

QUAN RAY
NO 11

Preliminary Instruction

Members of the jury, as reflected by your verdict, you have unanimously found the defendant guilty of the offense involving the murder of Charles "Jello" Banks. The law of the United States provides that the punishment for that offense may be death or life imprisonment without the possibility of parole. As members of the jury, it will be your responsibility at the conclusion of this hearing to determine whether the defendant should be sentenced to death for that offense.

If you decide that the defendant shall be sentenced to death, that decision will be binding on this court and I will sentence the defendant according to your decision. If you do not impose a sentence of death then the sentence will be life imprisonment without possibility of parole.

Before deciding on the appropriate punishment, you must consider additional information the parties have presented pertaining to aggravating and mitigating factors at this sentencing hearing. The information you may consider also includes the evidence presented at trial. Thus, you may consider the testimony, exhibits and stipulations offered by both sides during the guilt phase, and the parties were not required to reoffer that evidence.

Based on your consideration of evidence presented at trial and the information presented at this sentencing hearing, you must make a series of findings to guide you in arriving at a reasoned response to the defendant's crimes, background, character and circumstances of the offenses. These findings are to be entered on the Special Findings form.

Aggravating Factors

Under the law of the United States, there are two categories of statutory aggravating factors and there are also non-statutory aggravating factors. There can be no sentence of death unless the jury unanimously agrees that the government has proved beyond a reasonable doubt the existence of the statutory aggravating factor from Category One and at least one statutory aggravating factor from Category Two with respect to the killing of Charles "Jello" Banks.

The government bears the burden of proving beyond a reasonable doubt the existence of any aggravating factor upon which it seeks to rely. The finding that an aggravating factor exists must be unanimous. The defendant does not have the burden of disproving the existence of any aggravating factor. The law does not require the defendant to produce any evidence at all. The burden is wholly upon the government to prove the existence of the particular aggravating factor beyond a reasonable doubt.

Category One Statutory Aggravating Factor

Under the law of the United States, you may not consider whether the penalty of death is an appropriate punishment in this case for the defendant unless you unanimously agree that the government has proven beyond a reasonable doubt that the defendant, Quan John Ray, intentionally killed the victim, Charles "Jello" Banks.

In considering this factor, you may only consider the intent of the defendant, Quan John Ray.

If you unanimously find that the government has proven this factor beyond a reasonable doubt, all of the jurors should sign in the appropriate place in Part I of the Special Findings form, proceed to Part II of the Special Findings form and continue your deliberations. If you do not unanimously find that this factor exists, then all of the jurors must sign Decision Form A, the Certificate, and advise the court that you have reached a decision.

Intentionally Killing the Victim

To establish that the defendant “intentionally” killed the victim, Charles “Jello” Banks, the government must prove that defendant killed him with a conscious desire to cause his death.

Category Two Statutory Aggravating Factors

In this case, Section II of the Special Findings Form asks whether the government has proved beyond a reasonable doubt certain statutory aggravating factors. The government has alleged as Category Two statutory aggravating factors that the defendant, Quan John Ray:

1. Committed the offense in expectation of receipt of anything of pecuniary value; or
2. Committed the offense after substantial planning and premeditation.

If you unanimously find that the government has proven beyond a reasonable doubt the existence of at least one or both of the Category Two statutory aggravating factors you should check the appropriate line in Part II of the Special Findings form, all jurors should sign the form, proceed to Part III of the Special Findings form and continue your deliberations. If you do not unanimously find that the government has proved at least one of these statutory aggravating factors, all of the jurors must sign Decision Form A, the Certificate, and advise the court that you have reached a decision.

Commission for Pecuniary Gain

You must determine whether the government has proved beyond a reasonable doubt that this killing was committed in consideration for the receipt, or in the expectation of the receipt of anything of pecuniary value. To prove this, the government must prove beyond a reasonable doubt that, at the time of the commission of the killing, the defendant expected the receipt of something of pecuniary value. The fact that defendant may have received something of pecuniary value after the commission of the killing does not, in itself, prove his hopes or expectations at the time of the commission. You may, however, consider that, along with all other evidence, in deciding this issue.

