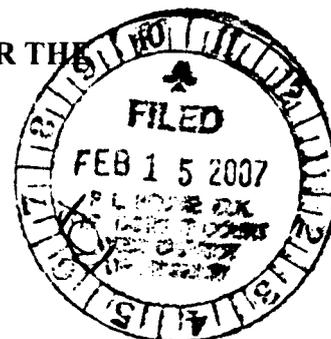


IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION



UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THOMAS D. SMITH,)
aka "Mad Dog," aka "MD,")
)
Defendant.)

No. 02-05025-01-CR-SW-GAF

SPECIAL VERDICT FORM A
MURDER OF PARIS HARBIN BY DEFENDANT THOMAS D. SMITH

I. AGE OF DEFENDANT

Instructions: Answer "YES" or "NO."

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that:

Thomas D. Smith was eighteen years of age or older at the time of the offense?

YES X

NO _____

 S/

Foreperson

Instructions: If you answered "NO" with respect to the determination in this section, then stop your deliberations, cross out Sections II, III, IV, V, and VI of this form, and proceed to Section VII. Each juror should then carefully read the statement in Section VII, 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 answered "YES" with respect to the determination in this Section I, then continue your deliberations in accordance with the court's instructions and proceed to Section II which follows.

II. REQUISITE MENTAL STATE

Instructions: For each of the following, answer "YES" or "NO."

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that:

1. Thomas D. Smith intentionally participated in an act, contemplating that the life of a person would be taken, and the victim, Paris Harbin died as a direct result of the act?

YES X

NO _____

 S/
Foreperson

2. Thomas D. Smith 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 Paris Harbin died as a direct result of the act?

YES X

NO _____

 S/
Foreperson

Instructions: If you answered "NO" with respect to all of the determinations in this section, then stop your deliberations, cross out Sections III, IV, V, and VI of this form, and proceed to Section VII. Each juror should then carefully read the statement in Section VII, 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 answered "YES" with respect to one or more of the determinations in this Section II, then continue your deliberations in accordance with the court's instructions and proceed to Section III which follows.

III. STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO."

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Thomas D. Smith, the defendant, killed more than one person, Paris Harbin and Chandy Bresee-Plumb, in a single criminal episode, as set out in Instruction No. 7?

YES X

NO _____

 S/
Foreperson

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Thomas D. Smith, the defendant, knowingly used a firearm during and in relation to a drug trafficking crime, conspiracy to distribute cocaine base, and in so doing, the defendant committed murder, that is the unlawful killing of Paris Harbin, after substantial planning and premeditation to cause the death of Paris Harbin, as set out in Instruction No. 7?

YES X

NO _____

 S/
Foreperson

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Thomas D. Smith, the defendant, has previously been convicted of two or more

State offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance, to-wit:

(1) On or about September 6, 1990, in Oklahoma State District Court of Tulsa County, of felony possession of marijuana with intent to distribute, in Case Number CRF89-5452;

(2) On or about May 10, 1994, in the Oklahoma State District Court of Tulsa County, of felony unlawful delivery of a controlled substance, cocaine base, in Case Number CF-TU-93-002303;

as set out in Instruction No. 7?

YES X

NO

S/
Foreperson

Instructions: If you answered “NO” with respect to all of the Statutory Aggravating Factors in this Section III, then stop your deliberations, cross out Sections IV, V, and VI of this form, and proceed to Section VII of this form. Each juror should carefully read the statement in Section VII, 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 found the requisite age in Section I, the requisite mental state in Section II, and answered “Yes” with respect to one or more of the aggravating factors in this Section III, proceed to Section IV which follows.

IV. NON-STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer “YES” or “NO.”

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Thomas D. Smith poses a threat of future dangerousness, based upon the probability that he would commit criminal acts of violence that would constitute a continuing threat to society, as evidenced by one or more of the following:

- a. He has displayed a complete lack of remorse for the killing of Paris Harbin;
- b. He made statements to Deputy United States Marshal Lonnie Nance on May 20, 2004, in which the defendant stated, “[t]he Marshals Service has fucked me while I have been locked up and if I get a chance, I’m going to fuck up one of you;”
- c. the defendant’s participation in the burglary and armed assault upon Christal Kress, on or about March 26, 1999;
- d. the defendant’s long term involvement with criminal street gangs in the Tulsa, Oklahoma and the Joplin, Missouri, areas;
- e. the defendant’s assault, while in custody, of James Orr on July 3, 2005; and
- f. the defendant’s assault, while in custody, of Brent Barber on August 24, 2005;

as set out in Instruction No. 8?

