



THE LAW LEAVES THIS DECISION EXCLUSIVELY TO YOU, THE JURY. IF YOU RECOMMEND THAT THE DEFENDANT SHOULD BE SENTENCED TO DEATH, OR TO LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE, THE COURT IS REQUIRED TO IMPOSE THAT SENTENCE.

YOU ARE ONLY AUTHORIZED TO RECOMMEND THE DEATH SENTENCE, IF, AFTER THIS HEARING, YOU UNANIMOUSLY FIND EACH OF THE FOLLOWING:

FIRST, THE GOVERNMENT HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS AT LEAST 18 YEARS OF AGE AT THE TIME HE COMMITTED THE OFFENSES; AND

SECOND, THE GOVERNMENT HAS PROVEN BEYOND A REASONABLE DOUBT THE EXISTENCE OF AT LEAST ONE "THRESHOLD ELIGIBILITY FACTOR"; AND

THIRD, THE GOVERNMENT HAS PROVEN BEYOND A REASONABLE DOUBT THE EXISTENCE OF AT LEAST ONE STATUTORY AGGRAVATING FACTOR; AND

FOURTH, THAT THE AGGRAVATING FACTOR OR FACTORS WHICH YOU FOUND TO EXIST SUFFICIENTLY OUTWEIGH ANY MITIGATING FACTOR OR FACTORS WHICH YOU FOUND TO EXIST TO JUSTIFY IMPOSITION OF A SENTENCE OF DEATH, OR, IN THE ABSENCE OF A MITIGATING FACTOR OR FACTORS, YOU FIND THAT THE AGGRAVATING FACTOR OR FACTORS ALONE ARE SUFFICIENT TO JUSTIFY IMPOSITION OF A SENTENCE OF DEATH.

IF, AFTER A FAIR AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE IN THIS CASE, ANY ONE OF YOU DOES NOT MAKE EACH OF THESE FOUR FINDINGS, YOU MUST RECOMMEND THAT THE DEFENDANT NOT BE SENTENCED TO DEATH, BUT INSTEAD SHOULD BE SENTENCED TO LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE. FOR COUNT TWELVE, YOU MAY ALSO CHOOSE THAT THE DEFENDANT BE GIVEN A LESSER

SENTENCE TO BE DETERMINED BY THE COURT.

AGAIN, WHETHER OR NOT THE CIRCUMSTANCES IN THIS CASE JUSTIFY A SENTENCE OF DEATH IS A DECISION THAT THE LAW LEAVES ENTIRELY TO YOU. YOU SHOULD NOT TAKE ANYTHING I MAY SAY OR DO DURING THIS PHASE OF THE TRIAL AS INDICATING WHAT I THINK OF THE EVIDENCE OR WHAT I THINK YOUR VERDICT SHOULD BE.

THREE TERMS THAT YOU HAVE ALREADY HEARD AND WILL HEAR THROUGHOUT THIS PHASE OF THE CASE ARE "THRESHOLD ELIGIBILITY FACTORS," "AGGRAVATING FACTORS" AND "MITIGATING FACTORS." THESE FACTORS HAVE TO DO WITH THE DEFENDANT'S INTENT AND ROLE IN THE OFFENSES, THE CIRCUMSTANCES OF THE CRIME, OR THE PERSONAL TRAITS, CHARACTER OR BACKGROUND OF THE DEFENDANT AND THE VICTIM. I WILL NOW BRIEFLY EXPLAIN THESE THREE SPECIAL TERMS.

FIRST, A "THRESHOLD ELIGIBILITY FACTOR" IS ONE OR MORE OF FOUR FACTORS LISTED IN THE STATUTE WHICH CONCERN THE DEFENDANT'S INTENT AND ROLE IN COMMITTING THE OFFENSE FOR WHICH HE MAY HAVE BEEN CONVICTED. BEFORE YOU CONSIDER THE IMPOSITION OF A SENTENCE OF DEATH, YOU MUST UNANIMOUSLY FIND ONE OR MORE OR MORE "THRESHOLD ELIGIBILITY FACTORS" TO EXIST BEYOND A REASONABLE DOUBT.