**Committing the Offense After Substantial
Planning and Premeditation**

To establish the existence of this factor, the government must prove beyond a reasonable doubt that the defendant killed the victim, Charles "Jello" Banks, after substantial planning and substantial premeditation. The words "substantial planning and premeditation" should be given their ordinary, everyday meaning. "Planning" means mentally formulating a method for doing something or achieving some end. "Premeditation" means thinking or deliberating about something and deciding whether to do it beforehand. ~~Substantial~~ "Substantial" planning and premeditation means a considerable or significant amount of planning and premeditation. ~~You~~ You must find that both the planning and the premeditation were more than the minimum amount necessary to commit the offense of murder.

You may only continue with your deliberations if you have found one of the aggravating circumstances listed in Part II, proved to the jury's unanimous satisfaction and beyond a reasonable doubt with respect to the intentional murder of Charles Banks. If you do not find either aggravating factor to have been proven beyond a reasonable doubt then the foreperson should sign Decision Form A, all jurors sign the Certificate and report the decision to the Court and deliberate no more. If you do unanimously so find, proceed to Part III.

Non-Statutory Aggravating Factors

Part III of the Special Findings Form asks you to find whether the government has proved beyond a reasonable doubt two additional aggravating factors, called non-statutory aggravating factors, it has alleged.

The non-statutory aggravating factors that the government has alleged in this case are that:

1. Quan John Ray acted in a vile manner in killing Charles “Jello” Banks. The defendant’s conduct in committing the offense was substantially greater in degree than that described in the definition of the crime, apart from the statutory aggravating factors. Quan John Ray shot Charles “Jello” Banks in the head and face, at close range six times. He continued to stand over Banks and shoot him as Banks lay on the ground. The way in which this murder was committed constitutes gratuitous violence above and beyond killing the victim; and
2. Quan John Ray would commit serious acts of violence in the future in prison which would be a continuing and serious threat to society as evidenced by his past criminal conduct, including:
 - a. the murder of Harold Williams, a rival drug dealer, who the defendant shot nine times and killed;
 - b. the defendant’s participation in the murder of Gregory Sharpe;
 - c. the defendant’s role as “Enforcer” for the Gangster Disciples, pursuant to which he committed numerous acts of violence.

Like the Category One and Category Two statutory aggravating factors, the government bears the burden of proving beyond a reasonable doubt the existence of any of these non-statutory aggravating factors.

If you unanimously find that one or both of these non-statutory aggravating factors exists, you should check the appropriate line on Part III of the Special Findings form and all jurors should sign that form. If you do not unanimously find that one or both of these non-statutory aggravating factors

exists, you should check the appropriate line on Part III of the Special Findings form and all jurors should sign that form.

Regardless of your findings as to any non-statutory aggravating factors, you should continue your deliberations and proceed to Part IV of the form.

Regardless of the findings you have made as to these non-statutory aggravating factor, proceed to Part IV -- Mitigating Factors.

Future Dangerousness

The government has alleged that Quan John Ray would commit serious acts of violence in the future which would be a continuing and serious threat to society. The government relies upon the following past criminal conduct:

- a. the murder of Harold Williams.
- b. the defendant's participation in the murder of Gregory Sharpe.
- c. the defendant's role as "Enforcer" for the Gangster Disciples, pursuant to which he committed numerous acts of violence.

The government bears the burden of proving these allegations beyond a reasonable doubt. If you do not unanimously find that the government has proved any one of these allegations beyond a reasonable doubt, then you should write "No" on the appropriate line in Part III of the Special Findings Form.

If you unanimously find that any one of the allegations has been proven beyond a reasonable doubt you should then go on to consider whether the government has proven future dangerousness beyond a reasonable doubt. In making this determination you should consider:

- a. the fact that Mr. Ray will be incarcerated for the rest of his life, should you so choose.
- b. evidence regarding the correlation of prior conduct has on future conduct.
- c. evidence of Mr. Ray's conduct since he has been incarcerated.
- d. the possible locations of Mr. Ray's future incarceration.
- e. the relative security of Federal facilities in which Mr. Ray will be incarcerated.
- f. the evaluation of the risk of Mr. Ray's future dangerousness by expert testimony.

