

ORIGINAL

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

FEB 28 1996

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

TYRONE WALKER,

Defendant.

PENALTY PHASE, SPECIAL
FINDINGS PACKET FOR:
TYRONE WALKER: COUNTS 2 & 3

AT _____ O'CLOCK
GEORGE A. RAY, CLERK
BINGHAMTON

94-CR-328
Hon. T.J. McAvoy

PLEASE NOTE -- Each Juror will be provided with a Special Findings Packet for each defendant, in order to facilitate deliberations as to each factor. HOWEVER, YOUR SPECIAL FINDINGS SHOULD BE REPORTED TO THE JUDGE ON ONLY ONE PACKET THAT MUST BE SIGNED IN TWO PLACES BY ALL JURORS. The remaining Special Findings Packets should be returned to the courtroom deputy unsigned.

There should be a total of 15 pages in this Special Findings Packet (please verify this before commencing).

AS TO TYRONE WALKER'S CONVICTION ON COUNT TWO, FOR AN INTENTIONAL KILLING WHILE ENGAGED IN A CONTINUING CRIMINAL ENTERPRISE, AND COUNT THREE, INTENTIONAL KILLING WHILE ENGAGED IN A CONSPIRACY PUNISHABLE UNDER 21 U.S.C. SECTION 841(b)(1)(A), WE, THE JURY, FIND:

I. CATEGORY ONE STATUTORY AGGRAVATING FACTORS

(You may find none or one (but ONE only) of the following two factors, but only if one of the factors has been proven to your unanimous satisfaction beyond a reasonable doubt)

a. That Tyrone Walker intentionally killed Michael Monsour:

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next factor (I(b)), only if you were unable to reach unanimous agreement on factor I(a). If, however, factor I(a) was proven to the jury's unanimous satisfaction, proceed directly to Section II)

b. That Tyrone Walker intentionally engaged in conduct intending that Michael Monsour be killed and that lethal force be employed against Michael Monsour, which resulted in Michael Monsour's death:

-Proved to the jury's unanimous satisfaction: N/A

-Unable to reach a unanimous verdict:

(Proceed to the next section (Section II) only if you have unanimously found one of the Section I factors proven beyond a reasonable doubt. If you have not unanimously found one of these factors proven beyond a reasonable doubt, proceed directly to Sections V(a) and (b) on pages 11 and 13 and complete alternative V(i) in both Sections)

II CATEGORY TWO STATUTORY AGGRAVATING FACTORS

(You may find none, one, any two, or all three of the following factors, but you may only find any of these factors if the factor has been proven to your unanimous satisfaction beyond a reasonable doubt)

a. That Tyrone Walker, in committing the offenses described in Counts Two and Three of the indictment, knowingly created a grave risk of death to one or more other persons in addition to the victim Michael Monsour, namely, Anne Marie Johnson, and/or Michelle Johnson, and/or Miledy Figueroa, and/or and Anna Griffin.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next factor)

b. That Tyrone Walker committed the offenses described in Counts Two and Three of the indictment as consideration for the receipt, or in the expectation of the receipt, of something of pecuniary value, namely drugs and money.

-Proved to the jury's unanimous satisfaction:

-Unable to reach a unanimous verdict: X

(proceed to the next factor)

c. That Tyrone Walker committed the offenses described in Counts Two and Three of the indictment after substantial planning and premeditation.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(Proceed to the next section (Section III) only if you have unanimously found at least one of these Section II factors proven beyond a reasonable doubt. If you have not unanimously found at least one of these Section II factors proven beyond a reasonable doubt, AND one of the Section I factors, proceed directly to Sections V(a) and (b) on pages 11 and 13 and complete alternative V(i) in both Sections)

III. CATEGORY THREE NON-STATUTORY AGGRAVATING FACTORS

(You may find none, any number, or all of the following factors, but you may only find any of these factors if the factor has been proven to your unanimous satisfaction beyond a reasonable doubt)

a. On or about February 23, 1993, at approximately 8:50 a.m., in the course of an attempted armed robbery, Tyrone Walker directly participated in the killing of Ms. Bonnie Bear in Manhattan, New York.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next factor)

b. On or about February 23, 1993, at approximately 12:50 P.M., Tyrone Walker attempted to rob Mr. Herbert Muskin in Brooklyn, New York, and fired a gunshot at Mr. Muskin at close range, for which Tyrone Walker was convicted of attempted robbery in a court of New York State.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next factor)

c. Tyrone Walker has previously been convicted of one felony narcotics offense punishable by a term of imprisonment of more than one year, in that, on September 29, 1992, in the Supreme Court of Sullivan County, New York, Tyrone Walker was convicted of Criminal Sale of a Controlled Substance, resulting from the sale of twelve vials of crack/cocaine to an undercover police officer in Sullivan County on August 29, 1990.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next factor)

d. The impact of the murder upon Michael Monsour's family.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next factor)

