

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

PLUTARCO TELLO,

Defendant.

No. 98-00<sup>301</sup>~~149~~-04-CR-W-4

SPECIAL VERDICT FORM  
DEFENDANT PLUTARCO TELLO

COUNT II - USING OR CARRYING A FIREARM DURING AND IN RELATION TO  
A DRUG TRAFFICKING CRIME WHICH RESULTED IN THE MURDER OF  
JULIAN COLON

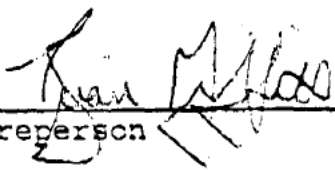
I. AGE OF DEFENDANT

Instructions: Answer "YES" or "NO." Do you, the jury,  
unanimously find that the government has established beyond a  
reasonable doubt that:

The defendant was eighteen years of age or older at the time  
of the offense.

YES

NO

  
\_\_\_\_\_  
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 the defendant intentionally aided and abetted the killing of Julian Colon.

YES       ✓      

NO                   

For

Instructions: If you answered "NO" with respect to 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 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[s] in this Section II, then proceed to Section III which follows.

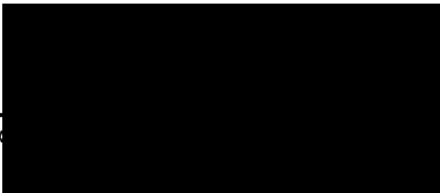
**III. STATUTORY AGGRAVATING FACTORS**

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 the defendant committed the offense in the expectation of the receipt of anything of pecuniary value, as set out in Instruction No. 7?

YES   ✓  

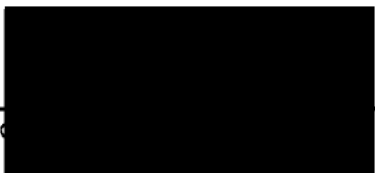
NO           

For 

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant committed the offense of murder of Julian Colon after substantial planning and premeditation to cause the death of a person as set out in Instruction No. 7?

YES   ✓  

NO           

For 

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant in

concert with others intentionally attempted to kill more than one person in a single criminal episode as set out in Instruction No. 7?

YES

NO

Fore

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 the defendant is likely to commit criminal acts of violence in the future which

would be a continuing and a serious threat to society.

YES \_\_\_\_\_

NO       ✓      

\_\_\_\_\_  
[REDACTED]

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant's vile conduct in committing the offense, apart from the other aggravating factors, was substantially greater in degree than that described in the definition of the crime?

YES       ✓      

NO \_\_\_\_\_

\_\_\_\_\_  
[REDACTED]

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Julian Colon's personal characteristics as an individual human being and the impact of the death of Julian Colon upon his family makes this crime more worthy of the death penalty than other murders?

YES \_\_\_\_\_

NO       ✓      

\_\_\_\_\_  
[REDACTED]

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:

A. **Statutory Mitigating Factors**

1. Plutarco Tello is punishable as a principal only because he aided and abetted in the offense, which was committed by another, but his participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

Number of jurors who so find 3.

2. Plutarco Tello does not have any history of other criminal conduct.

Number of jurors who so find 12.

3. Other factors in Plutarco Tello's background, record, or character, or any other circumstance of the

offense, that mitigate against imposition of the death sentence. You are permitted to consider anything else about the commission of the crime or about Plutarco Tello's background or character that would mitigate against imposition of the death penalty. If there are any such mitigating factors, whether or not specifically argued by defense counsel, which are established by a preponderance of the evidence, you are free to consider them in your deliberations.

Number of jurors who so find 7.

**B. Non-Statutory Mitigating Factors**

The non-statutory mitigating factors the defendant asserts he has proven by a preponderance of the evidence are:

1. Plutarco Tello did not participate in binding Julian Colon with duct tape.

Number of jurors who so find 12.

2. Plutarco Tello did not participate in beating Julian Colon.

Number of jurors who so find 12.