SECOND, AN "AGGRAVATING FACTOR" IS A FACT OR CIRCUMSTANCE WHICH WOULD TEND TO SUPPORT IMPOSITION OF THE DEATH PENALTY. IN THE DEATH PENALTY STATUTE, SEVERAL AGGRAVATING FACTORS ARE LISTED. THESE ARE CALLED "STATUTORY AGGRAVATING FACTORS." AS I INSTRUCTED YOU EARLIER, BEFORE YOU MAY CONSIDER IMPOSITION OF THE DEATH PENALTY, YOU MUST FIND THAT THE GOVERNMENT PROVED ONE OF THESE AGGRAVATING FACTORS, AS SPECIFIED IN THE DEATH PENALTY

STATUTE. THE GOVERNMENT HAS THE BURDEN OF PROVING ANY STATUTORY AGGRAVATING FACTOR TO YOUR UNANIMOUS SATISFACTION AND BEYOND A REASONABLE DOUBT. THERE ALSO MAY BE "NON-STATUTORY AGGRAVATING FACTORS," WHICH ARE THOSE NOT SPECIFICALLY SET OUT IN THE DEATH PENALTY STATUTE, BUT WHICH ARE PERMITTED BY THE STATUTE. THE GOVERNMENT HAS THE BURDEN OF PROVING ANY NON-STATUTORY AGGRAVATING FACTOR TO YOUR UNANIMOUS SATISFACTION AND BEYOND A REASONABLE DOUBT.

THIRD, A "MITIGATING FACTOR" IS ANY ASPECT OF A DEFENDANT'S CHARACTER OR BACKGROUND, ANY CIRCUMSTANCE OF THE OFFENSES, OR ANY OTHER RELEVANT FACT OR CIRCUMSTANCE WHICH MIGHT INDICATE THAT THE DEFENDANT SHOULD NOT BE SENTENCED TO DEATH. THE DEFENDANT HAS THE BURDEN OF PROVING ANY MITIGATING FACTORS. HOWEVER, THERE IS A DIFFERENT STANDARD OF PROOF AS TO MITIGATING FACTORS. YOU NEED NOT BE CONVINCED BEYOND A REASONABLE DOUBT ABOUT THE EXISTENCE OF A MITIGATING FACTOR; RATHER, A MITIGATING FACTORS NEEDS ONLY TO BE PROVED BY A PREPONDERANCE OF THE EVIDENCE. IN OTHER WORDS, YOU NEED ONLY BE CONVINCED THAT IT IS MORE LIKELY TRUE THAN NOT TRUE IN ORDER TO FIND THAT IT EXISTS. FURTHERMORE, A UNANIMOUS FINDING IS NOT REQUIRED. ANY ONE OF YOU MAY FIND THE EXISTENCE OF A MITIGATING FACTOR.

IF YOU HAVE FOUND THAT AT LEAST ONE THRESHOLD ELIGIBILITY FACTOR AND THAT AT LEAST ONE STATUTORY AGGRAVATING FACTOR EXIST, YOU THEN MUST WEIGH THE AGGRAVATING FACTORS YOU FOUND TO EXIST AGAINST ANY MITIGATING FACTORS YOU FOUND TO EXIST TO DETERMINE THE APPROPRIATE SENTENCE. IN DETERMINING THE APPROPRIATE SENTENCE, YOU DO NOT WEIGH THE THRESHOLD ELIGIBILITY FACTORS YOU

FOUND TO EXIST AGAINST ANY MITIGATING FACTORS YOU FOUND TO EXIST. IN THE WEIGHING PROCESS YOU ARE TO CONSIDER ONLY STATUTORY AND NON-STATUTORY AGGRAVATING FACTORS FOUND TO EXIST ALONG WITH ANY MITIGATING FACTORS YOU FOUND TO EXIST. I WILL GIVE YOU DETAILED INSTRUCTIONS REGARDING THE WEIGHING OF AGGRAVATING AND MITIGATING FACTORS BEFORE YOU BEGIN YOUR DELIBERATIONS. HOWEVER, I INSTRUCT YOU NOW THAT YOU MUST NOT SIMPLY COUNT THE NUMBER OF AGGRAVATING AND MITIGATING FACTORS AND REACH A DECISION BASED ON WHICH NUMBER IS GREATER; YOU MUST CONSIDER THE WEIGHT AND VALUE OF EACH FACTOR.