Mitigating Factors

Part IV of the Special Findings Form asks you to find whether the defendant has proved any mitigating factors by a preponderance of the evidence. Mitigating factors are not limited by statute. The law permits you to consider any mitigating factor presented by the defendant. A mitigating factor includes anything in the defendant's background, record, or character, or any circumstances of the offense, or any other fact or circumstance which might indicate, or tend to indicate, that the defendant should not be sentenced to death. The defendant must prove the existence of mitigating factors by a preponderance of the evidence or information.

A "preponderance of the evidence" or information means an amount of evidence or information sufficient to persuade you that a contention is more likely true than not true or that a factor is more likely present than not present.

Not only is the burden of persuasion different for aggravating and mitigating factors, the unanimity requirement that exists for aggravating factors does not exist with respect to mitigating factors. Any one or more jurors who find the existence of a mitigating factor shall weigh that factor even though other jurors may not agree that the particular mitigating factor has been established.

Mitigating Factors to Consider

The mitigating factors relied upon by the defense in this case are:

- (1) QUAN JOHN RAY was under unusual and substantial duress at the time he committed the killing of Charles Banks.
- (2) Should the jury so direct, QUAN JOHN RAY will be sentenced to life in prison without any possibility of release if he is not executed.
- (3) In prison QUAN JOHN RAY is likely to be a well-behaved, productive and cooperative inmate who will pose no further danger to society.
- (4) Other persons, equally culpable in the crime will not be punished to death.
- (5) QUAN JOHN RAY's mother, grandmother, and girlfriend will be harmed by the emotional trauma of his execution.
- (6) That other factors in QUAN JOHN RAY's background or character weigh against imposition of the death sentence.

The last factor, which derives from the statute, permits you to consider anything else about the commission of the crime or about QUAN JOHN RAY's background or character that would mitigate against imposition of the death penalty. Thus, if there are any such mitigating factors, whether or not specifically argued by defense counsel, but which are established by a preponderance of the evidence, you are free to consider them in your deliberations.

In short, your discretion in considering mitigating factors is much broader than your discretion in considering aggravating factors. This was a choice expressly made by Congress in enacting the capital punishment statute here at issue.

Part IV on your Special Findings Form relates to mitigating factors.

Defendant Acted Under Duress

One mitigating factor on which QUAN JOHN RAY relies is that the defendant was under unusual and substantial duress at the time he committed the charged crime. "Duress" means compulsion or a threat of harm to the defendant. You may consider this factor even though the duress was not of such degree as to constitute a defense to the charge.

Relative Culpability

One mitigating factor on which QUAN JOHN RAY relies is that "other persons, equally culpable in the crime, will not be punished by death." You may take into account as a reason not to impose the death penalty the fact, if you find it to be more likely than not so, that other participants in the killing will not be sentenced to death and executed, even though they might be equally responsible for the death of Charles Banks.

The law requires consideration of this mitigating factor to allow juries to consider what is fair, considering all of the persons responsible for an intentional killing, before imposing a sentence of death.

Part IV. Mitigating Factors

(To be proved by the defense by a preponderance of the evidence)

- (1) QUAN JOHN RAY was under unusual and substantial duress at the time he committed the killing of Charles Banks.

Number of jurors who so find _____

- (2) Should the jury so direct, QUAN JOHN RAY will be sentenced to life in prison without any possibility of release if he is not executed.

Number of jurors who so find _____

- (3) In prison QUAN JOHN RAY is likely to be a well-behaved, productive and cooperative inmate who will pose no further danger to society.

Number of jurors who so find _____

- (4) Other persons equally culpable will not be punished by death.

Number of jurors who so find _____

- (5) QUAN JOHN RAY's mother, grandmother, and girlfriend will be harmed by the emotional trauma of his execution.

Number of jurors who so find _____

- (6) That other factors in QUAN JOHN RAY's background or character weigh against imposition of the death sentence.

You should engage in the weighing process described in the instructions and complete the appropriate Decision Form.

