

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,            )  
  )  
                                  Plaintiff,    )  
  )  
                                  v.            )  
  )  
PHOUC H. NGUYEN                    )  
  )  
                                  Defendant.    )  
\_\_\_\_\_  )

Criminal Action

No. 94-10129-01

SPECIAL FINDINGS FORM

I. GATEWAY INTENT FACTOR

Instructions: Answer "YES" or "NO" as to whether you, the jury, unanimously find that the United States has established the existence of the gateway intent factor beyond a reasonable doubt:

Phouc Nguyen intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to someone, 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, Barbara Sun, died as a direct result of the act.

YES   X    
NO             

Instructions: If you answered "NO" with respect to the gateway intent factor in part I, then stop your deliberations, cross out parts V A and B of this form, sign parts VI and VII of

this form, and advise my law clerk that you have reached a decision.

If you answered "YES" with respect to the gateway intent factor, then continue your deliberations in accordance with the court's instructions and proceed to part II which follows.

II. STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO" as to whether you, the jury, unanimously find that the United States has established the existence of that statutory aggravating factor beyond a reasonable doubt:

1. Phouc Nguyen committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Barbara Sun.

YES  X

NO \_\_\_\_\_

2. Phouc Nguyen committed the offense in the expectation of the receipt of anything of pecuniary value.

YES  X

NO \_\_\_\_\_

Instructions: If you answered "NO" with respect to both of the statutory aggravating factors in part II, then stop your deliberations, cross out parts V A and B of this form, sign parts VI and VII of this form, and advise my law clerk that you have reached a decision.

If you found the gateway intent factor in part I and at least one statutory aggravating factor in part II, then continue your deliberations in accordance with the court's instructions and proceed to part III which follows.

III. NON-STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO" as to whether you, the jury, unanimously find that the United States has established the existence of that non-statutory aggravating factor beyond a reasonable doubt:

1. Phouc Nguyen intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to someone, 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, Barbara Sun, died as a direct result of the act;

YES   X  

NO \_\_\_\_\_

2. Phouc Nguyen caused permanent harm to the family of Barbara Sun by her murder which was committed in close proximity to her husband and two daughters.

YES   X  

NO \_\_\_\_\_

Instructions: Regardless of whether you answered "YES" or "NO" with respect to the Non-Statutory Aggravating Factors in part III above, continue your deliberations in accordance with the court's instructions and proceed to part IV which follows.

IV. MITIGATING FACTORS

Instructions: For each of the following mitigating factors, record and/or describe, in the space provided, the factor and number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence.

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 a sentence of death shall be imposed, regardless of the number of other jurors who concur that the factor has been established.

Mitigating factors alleged by defendant and found by one or more jurors:

1. Defendant was not the triggerman. He did not shoot Barbara Sun.

Number of jurors: 9

2. While the defendant is punishable as a principal for the murder of Barbara Sun, his participation was relatively minor, even though it was not so minor as to constitute a defense to the murder charge.

Number of jurors: 3

3. Other participants in the crime, who are equally culpable, will not be punished by death.

Number of jurors: 5

4. Before being convicted in this case, the defendant had no previous felony convictions.

Number of jurors: 4

5. During the robbery, the defendant had no intent that anyone be killed, and there was no plan to kill anyone during the robbery.

Number of jurors: 7

6. At the time Barbara Sun was killed, the defendant was not armed with a deadly weapon.

Number of jurors: 0

7. The defendant did not order, direct or suggest that Bountaem Chanthadara shoot Barbara Sun.

Number of jurors: 3

8. The defendant was angry, mad and upset that Bountaem Chanthadara shot Barbara Sun.

Number of jurors: 4

9. After his apprehension, the defendant cooperated with law enforcement by giving them a voluntary statement.

Number of jurors: 10

10. The defendant's mother attempted to abort him because she could not support the two children she already had.

Number of jurors: 0

11. The defendant's father was killed when defendant was one year old, and defendant never had the guidance of a father figure after the family came to America.

Number of jurors: 2

12. The first nine years of defendant's life were spent in extreme poverty and deprivation in Vietnam under a Communist regime.

Number of jurors: 0

13. The defendant was youthful (age 20) when the homicide occurred.

Number of jurors: 1

14. If he is not executed, defendant will serve a life sentence, without any possibility of release.

Number of jurors: 12

15. The defendant's mother and brother love him and will maintain contact with him if he is not executed.

Number of jurors: 0

16. The defendant's family would be harmed by the emotional trauma of his execution.

Number of jurors: 2

17. Other factors in the defendant's background or character, or any other circumstances of the offense, mitigate against imposition of the death penalty.

Number of jurors: 0

Continue your deliberations in accordance with the court's instructions and proceed to parts V A and B, VI and VII which follow.

V-A. VERDICT - DEATH PENALTY

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, we find, by unanimous vote and beyond a reasonable doubt, that a sentence of death shall be imposed.

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FOREPERSON

Date: November \_\_, 1996.

V-B. VERDICT - LIFE IMPRISONMENT

Based upon our consideration of the evidence and the law instructed upon by the court, we find that a sentence of life imprisonment without release shall be imposed.

  
FOREPERSON

Date: November 15, 1996.

VI. CERTIFICATION

By signing below, each juror certifies that other than as a potential mitigating factor, consideration of the race, color, religious beliefs, national origin, or sex of defendant or Barbara Sun was not involved in reaching his or her individual decision, and that the individual juror would have reached the same decision regarding a sentence no matter what the race, color, religious beliefs, national origin, or sex of defendant, or Barbara Sun, would have been.



Date: November 15, 1996.

VII. CERTIFICATION REGARDING PERFORMANCE OF DUTIES

By signing below, each juror certifies that he or she has based his or her verdict in both the guilt and penalty phases solely upon the evidence, has followed the admonitions and instructions on the law given by the court and has not based his or her verdict upon anything said or done by the court during the trial.



FOREPERSON

Date: November 15, 1996.