I WILL NOW EXPLAIN TO YOU THE THRESHOLD ELIGIBILITY FACTORS, STATUTORY AGGRAVATING FACTORS, AND NON-STATUTORY AGGRAVATING FACTORS THE GOVERNMENT SEEKS TO ESTABLISH TO YOUR UNANIMOUS SATISFACTION BEYOND A REASONABLE DOUBT. AFTER I EXPLAIN THESE FACTORS, I WILL DESCRIBE THE MITIGATING CIRCUMSTANCES WHICH THE DEFENDANT, \_\_\_\_\_, INTENDS TO ESTABLISH.

AS TO THE DEFENDANT, \_\_\_\_\_, THE GOVERNMENT ALLEGES THE FOLLOWING "THRESHOLD ELIGIBILITY FACTORS" PERTAINING TO THE DEFENDANT'S INTENT AND ROLE IN COMMITTING THE OFFENSES IN COUNTS TEN, ELEVEN, AND TWELVE:

1. THAT [DEFENDANT] INTENTIONALLY KILLED [VICTIM];
2. THAT [DEFENDANT] INTENTIONALLY INFLICTED SERIOUS BODILY INJURY THAT RESULTED IN THE DEATH OF [VICTIM];
3. THAT [DEFENDANT] INTENTIONALLY PARTICIPATED IN AN ACT, CONTEMPLATING THAT THE LIFE OF A PERSON WOULD BE TAKEN OR INTENDING THAT LETHAL FORCE WOULD BE USED IN CONNECTION WITH A

PERSON, OTHER THAN ONE OF THE PARTICIPANTS IN THE OFFENSE, AND [VICTIM] DIED AS A DIRECT RESULT OF THE ACT; AND

4. THAT [DEFENDANT] INTENTIONALLY AND SPECIFICALLY ENGAGED IN AN ACT OF VIOLENCE, KNOWING THAT THE ACT CREATED A GRAVE RISK OF DEATH TO A PERSON, OTHER THAN ONE OF THE PARTICIPANTS IN THE OFFENSE, SUCH THAT PARTICIPATION IN THE ACT CONSTITUTED A RECKLESS DISREGARD FOR HUMAN LIFE AND [VICTIM] DIED AS A DIRECT RESULT OF THE ACT.

THE GOVERNMENT ALSO ALLEGES THE FOLLOWING STATUTORY AGGRAVATING FACTORS AS TO DEFENDANT LAMOND GARRETT FOR COUNTS TEN, ELEVEN, AND TWELVE:

1. IN COMMITTING THE CAPITAL OFFENSES DESCRIBED IN THE INDICTMENT, AND IN ESCAPING APPREHENSION FOR THE VIOLATION OF THE OFFENSES, THE DEFENDANT, \_\_\_\_\_, KNOWINGLY CREATED A GRAVE RISK OF DEATH TO ONE OR MORE PERSONS IN ADDITION TO THE VICTIM OF THE OFFENSE, [VICTIM].

2. THE DEFENDANT, \_\_\_\_\_, COMMITTED THE CAPITAL OFFENSES DESCRIBED IN THE INDICTMENT AFTER SUBSTANTIAL PLANNING AND PREMEDITATION TO CAUSE THE DEATH OF A PERSON.

THE GOVERNMENT FURTHER ALLEGES NON-STATUTORY AGGRAVATING FACTORS AS TO DEFENDANT \_\_\_\_\_. THE NON-STATUTORY AGGRAVATING FACTORS WHICH THE GOVERNMENT SEEKS TO ESTABLISH FOR COUNTS TEN, ELEVEN, AND TWELVE INCLUDE:

1. THE DEFENDANT, \_\_\_\_\_, CAUSED INJURY, HARM, AND LOSS TO THE VICTIM'S FAMILY BECAUSE OF THE VICTIM'S PERSONAL CHARACTERISTICS AS AN INDIVIDUAL HUMAN BEING AND THE IMPACT OF THE DEATH ON THE VICTIM'S FAMILY; AND

2. THE DEFENDANT, \_\_\_\_\_, COMMITTED THE OFFENSES FOR THE PURPOSE OF PREVENTING THE VICTIM FROM, OR RETALIATING AGAINST THE VICTIM FOR, PROVIDING ASSISTANCE TO LAW ENFORCEMENT AUTHORITIES IN REGARD TO THE INVESTIGATION OR PROSECUTION OF THE COMMISSION OR POSSIBLE COMMISSION OF ANOTHER OFFENSE; AND

3. THE DEFENDANT'S BACKGROUND, CHARACTER, MORAL CULPABILITY, AND FUTURE DANGEROUSNESS, AS WELL AS THE NATURE AND CIRCUMSTANCES OF THE OFFENSES FOUND IN COUNTS TEN, ELEVEN, AND TWELVE.