YES X

NO

 S/
Foreperson

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the murder caused injury, loss, and harm to the surviving family of Paris

Harbin, as demonstrated by the victim's personal characteristics as an individual human being and the impact of the death upon Paris Harbin's family as set out in Instruction No. 8?

YES X

NO _____

 S/
Foreperson

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the victim was killed by Thomas D. Smith in order to protect, enforce and advance Thomas D. Smith's continued narcotics distribution activities, as set out in Instruction No. 8?

YES X

NO _____

 S/
Foreperson

4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Thomas D. Smith obstructed justice during the investigation in this case by killing Chandy Bresee-Plumb to hinder, delay, or prevent the communication to law enforcement of information relating to the murder of Paris Harbin as set out in Instruction No. 8?

YES X

NO _____

 S/
Foreperson

Instructions: Regardless of whether you answered "YES" or "NO" with respect to either of the Non-Statutory Aggravating Factors in this Section IV, proceed to Section V, which follows:

V. MITIGATING FACTORS

Instructions: 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.

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. Further, any juror may also weight a mitigating factor found by another juror, even if he or she did not also find that factor to be mitigating.

Do you, the jury, find that the defendant has established by a preponderance of the evidence any of the following:

1. Paris Harbin engaged in criminal conduct that may have contributed to the circumstances leading to his death in that he was involved in narcotics possession and/or distribution.

Number of jurors who so find 12.

2. Life in prison without the possibility of parole is a severe punishment and serves society's goals to punish Thomas D. Smith, IV.

Number of jurors who so find 8.

3. In a case in which other(s) participated equally in the commission of the murders, Mr. Smith should not be punished by death when equally culpable co-defendants are not charged with the murders.

Number of jurors who so find 0.

4. Thomas D. Smith, IV's overall behavior in pretrial detention over a four year period at the Greene County Detention Center, the St. Clair County Detention Center, and the Correctional Center of America has demonstrated his ability to adapt to prison life if sentenced to life without the possibility of release.

Number of jurors who so find 5.

5. Mr. Smith has peaceably served his time in prison when sentenced to a term of years in the Oklahoma Department of Corrections.

Number of jurors who so find 12.

6. In his childhood, Mr. Smith was exposed to numerous risk factors including parent criminality, parent substance abuse, domestic violence, physical abuse by a parent, and poor supervision..

Number of jurors who so find 12.

7. In his childhood, Mr. Smith was exposed to risks within his peer group, including his cousins, as well as friends at school and in the neighborhood, who were participating in delinquent behavior.

Number of jurors who so find 12.

8. In his childhood, Mr. Smith was exposed to risk factors in his community, including but not limited to poverty, presence of crime, drug trafficking, gangs, and poor housing.

Number of jurors who so find 12.

9. In his childhood, Thomas D. Smith, IV accepted responsibility for his mother's drug charge which cast him into the adult system at the age of 16 years old.

Number of jurors who so find 12.

10. Thomas D. Smith, IV's father was addicted to crack cocaine and exposed his son at a tender age to drug abuse, possession, and distribution.

Number of jurors who so find 12.

11. Thomas D. Smith, IV's father was both verbally and physically abusive.

Number of jurors who so find 12.

12. Thomas D. Smith, IV has performed kind acts for friends and family.

Number of jurors who so find 9.

13. A sentence of death with cause Thomas D. Smith, IV's family injury, loss, and harm.

Number of jurors who so find 12.

14. Thomas D. Smith, IV has a loving, caring relationship with his mother, Lorelei Ramsey, and his sister, Shalisa Smith, and those two relationships would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 12.

15. Thomas D. Smith, IV has a loving and caring relationship with his Uncle Larry Smith and this relationship would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 11.

16. Thomas D. Smith, IV has a loving and caring relationship with his Aunt Cheryl Surrat and her immediate family and those relationships would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 7.

17. Thomas D. Smith, IV has a loving and caring relationship with his Aunt Vicki Smith and her children and those relationships would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 3.

18. Thomas D. Smith, IV has a loving and caring relationship with Mandy Duncan and her children and those relationships would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 9.

19. Thomas D. Smith, IV has a loving, caring relationship with Melinda Fullbright, and that relationship would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 12.

20. If Mr. Smith is sentenced to life in prison without the possibility of release, he and Sam Fullbright would continue to carry on a loving, nurturing father-son relationship.