Defendant's Right Not to Testify

QUAN JOHN RAY did not testify. You may not attach any significance to this fact or even discuss it in the course of your deliberations. Under our Constitution, a defendant has no obligation to testify or to present any other evidence. It is the prosecution's burden both to prove guilt beyond a reasonable doubt and, at this stage of the proceeding, to prove beyond a reasonable doubt that justice mandates a sentence of death rather than life in prison without any possibility of release. As I have told you, a defendant is not required to prove that he should be allowed to live. Thus, no adverse inference may be drawn against a defendant who does not take the stand.

Weighing Aggravation and Mitigation

After you have completed your findings as to whether or not any aggravating or mitigating factors exist, you will then engage in a weighing process. In determining whether a sentence of death is appropriate, all of you must weigh any aggravating factors that you unanimously find to exist (statutory and non-statutory) and each of you must weigh any mitigating factor(s) any one or more of you find to exist.

If you unanimously conclude that the aggravating factors found to exist sufficiently outweigh any proven mitigating factor or factors found to exist, or in the absence of any mitigating factors, that the aggravating factors are themselves sufficient to justify a sentence of death, you may impose a sentence of death.

The process of weighing aggravating and mitigating factors against each other or weighing aggravating factors alone, if there are no mitigating factors, in order to determine the proper punishment is not a mechanical process. In other words, you should not simply count the number of aggravating and mitigating factors and reach a decision based on which number is greater; you should consider the weight and value of each factor.

The law contemplates that different factors may be given different weights or values by different jurors. You may find that one mitigating factor outweighs all aggravating factors combined. If so, you should recommend that a sentence of death not be imposed. Similarly, you may find that a particular aggravating factor outweighs all mitigating factors combined. If so, you may impose a sentence of death. Only you, the jury, are to decide what weight or value is to be given to a particular factor in your decision-making process.

Regardless of your findings with respect to aggravating and mitigating factors, you are never required to impose a death sentence.

Your decision must be a reasoned one free from the influence of passion, prejudice or any other arbitrary factor.

After engaging in the process described above, the jury must record its judgment as to the appropriate sentence. The place for recording the sentence is the appropriate Decision Forms.

Consequences of Deliberations

At the end of your deliberations, if you unanimously decide that a sentence of death shall be imposed, then the court is required to sentence the defendant to death. If you do not unanimously decide that a sentence of death shall be imposed, then the Court shall impose a sentence of life without the possibility of parole.

Justice Without Discrimination

In your consideration of whether the death sentence is justified, you must not consider the race, color, religious beliefs, national origin, or sex of either the defendant or the victim. You are not to impose a sentence of death unless you have concluded that you would impose a sentence of death for the crimes in question no matter what the race, color, religious beliefs, national origin, or sex of either the defendant or the victim would have been.

To emphasize the importance of this consideration, Part V of the Special Findings Form contains a Certificate that must be signed by each juror. When you have reached a decision, each of you is to sign the certificate -- but only if this is so -- attesting that considerations of race, color, religious beliefs, national origin, or sex of the defendant or the victim was not involved in reaching your individual decision, and attesting that you would have made the same recommendation regarding a sentence for the crimes in question no matter what the race, color, religious beliefs, national origin or sex of the defendant or the victim would have been.

Concluding Instruction

The first thing you should do is select a foreperson, who may be the same one that served you during the guilt phase, or someone else. He or she will preside over your deliberations and will speak for you here in court.

If you should desire to communicate with me at any time during your deliberations, please write down your message or question and pass the note to the marshal who will bring it to my attention.

I shall respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally.

I caution you, however, with any message or question you might send, that you should not tell me your numerical division at that time.

It is proper again to add a final caution. Nothing that I have said in these instructions -- and nothing that I have said or done during the trial -- has been said or done to suggest to you what I think your decision should be. What the decision should be is your exclusive duty and responsibility.

Members of the jury, the evidence and arguments in this phase of the case have been completed, and I will now instruct you as to the law applicable to this phase of the case. It is your duty to follow all of the instructions.

You must not question any rule of law stated by me in these instructions. Regardless of any opinion you may have as to what the law ought to be, you must base your verdict upon the law given by me.