3. Plutarco Tello did not participate in threatening Julian Colon.

Number of jurors who so find 3.

4. Plutarco Tello did not shoot Julian Colon.  
Number of jurors who so find 12.
5. Plutarco Tello has supported, nurtured and loved his daughters throughout their lives.  
Number of jurors who so find 7.
6. Plutarco Tello has loved, supported and nurtured his wife, Ligia Velencio-Gamboa.  
Number of jurors who so find 1.
7. Plutarco Tello has loved, honored and kept in constant contact with his mother and father, Dionisio and Amelia Tello.  
Number of jurors who so find 4.
8. Plutarco Tello has supported, nurtured and loved his children while he has been in custody over the last seventeen months that he has been incarcerated awaiting trial.  
Number of jurors who so find 10.
9. Plutarco Tello has loved and nurtured his wife, Ligia Velencio-Gamboa, over the last seventeen months that he has been incarcerated awaiting trial.  
Number of jurors who so find 3.



10. If Plutarco Tello is sentenced to life imprisonment without possibility of release, he will continue to provide his children counseling, guidance, nurturing and love.

Number of jurors who so find 8.

11. If Plutarco Tello is sentenced to life imprisonment without possibility of release, he will continue to provide nurturing and love to his wife, Ligia Velencio-Gamboa.

Number of jurors who so find 1.

12. If Plutarco Tello is sentenced to life imprisonment without possibility of release, he will serve his time peaceably and productively.

Number of jurors who so find 8.

13. Plutarco Tello was gainfully employed as often as he was able and, at other times, contributed financially to the care of his children and his household.

Number of jurors who so find 7.

14. Plutarco Tello has helped many persons in addition to family members and close friends with his time, support, and when able, his money.

Number of jurors who so find ~~8~~ 0.

15. Plutarco Tello has been a source of advice, counsel, and support for his family and friends, which has benefitted the lives of those he has given such counsel to.

Number of jurors who so find 0.

16. If Plutarco Tello is put to death, his death will have an impact on his daughters, his wife, his parents, six brothers, his sister and his other family and friends.

Number of jurors who so find 12.

17. On November 28, 1998, Julian Colon prepared to rob and murder another person by obtaining duct tape and rubber gloves and by mixing up fake cocaine and by taking a gun with him with the willingness to participate in the killing of another person.

Number of jurors who so find 12.

18. Julian Colon knowingly placed his own life in danger because of his occupation, his lifestyle, and his specific actions taken on November 28, 1998.

Number of jurors who so find 12.

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.

TELLO'S MENTAL INCAPACITY / DEFICIENCY  
PLAYED A ROLE IN HIS DECISION MAKING  
Number of jurors who so find 4.

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

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

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

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

VI. DETERMINATION

A. Death Sentence

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,

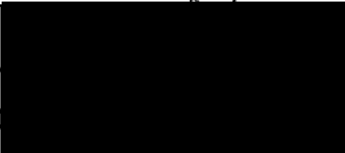
We determine, by unanimous vote, that a sentence of death shall be imposed:

YES \_\_\_\_\_  
NO \_\_\_\_\_

If you answer "YES," sign your names here, and then proceed to Section VII. If you answer "NO," the foreperson alone should sign, and you should proceed to Section VI (B):

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FO 

Date: May 10, 2000

**B. Sentence of Life in Prison Without Possibility of Release**

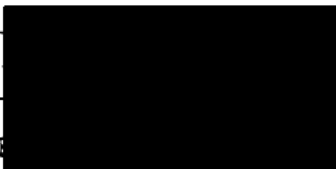
We determine, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed.

YES \_\_\_\_\_

NO ✓

If you answer "YES," sign your names here, and then proceed to Section VII.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

FOR 

Date: May 10, 2000

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 no matter what the race, color, religious beliefs, national origin, or sex of the defendant or the victim.



FOREPERSON

Date: May 10, 2000