Number of jurors who so find 12.

21. Sam Fullbright loves his father, Thomas D. Smith, IV very much.

Number of jurors who so find 12.

22. The execution of Thomas D. Smith, IV will cause his innocent son, Sam Fullbright, psychological and emotional harm.

Number of jurors who so find 12.

23. If Mr. Smith is sentenced to life in prison without the possibility of release, he and Jade House would continue to carry on a loving, nurturing father-daughter relationship.

Number of jurors who so find 3.

24. The execution of Thomas D. Smith, IV will cause his innocent daughter, Jade House, psychological and emotional harm.

Number of jurors who so find 1.

25. If Mr. Smith is sentenced to life in prison without the possibility of release, he and Thomas D. Smith, II ("Diggy") would continue to carry on a loving, nurturing father-son relationship.

Number of jurors who so find 1.

26. The execution of Thomas D. Smith, IV will cause his innocent son, Thomas D. Smith, II ("Diggy"), psychological and emotional harm.

Number of jurors who so find 2.

27. There is a desire on the part of one or more members of the jury to show mercy, based on circumstances of the offense or the character and background of Mr. Smith.

Number of jurors who so find 8.

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." If more space is needed, write "CONTINUED" and use the reverse side of this page.

None

X X

Number of jurors who so find X.

X

X

Number of jurors who so find X .

Instructions: Proceed to Section VI and Section VII which follow.

VI. DETERMINATION

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 for a sentence of death, and whether death is therefore the appropriate sentence in this case:

A. Death Sentence

We determine, by unanimous vote, that a sentence of death shall be imposed.

YES _____

NO X

If you answer "YES," the foreperson must sign here, and you must then proceed to Section VII. If you answer "NO" the foreperson must sign, and you must then proceed to Section VI(B).

S/
Foreperson

Date: February 14, 2007

B. Sentence of Life in Prison Without Possibility of Release

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

YES _____

NO X

If you answer "YES," the foreperson must sign here, and then you must proceed to Section VII. If you answer "NO," the foreperson must sign, and you must then proceed to Section VII.

S/
Foreperson

Date: February 14, 2007

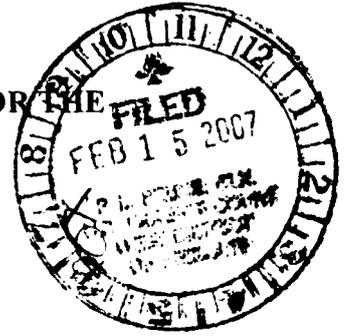
VII. CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex 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 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.

S/ all jurors

.
-
-
-

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION



UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THOMAS D. SMITH,)
aka "Mad Dog," aka "MD,")
)
Defendant.)

No. 02-05025-01-CR-SW-GAF

SPECIAL VERDICT FORM B
MURDER OF CHANDY BRESEE-PLUMB BY DEFENDANT THOMAS D. SMITH

I. AGE OF DEFENDANT

Instructions: Answer "YES" or "NO."

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that:

Thomas D. Smith was eighteen years of age or older at the time of the offense?

YES X

NO _____

 S

Foreperson

Instructions: If you answered "NO" with respect to the determination in this section, then stop your deliberations, cross out Sections II, III, IV, V, and VI of this form, and proceed to Section VII. Each juror should then carefully read the statement in Section VII, 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 answered "YES" with respect to the determination in this Section I, then continue your deliberations in accordance with the court's instructions and proceed to Section II which follows.

II. REQUISITE MENTAL STATE

Instructions: For each of the following, answer "YES" or "NO."

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that:

1. Thomas D. Smith intentionally participated in an act, contemplating that the life of a person would be taken, and the victim, Chandy Bresee-Plumb died as a direct result of the act?

YES X

NO _____

 S/
Foreperson

2. Thomas D. Smith 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 Chandy Bresee-Plumb died as a direct result of the act?

YES X

NO _____

 S/
Foreperson

Instructions: If you answered "NO" with respect to all of the determinations in this section, then stop your deliberations, cross out Sections III, IV, V, and VI of this form, and proceed to Section VII. Each juror should then carefully read the statement in Section VII, 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 answered "YES" with respect to one or more of the determination in this Section II, then continue your deliberations in accordance with the court's instructions and proceed to Section III which follows.

III. STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO."

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Thomas D. Smith, the defendant, killed more than one person, Paris Harbin and Chandy Bresee-Plumb, in a single criminal episode, as set out in Instruction No. 14?