III. CATEGORY THREE NON-STATUTORY AGGRAVATING FACTORS (cont.)

e. Future dangerousness based upon the probability that Tyrone Walker would commit serious criminal acts of violence that would constitute a continuing threat to society, as evidenced by one or more of the following:

1. On or about April 13, 1987, in the course of burglarizing the home of Mr. Philip Slutsky, Tyrone Walker directly participated in the killing of eighty-six year old Mr. Philip Slutsky inside Mr. Slutsky's home in Ellenville, New York.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

2. On or about September 6, 1992, while incarcerated in the Sullivan County Jail, Tyrone Walker participated in the stabbing and beating of Mr. Tony Bowman, whereby Mr. Bowman was stabbed approximately 18 times in the back.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

3. In February of 1993, Tyrone Walker, while armed with a loaded firearm, stated that he would shoot and kill any state police officer who happened to stop the vehicle in which Tyrone Walker was a passenger.

-Proved to the jury's unanimous satisfaction:

-Unable to reach a unanimous verdict: X

4. In 1994, Tyrone Walker, while incarcerated, did solicit another inmate to assist Tyrone Walker in hiring a "hit man" for the purpose of having a witness, Mr. Herbert Muskin, executed by means of a contract killing whereby Tyrone Walker would pay the "hit man" to kill Mr. Herbert Muskin.

-Proved to the jury's unanimous satisfaction:

-Unable to reach a unanimous verdict: X

(proceed to the next page)

III. CATEGORY THREE NON-STATUTORY AGGRAVATING FACTORS (cont.)

5. On or about December 23, 1994, while incarcerated in the Federal Correctional Institution in Otisville, New York, Tyrone Walker was in possession of a weapon, namely a razor, secreted in his hair.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

Considering the foregoing subsidiary findings, Tyrone Walker presents a continuing danger to society.

-Proved to the jury's unanimous satisfaction: X

-Unable to reach a unanimous verdict:

(proceed to the next section (Section IV))

IV. MITIGATING FACTORS

The following mitigating factors concern Tyrone Walker's life, background, or character, or the circumstances surrounding his capital crime. As the Court instructed you, the defendant you are considering need only establish these mitigating factors by a preponderance of the evidence -- a lesser standard of proof under the law than proof beyond a reasonable doubt.

A finding may be made as to a mitigating factor by one or more jurors, and any mitigating factor found must be considered by that juror or jurors, regardless of the number of other jurors who concur.

a. If Tyrone Walker is not sentenced to death, he will be punished by a sentence of life imprisonment without the possibility of release or parole. (you must all accept this factor as proven)

-Number of jurors who so find by a preponderance of the evidence 12

(proceed to the next factor)

b. The impact of Tyrone walker's execution on members of his family as a mitigating factor.

-Number of jurors who so find by a preponderance of the evidence 2

(proceed to the next factor)

c. Tyrone Walker is a mentally disturbed individual.

-Number of jurors who so find by a preponderance of the evidence 0

(proceed to the next factor)

d. As a child, Tyrone walker was exposed to parental drug use.

-Number of jurors who so find by a preponderance of the evidence 12

(proceed to the next factor)

IV. MITIGATING FACTORS (cont.)

e. As a child, Tyrone Walker was the victim of physical battery.

-Number of jurors who so find by a
preponderance of the evidence 0

(proceed to the next factor)

f. As a child, Tyrone walker was emotionally and physically neglected.

-Number of jurors who so find by a
preponderance of the evidence 12

(proceed to the next factor)

g. As a child, Tyrone Walker was subject to deprivation.

-Number of jurors who so find by a
preponderance of the evidence 10

(proceed to the next factor)

h. As a child, Tyrone Walker was raised in an unstable environment.

-Number of jurors who so find by a
preponderance of the evidence 12

(proceed to the next factor)

i. As a child, Tyrone Walker was subjected to verbal and psychological abuse.

-Number of jurors who so find by a
preponderance of the evidence 10

(proceed to the next factor)

IV. MITIGATING FACTORS (cont.)

j. Others involved in planning the events that led up to the murder of Michael Monsour will go unpunished (referring to Josh Pettway, Frankie Lee Peterson a.k.a. "Stag Lee," and/or any others that are found to fit this category).

-Number of jurors who so find by a preponderance of the evidence 12

(proceed to the next factor)

k. Another defendant or defendants, equally culpable in the crime, (referring to Walter Diaz and/or Tony Walker) will not be sentenced to death.

-Number of jurors who so find by a preponderance of the evidence 0

(proceed to the next factor)

l. That despite the circumstances of his childhood, Tyrone Walker has tried to do some positive things with his life.

-Number of jurors who so find by a preponderance of the evidence 5

(proceed to the next factor)

m. Other factors in Tyrone Walker's background or character, or the circumstances of the offense, mitigate against imposition of the death sentence.

-Number of jurors who so find by a preponderance of the evidence 0

If any juror or jurors find/s that as to Tyrone Walker, a mitigating factor not listed above has been proven to exist by a preponderance of the evidence, please identify that mitigating factor below, together with the number of jurors who so find. Remember, however, that you need not be able to articulate a mitigating factor with specificity to consider it in your deliberations.

