentence of death for James McTier.

Number of jurors who so find: 1.

6. James McTier is the product of an abusive, neglectful and chaotic childhood.

Number of jurors who so find: 5.

7. James McTier was raised in a community plagued by violence, poverty, crime, drug and alcohol abuse and street gang activity.

Number of jurors who so find: 5.

8. Members of James McTier's immediate family have suffered from drug addiction, alcoholism and mental illness.

Number of jurors who so find: 6.

9. Despite the absence of positive role models, James McTier tried to involve himself in positive behavior, including community programs and athletics.

Number of jurors who so find: 0.

10. The growth and development of James McTier's two children will be adversely affected if he is executed.

Number of jurors who so find: 2.

11. There are a number of James McTier's family members who will suffer grief and loss if he is executed.

Number of jurors who so find: 0.

12. James McTier's life will have value to others if he is sentenced to spend the rest of his life in prison without the possibility of release.

Number of jurors who so find: 0.

13. The fact that James McTier gave a statement to law enforcement admitting his involvement in the Shamel Ayatolla and Tabitha Buckman murders as well as his gang activity is a mitigating factor.

Number of jurors who so find: 7.

14. Additional reasons weigh against sentencing James McTier to death.

Number of jurors who so find: 0.

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors. If none, write "NONE" and line out the extra spaces with a large "X."

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Number of jurors who so find: \_\_\_\_\_.

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Number of jurors who so find: \_\_\_\_\_.

General Instructions for Section IV: Regardless of whether you chose to make written findings for the Mitigating Factors in Section IV above, proceed to Section V and Section VI which follow.

#### **SECTION V. DETERMINATION OF SENTENCE**

General Instructions for Section V: Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death:

A. Count Ten: Ricky Tubens

\_\_\_\_\_ We the jury determine, by unanimous vote, that a sentence of death shall be imposed.

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

B. Count Fourteen: Shamel Ayatollah

\_\_\_\_ We the jury determine, by unanimous vote, that a sentence of death shall be imposed.

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

C. Count Eighteen: Tabitha Buckman

\_\_\_\_ We the jury determine, by unanimous vote, that a sentence of death shall be imposed.

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

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

12  
11  
10  
9  
8  
7

6  
5  
4  
3  
2  
1

Foreperson

Dated: 2008

## **SECTION VI. CERTIFICATION**

By signing his or her juror number below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding a sentence for the crime or crimes in question regardless of the race, color, religious beliefs, national origin, or sex of the defendant, or the victims.

7	6
5	4
8	3
9	2
10	1
11	
12	

Foreperson

Dated: 2008