It is your duty to determine the facts from the evidence in this case. You are to apply the law given to you in these instructions to the facts and in this way decide the case.

You are the sole judges of the credibility of the witnesses, and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account the witness' intelligence, ability and opportunity to observe, age, memory, and manner while testifying, and any interest, bias or prejudice the witness may have, and the reasonableness of the witness' testimony considered in the light of all the evidence in the case.

Neither by these instructions, nor by any ruling or remark which I have made, do I mean to indicate any opinion as to the facts or as to what your verdict should be. You are the sole and exclusive judges of the facts.

Opening statements of counsel are for the purpose of acquainting you in advance with the facts counsel expect the evidence to show. Closing arguments of counsel are for the purpose of discussing the evidence.

Opening statements, closing arguments and other statements of counsel should be disregarded to the extent they are not supported by the evidence.

During the course of trial it often becomes the duty of counsel to make objections and for me to rule on them in accordance with the law. The fact that counsel made objections should not influence you in any way.

The evidence consists of the sworn testimony of the witnesses, the exhibits received in evidence, and stipulated or admitted facts.

A stipulation is an agreement between the parties. There are two types of stipulations. One is a factual stipulation which is an agreed statement of facts between the parties, and you should regard agreed statements as true. The other is a testimonial stipulation which is an agreement that if a witness were called to the stand, the witness would testify to certain matters.

You are to consider only the evidence received in this case. You should consider this evidence in the light of your own observations and experiences in life. You may draw such reasonable inferences as you believe to be justified from proved facts.

You are to disregard any evidence to which I sustain an objection or which I order stricken. Anything you may have seen or heard about this case outside the courtroom is not evidence and must be entirely disregarded. You should not be influenced by sympathy, prejudice, fear or public opinion.

You should decide this case solely on the evidence presented here in the courtroom. You must completely disregard any press, television or radio reports which you may have read, seen or heard. Such reports are not evidence; therefore, you must not be influenced in any manner whatever by such publicity.

There are two types of evidence: direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Evidence has been received concerning statements said to have been made to law enforcement authorities by defendant Quan John Ray. It is for you to determine whether the defendant did in fact make a statement. If you find that the defendant did make a statement, then you must determine what weight, if any, you feel that statement deserves. In determining what weight, if any, should be given that statement, you should consider all matters in evidence having to do with that statement, including those concerning the defendant's personal characteristics and the conditions under which that statement was made.

Roger Stewart, Travis Stephen and Charles Smith have received benefits from the government.

You may give these witnesses' testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

Evidence that on some former occasion a witness made a statement inconsistent with that witness' testimony in this case may be considered by you only in determining the credibility of the witness and not to establish the truth of the matters contained in that prior statement.

Evidence that a witness has been convicted of a crime is to be considered by you only insofar as it may affect the witness' credibility.

The weight to be given to any particular evidence is not necessarily determined by the number of witnesses testifying. You are to consider all the evidence in the case in determining the credibility of witnesses.

You have heard testimony of expert witnesses. This testimony is admissible where the subject matter involved requires knowledge, special study, training, or skill not within ordinary experience, and the witness is qualified to give an expert opinion.