YES X

NO _____

 S/
Foreperson

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Thomas D. Smith, the defendant, knowingly used a firearm during and in relation to a drug trafficking crime, conspiracy to distribute cocaine base, and in so doing, the defendant committed murder, that is the unlawful killing of Chandy Bresee-Plumb, after substantial planning and premeditation to cause the death of Chandy Bresee-Plumb, as set out in Instruction No. 14?

YES X

NO _____

 S/
Foreperson

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Thomas D. Smith, the defendant, has previously been convicted of two or more State offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance, to-wit:

(1) On or about September 6, 1990, in Oklahoma State District Court of Tulsa County, of felony possession of marijuana with intent to distribute, in Case Number CRF89-5452;

(2) On or about May 10, 1994, in the Oklahoma State District Court of Tulsa County, of felony unlawful delivery of a controlled substance, cocaine base, in Case Number CF-TU-93-002303;

as set out in Instruction No. 14?

YES X

NO

 S/
Foreperson

Instructions: If you answered “NO” with respect to all of the Statutory Aggravating Factors in this Section III, then stop your deliberations, cross out Sections IV, V, and VI of this form, and proceed to Section VII of this form. Each juror should carefully read the statement in Section VII, 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 found the requisite age in Section I, the requisite mental state in Section II, and answered “Yes” with respect to one or more of the aggravating factors in this Section III, proceed to Section IV which follows.

IV. NON-STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO."

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Thomas D. Smith poses a threat of future dangerousness, based upon the probability that he would commit criminal acts of violence that would constitute a continuing threat to society, as evidenced by one or more of the following:

- a. He has displayed a complete lack of remorse for the killing of Chandy Bresee-Plumb;
- b. He made statements to Deputy United States Marshal Lonnie Nance on May 20, 2004, in which the defendant stated, "[t]he Marshals Service has fucked me while I have been locked up and if I get a chance, I'm going to fuck up one of you;"
- c. the defendant's participation in the burglary and armed assault upon Christal Kress, on or about March 26, 1999;
- d. the defendant's long term involvement with criminal street gangs in the Tulsa, Oklahoma and the Joplin, Missouri, areas;
- e. the defendant's assault, while in custody, of James Orr on July 3, 2005; and
- f. the defendant's assault, while in custody, of Brent Barber on August 24, 2005;

as set out in Instruction No. 15?

YES X

NO

 S/
Foreperson

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the murder caused injury, loss, and harm to the surviving family of Chandy Bresee-Plumb, as demonstrated by the victim's personal characteristics as an individual human being and the impact of the death upon Chandy Bresee-Plumb's family as set out in Instruction No. 15?

YES X

NO _____

 S/
Foreperson

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the victim was killed by Thomas D. Smith in order to protect, enforce and advance Thomas D. Smith's continued narcotics distribution activities, as set out in Instruction No. 15?

YES X

NO _____

 S/
Foreperson

4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Thomas D. Smith obstructed justice during the investigation in this case by killing Chandy Bresee-Plumb to hinder, delay, or prevent the communication to law enforcement of information relating to the murder of Paris Harbin as set out in Instruction No. 15?

YES X

NO _____

 S/
Foreperson

Instructions: Regardless of whether you answered "YES" or "NO" with respect to the Non-Statutory Aggravating Factors in this Section IV, proceed to Section V, which follows:

V. MITIGATING FACTORS

Instructions: 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.

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. Further, any juror may also weight a mitigating factor found by another juror, even if he or she did not also find that factor to be mitigating.

Do you, the jury, find that the defendant has established by a preponderance of the evidence any of the following:

1. Paris Harbin engaged in criminal conduct that may have contributed to the circumstances leading to his death in that he was involved in narcotics possession and/or distribution.

Number of jurors who so find 12.

2. Life in prison without the possibility of parole is a severe punishment and serves society's goals to punish Thomas D. Smith, IV.

Number of jurors who so find 8.

3. In a case in which other(s) participated equally in the commission of the murders, Mr. Smith should not be punished by death when equally culpable co-defendants are not charged with the murders.

Number of jurors who so find 0.

4. Thomas D. Smith, IV's overall behavior in pretrial detention over a four year period at the Greene County Detention Center, the St. Clair County Detention Center, and the Correctional Center of America has demonstrated his ability to adapt to prison life if sentenced to life without the possibility of release.

Number of jurors who so find 5.