THE DEFENDANT, \_\_\_\_\_, ALLEGES CERTAIN MITIGATING FACTORS WHICH HIS ATTORNEYS WILL SEEK TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE. THE MITIGATING FACTORS WHICH THE DEFENDANT INTENDS TO ESTABLISH FOR COUNTS TEN, ELEVEN, AND TWELVE INCLUDE:

1) [DEFENDANT'S] CAPACITY TO APPRECIATE THE WRONGFULNESS OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS IMPAIRED, REGARDLESS OF WHETHER HIS CAPACITY WAS SO IMPAIRED AS TO CONSTITUTE A DEFENSE TO THE CHARGE.

2) [DEFENDANT] WAS UNDER DURESS, REGARDLESS OF WHETHER THE DURESS WAS OF SUCH A DEGREE AS TO CONSTITUTE A DEFENSE TO THE CHARGE.

3) [DEFENDANT] DOES NOT HAVE A SIGNIFICANT PRIOR CRIMINAL RECORD.

4) OTHER PERSONS, EQUALLY CULPABLE IN THE CRIMES, WILL

NOT BE PUNISHED BY DEATH.

5) SHOULD THE JURY SO DIRECT, [DEFENDANT] WILL BE SENTENCED TO LIFE IN PRISON WITHOUT ANY POSSIBILITY OF RELEASE.

6) [DEFENDANT] WAS SUBJECTED TO EMOTIONAL AND PHYSICAL ABUSE, ABANDONMENT AND NEGLECT AS A CHILD, AND WAS DEPRIVED OF PARENTAL GUIDANCE AND PROTECTION.

7) [DEFENDANT] SUFFERS FROM A BRAIN DYSFUNCTION WHICH HAS IMPAIRED HIS ABILITY TO FUNCTION IN THE ABSENCE OF STRONG SUPPORT AND GUIDANCE.

8) [DEFENDANT] GREW UP IN AN IMPOVERISHED, VIOLENT AND BRUTAL ENVIRONMENT, AND WAS EXPOSED TO EXTREME VIOLENCE AS A CHILD AND THROUGHOUT HIS LIFE.

9) [DEFENDANT] COMMITTED THE KILLING UNDER A MENTAL AND/OR EMOTIONAL DISTURBANCE.

10) [DEFENDANT] SUFFERS FROM NEUROLOGICAL IMPAIRMENTS WHICH WERE IDENTIFIED AND WHICH COULD HAVE BEEN TREATED WHEN HE WAS A CHILD AND ADOLESCENT.

11) [DEFENDANT] WAS INTRODUCED TO ADDICTIVE DRUGS AND ALCOHOL WHILE STILL A CHILD, AND WAS SUPPORTED AND REINTRODUCED INTO DRUG SELLING BY HIS OWN FATHER.



12) [DEFENDANT] HAS RESPONDED INVARIABLY WELL TO STRUCTURED ENVIRONMENTS, AND WOULD LIKELY MAKE AN EXCELLENT ADAPTION TO PRISON IF HE WERE SENTENCED TO LIFE IN PRISON.

13) THAT OTHER FACTORS IN [DEFENDANT'S] CHILDHOOD, BACKGROUND OR CHARACTER MITIGATE AGAINST IMPOSITION OF THE DEATH SENTENCE.

IN MAKING ALL THE DETERMINATIONS YOU ARE REQUIRED TO MAKE IN THIS PHASE OF THE TRIAL, YOU MAY CONSIDER ANY EVIDENCE THAT WAS PRESENTED DURING THE GUILT PHASE OF THE TRIAL AS WELL AS EVIDENCE THAT IS PRESENTED AT THIS SENTENCING PHASE OF THE TRIAL.

AT THE CONCLUSION OF THE SENTENCING PHASE, I WILL GIVE YOU FURTHER INSTRUCTIONS CONCERNING THE MANNER IN WHICH THE LAW GUIDES YOUR DELIBERATIONS. AT THIS TIME, HOWEVER, PLEASE TURN YOUR ATTENTION TO COUNSEL AS THEY PROVIDE THEIR OPENING STATEMENTS.