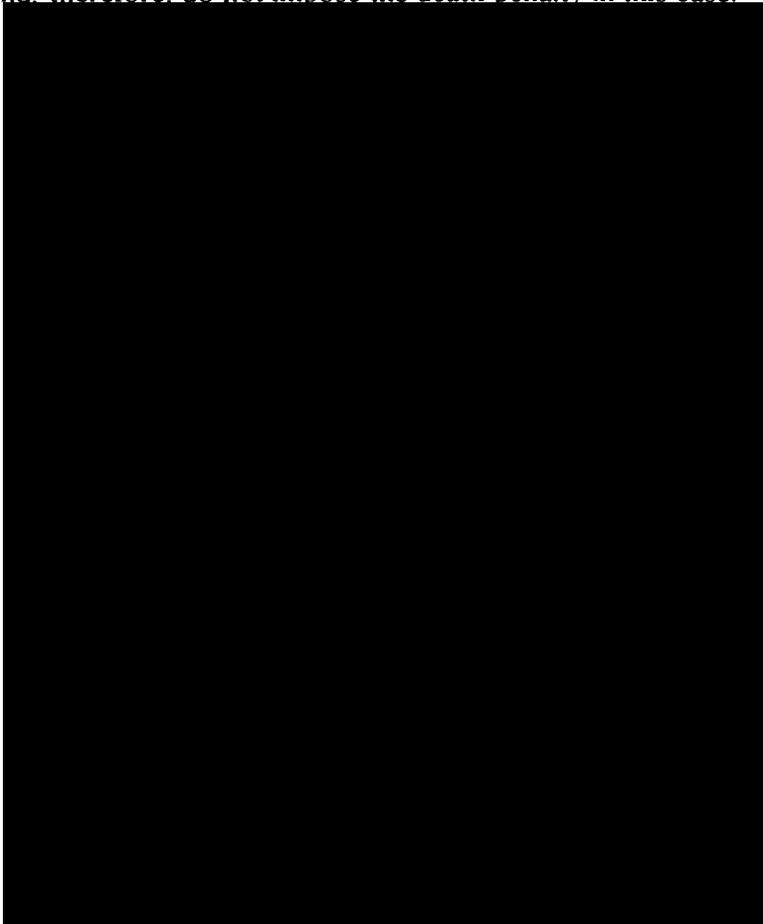
However, the fact that an expert has given an opinion does not mean that it is binding upon you or that you are obligated to accept the expert's opinion as to the facts. You should assess the weight to be given to the expert opinion in the light of all the evidence in this case.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
SEP 26 1997
United States District Court
Judge Suzanne B. Conlon

UNITED STATES OF AMERICA,)
)
) No. 96 CR 379-2
vs.) Hon. Suzanne B. Conlon
)
QUAN JOHN RAY) DECISION FORM A

We, the jury, as to QUAN JOHN RAY, DO NOT unanimously find proved beyond a reasonable doubt the existence of a statutory aggravating circumstance as to the killing of Charles "Jello" Banks, and therefore, do not impose the death penalty in this case.



MARKETED
OCT - 6 1997

FOREPERSON

DATE: 9-26-97

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
SEP 20 1997
Judge Suzanne B. Conlon
United States District Court

UNITED STATES OF AMERICA,)

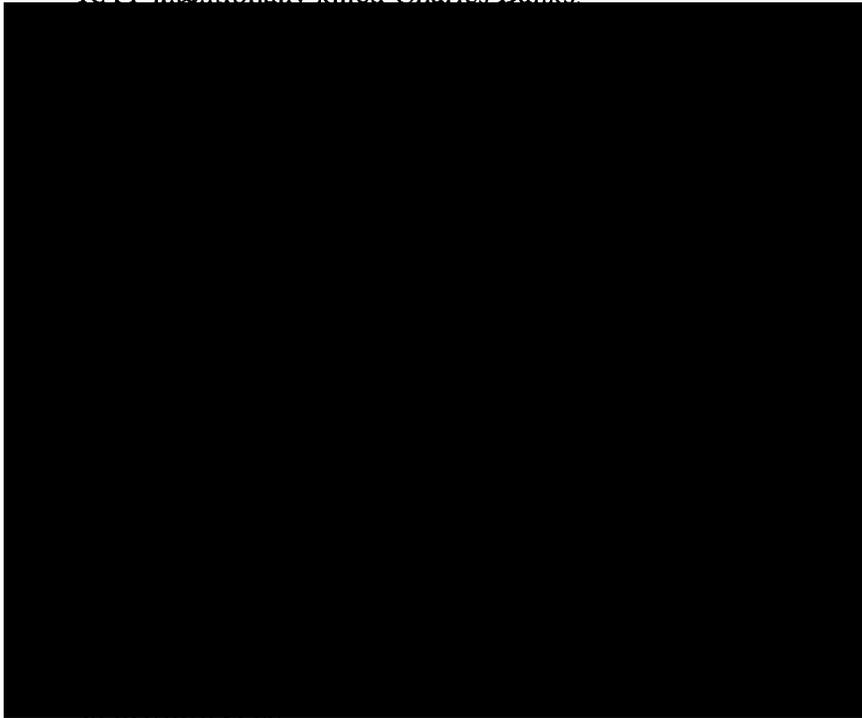
vs.)