5. Mr. Smith has peaceably served his time in prison when sentenced to a term of years in the Oklahoma Department of Corrections.

Number of jurors who so find 12.

6. In his childhood, Mr. Smith was exposed to numerous risk factors including parent criminality, parent substance abuse, domestic violence, physical abuse by a parent, and poor supervision..

Number of jurors who so find 12.

7. In his childhood, Mr. Smith was exposed to risks within his peer group, including his cousins, as well as friends at school and in the neighborhood, who were participating in delinquent behavior.

Number of jurors who so find 12.

8. In his childhood, Mr. Smith was exposed to risk factors in his community, including but not limited to poverty, presence of crime, drug trafficking, gangs, and poor housing.

Number of jurors who so find 12.

9. In his childhood, Thomas D. Smith, IV accepted responsibility for his mother's drug charge which cast him into the adult system at the age of 16 years old.

Number of jurors who so find 12.

10. Thomas D. Smith, IV's father was addicted to crack cocaine and exposed his son at a tender age to drug abuse, possession, and distribution.

Number of jurors who so find 12.

11. Thomas D. Smith, IV's father was both verbally and physically abusive.

Number of jurors who so find 12.

12. Thomas D. Smith, IV has performed kind acts for friends and family.

Number of jurors who so find 9.

13. A sentence of death with cause Thomas D. Smith, IV's family injury, loss, and harm.

Number of jurors who so find 12.

14. Thomas D. Smith, IV has a loving, caring relationship with his mother, Lorelei Ramsey, and his sister, Shalisa Smith, and those two relationships would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 12.

15. Thomas D. Smith, IV has a loving and caring relationship with his Uncle Larry Smith and this relationship would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 1.

16. Thomas D. Smith, IV has a loving and caring relationship with his Aunt Cheryl Surrat and her immediate family and those relationships would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 7.

17. Thomas D. Smith, IV has a loving and caring relationship with his Aunt Vicki Smith and her children and those relationships would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 3.

18. Thomas D. Smith, IV has a loving and caring relationship with Mandy Duncan and her children and those relationships would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 9.

19. Thomas D. Smith, IV has a loving, caring relationship with Melinda Fullbright, and that relationship would continue if he was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 12.

20. If Mr. Smith is sentenced to life in prison without the possibility of release, he and Sam Fullbright would continue to carry on a loving, nurturing father-son relationship.

Number of jurors who so find 12.

21. Sam Fullbright loves his father, Thomas D. Smith, IV very much.

Number of jurors who so find 12.

22. The execution of Thomas D. Smith, IV will cause his innocent son, Sam Fullbright, psychological and emotional harm.

Number of jurors who so find 12.

23. If Mr. Smith is sentenced to life in prison without the possibility of release, he and Jade House would continue to carry on a loving, nurturing father-daughter relationship.

Number of jurors who so find 3.

24. The execution of Thomas D. Smith, IV will cause his innocent daughter, Jade House, psychological and emotional harm.

Number of jurors who so find 1.

25. If Mr. Smith is sentenced to life in prison without the possibility of release, he and Thomas D. Smith, II ("Diggy") would continue to carry on a loving, nurturing father-son relationship.

Number of jurors who so find 1.

26. The execution of Thomas D. Smith, IV will cause his innocent son, Thomas D. Smith, II ("Diggy"), psychological and emotional harm.

Number of jurors who so find 2.

27. There is a desire on the part of one or more members of the jury to show mercy, based on circumstances of the offense or the character and background of Mr. Smith.

Number of jurors who so find 8.

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." If more space is needed, write "CONTINUED" and use the reverse side of this page.

None

X X

Number of jurors who so find X.

X X

X X

Number of jurors who so find X .

Instructions: Proceed to Section VI and Section VII which follow.

VI. DETERMINATION

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 for a sentence of death, and whether death is therefore the appropriate sentence in this case:

A. Death Sentence

We determine, by unanimous vote, that a sentence of death shall be imposed.

YES _____

NO X

If you answer "YES," the foreperson must sign here, and you must then proceed to Section VII. If you answer "NO" the foreperson must sign, and you must then proceed to Section VI(B).

Foreperson

Date: February 15, 2007

B. Sentence of Life in Prison Without Possibility of Release

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

YES _____

NO X

If you answer "YES," the foreperson must sign here, and then you must proceed to Section VII. If you answer "NO," the foreperson must sign, and you must then proceed to Section VII.

S/

Foreperson

Date: February 15, 2007

VII. CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex 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 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.

S/ All Jurors