IV. MITIGATING FACTORS (cont.)

Factor: _____

-Number of jurors who so find by a
preponderance of the evidence _____

Factor: _____

-Number of jurors who so find by a
preponderance of the evidence _____

Factor: _____

-Number of jurors who so find by a
preponderance of the evidence _____

(if additional space is required, please use the back of this page)

You have now completed the special findings you are required to return as to Tyrone Walker on Counts Two and Three. You must now consider whether, beyond a reasonable doubt, any aggravating factors you have found to exist, including the aggravating factors from both statutory categories and any non-statutory aggravating factors, sufficiently outweigh any mitigating factor or factors you have found to exist, or, in the absence of mitigating factors, whether the aggravating factors are themselves sufficient, to justify a sentence of death. You should have found only ONE, if any, and you should take special care to weigh only ONE, of the Section I, first category factors.

Please review the TWO Decision Forms that follow (Section V(a) as to Count Two and Section V(b) as to Count Three) and alternatives i, ii, iii and iv in each, and complete the ONE appropriate alternative on EACH form, in regard to each Count, as you conclude your deliberations.

V(a). DECISION FORM (choose one of i, ii, iii, or iv)

AS TO COUNT TWO OF THE INDICTMENT:

i. We, the jury, do not unanimously find proven beyond a reasonable doubt the existence of both required statutory aggravating factors as to the capital crime and, therefore, do not consider the death penalty as to Tyrone Walker on Count Two.

N/A

Foreperson

ii. We, the jury, unanimously find beyond a reasonable doubt that the aggravating factors proven in this case (both statutory and, if any, non-statutory) so outweigh any mitigating factors, and are themselves so serious that justice requires a sentence of death. We vote unanimously that Tyrone Walker shall be sentenced to death on Count Two.

N/A

Foreperson

V(a). DECISION FORM (cont.)

iii. We, the jury, do not unanimously find that the aggravating factors proven in this case so outweigh the mitigating factors that justice requires a sentence of death. Therefore, we return a decision that Tyrone Walker not be sentenced to death on Count Two.

N/A

Foreperson

iv. We, the jury, having considered and evaluated the evidence presented in light of the instructions of the court, nevertheless, are not unanimously persuaded that a death sentence should be imposed in this case. Therefore, we return a decision that Tyrone Walker not be sentenced to death on Count Two.

Foreperson

(after completing the SINGLE appropriate Decision Form alternative in Section V(a), regarding Count Two, proceed to Section V(b), regarding Count Three, and complete that Decision Form)

v(b). DECISION FORM (choose one of i, ii, iii or iv)

AS TO COUNT THREE OF THE INDICTMENT:

i. We, the jury, do not unanimously find proven beyond a reasonable doubt the existence of both required statutory aggravating factors as to the capital crime and, therefore, do not consider the death penalty as to Tyrone Walker on Count Three.

N/A

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

Foreperson

ii. We, the jury, unanimously find beyond a reasonable doubt that the aggravating factors proven in this case (both statutory and, if any, non-statutory), so outweigh any mitigating factors, and are themselves so serious that justice requires a sentence of death. We vote unanimously that Tyrone Walker shall be sentenced to death on Count Three.

N/A

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

Foreperson

V(b). DECISION FORM (cont.)

iii. We, the jury, do not unanimously find that the aggravating factors proven in this case so outweigh the mitigating factors that justice requires a sentence of death. Therefore, we return a decision that Tyrone Walker not be sentenced to death on Count Three.

N/A

Foreperson

iv. We, the jury, having considered and evaluated the evidence presented in light of the instructions of the court, nevertheless, are not unanimously persuaded that a death sentence should be imposed in this case. Therefore, we return a decision that Tyrone Walker not be sentenced to death on Count Three.

Foreperson

(after completing the single appropriate Decision Form alternatives in Section V(a), AND Section V(b) proceed to the next section (Section VI) and complete the certification thereat).

VI. CERTIFICATE

By signing below, each juror individually certifies as follows:

I hereby certify that consideration of the race, color, religious beliefs, national origin, or sex of the defendant Tyrone Walker, and of the victim, Michael Monsour, was not involved in reaching my individual decision in this case as to this defendant.

I further certify that I would have made the same recommendations regarding sentences for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant Tyrone Walker, or the victim, Michael Monsour.

Lynn M. Moore

Paula

Alice Westwood

Rebecca Byrd

Wynne Duff

Teresa M. McLowen

Rosemary Willes

Paula

Paula C. O'Brien

Myra

Joseph A. Reynolds

Deborah Mallery
Foreperson

Dated, 2-28-1996

WHEN YOU HAVE CONCLUDED YOUR DELIBERATIONS AS TO BOTH DEFENDANTS AND ALL COUNTS INFORM THE MARSHALL THAT YOUR DELIBERATIONS ARE COMPLETED