QUAN JOHN RAY)

) No. 96 CR 379-2
) Hon. Suzanne B. Conlon
) SPECIAL FINDINGS
)

Part I. Category One Statutory Aggravating Factor

We the jury unanimously find beyond a reasonable doubt that the defendant QUAN JOHN RAY intentionally killed Charles Banks.



DOCKETED
OCT - 8 1997

FOREPERSON

If you do not unanimously so find, have the foreperson sign Decision Form A, all jurors sign the Certificate, report the decision to the Court and deliberate no more. If you do unanimously so find, proceed to Part II.

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Part II. Category Two Statutory Aggravating Factors

(To be proved by the government beyond a reasonable doubt)

(1) QUAN JOHN RAY intentionally killed Charles Banks as consideration for the receipt, or in the expectation of the receipt on anything of pecuniary value.

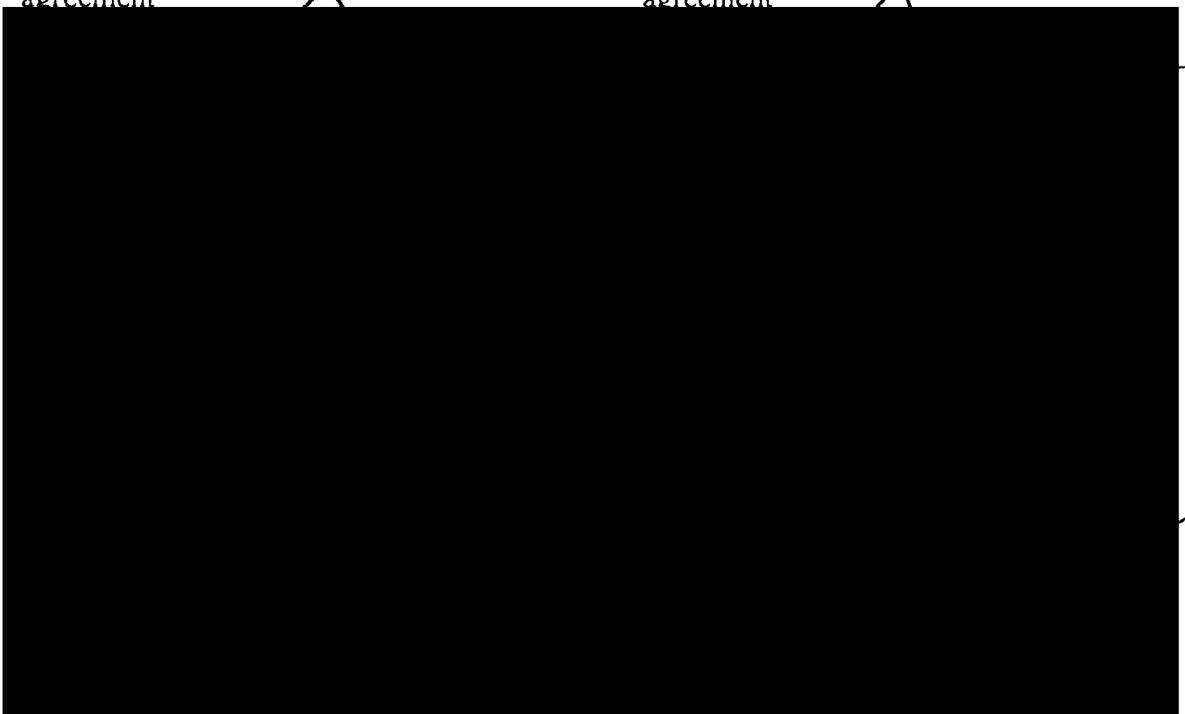
(2) QUAN JOHN RAY intentionally killed Charles Banks after substantial planning and premeditation.

Proved to the jury's unanimous satisfaction _____

Proved to the jury's unanimous satisfaction _____

Unable to reach unanimous agreement

Unable to reach unanimous agreement



FOREPERSON

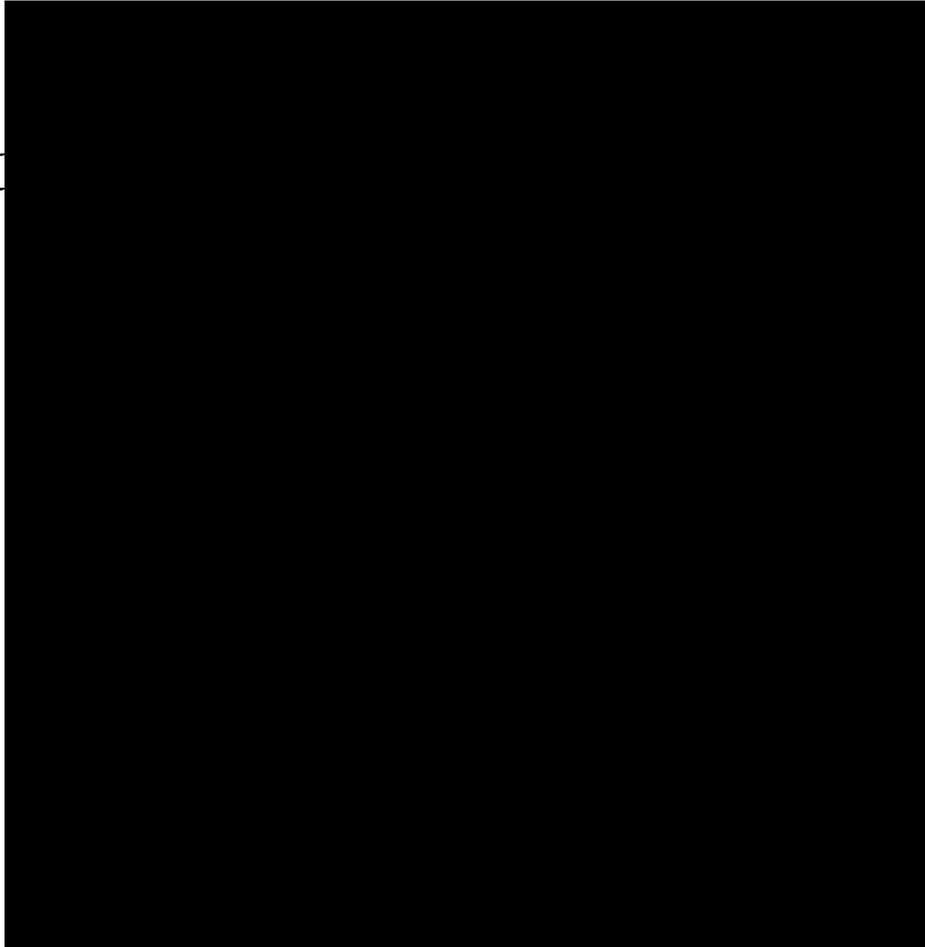
FOREPERSON

FILED
SEP 26 1997
Judge Suzanne B. Conlon
United States District Court

You may only continue with your deliberations if you have found one of the aggravating circumstances listed in Part II, proved to the jury's unanimous satisfaction and beyond a reasonable doubt with respect to the intentional murder of Charles Banks. If you do not find either aggravating factor to have been proven beyond a reasonable doubt then the foreperson should sign Decision Form A, all jurors sign the Certificate and report the decision to the Court and deliberate no more. If you do unanimously so find, proceed to Part III.

Part V. Certificate

By signing below, each of us individually hereby certifies that consideration of the race, color, religious beliefs, national origin, or sex of QUAN JOHN RAY, and of the victim, Charles Banks, were not involved in reaching our respective individual decisions. Each of us individually further certifies that the same decision regarding a sentence would have been made no matter what the race, color, religious beliefs, national origin, or sex of the defendant or victim may have been.



FILED
SEP 29 1997
Canton
Court

FOREPERSON

DATE: 9-26-97