
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

versus

MARK ISAAC SNARR

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NO. 1:09-CR-15 (1)
(Judge Crone)

COURT'S INSTRUCTIONS TO THE JURY—PHASE THREE

Members of the Jury:

INTRODUCTION

FILED
P.M. 5-21 2010
DAVID J. MALAND, CLERK
U.S. DISTRICT COURT
By Patricia Keff
DEPUTY

Now that you have heard all of the evidence in this case, it is my duty to give you instructions as to the law applicable to the question of punishment selection. You have found the defendant, Mark Isaac Snarr, guilty beyond a reasonable doubt of the first degree murder of Gabriel Rhone, and you have also found the defendant, Mark Isaac Snarr, eligible for the death penalty under the law. You must now consider whether justice requires imposition of the death penalty or life imprisonment without the possibility of release. This decision is left exclusively to the jury. I will not be able to change any decision you reach in this regard. You, and you alone, will decide whether the defendant should be sentenced to death or life imprisonment without the possibility of release. Thus, I again stress the importance of your giving careful and thorough consideration to all of the evidence before you.

GENERAL INSTRUCTIONS

Some of the legal principles that you must apply at this stage of the proceedings duplicate those instructions I have already given you in the trial. I will now repeat several of the instructions I previously gave for guidance in your deliberations with respect to this the selection phase of the trial.

DUTY TO FOLLOW THE LAW

First, regardless of any opinion you may have as to what the law may be—or should be—it would be a violation of your oath as jurors to base your verdict upon any view of the law other than that given to you in these instructions. Some of the legal principles that you must apply to your selection phase decisions duplicate those you followed in reaching your verdict as to guilt or innocence in the first phase and death penalty eligibility in the second phase, but others are different. The instructions I am giving you now are a complete set of instructions on the law applicable to your selection phase decisions. I have prepared these instructions to ensure that you are clear in your duties at this stage of the case. I have also prepared a Verdict Form that you must complete. The Verdict Form details special findings that you must make in this case and will help you perform your duties properly.

EVIDENCE TO CONSIDER

In making all of the determinations that you are required to make in this the selection phase of the trial, you may consider any evidence that was received by the court during the guilt and eligibility phases of the trial and the additional evidence received during this phase. You may consider no other evidence. The law demands of you a just verdict, based solely on this evidence, your common sense, and the law as I give it to you. Although the lawyers will make arguments to summarize and interpret the evidence for purposes of this selection phase of the trial, the arguments of the lawyers are not evidence.

BURDEN OF PROOF

The government has the burden of proving beyond a reasonable doubt the non-statutory aggravating factors alleged in the selection phase of the trial for consideration of a death sentence.

A reasonable doubt may arise from the evidence produced by either the government or the defendant during the selection phase, keeping in mind that the defendant never has the burden or duty of calling any witnesses or producing any evidence. It may also arise from the government's lack of evidence. As I explained to you previously in both the guilt and eligibility phases, while this burden of proof is a strict or heavy burden, it is not necessary that proof of the non-statutory aggravating factors be beyond all possible doubt. It is only required that the proof by the government exclude any reasonable doubt as to the non-statutory aggravating factors to your unanimous satisfaction.

A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

As was true in the first two phases of the trial, the defendant at this phase does not have to present any evidence. The defendant does not have to prove to you that a non-statutory aggravating factor does not exist or that he should not be sentenced to death.

As I have previously told you, under our Constitution, a defendant has no obligation to testify or to present any other evidence. That is as true in this phase as it was in the guilt phase of the trial. Thus, no adverse inference may be drawn against a defendant who does not take the stand.

EXCLUDING WHAT IS NOT EVIDENCE

As I told you earlier, it is your duty to determine the facts. In doing so, you must consider only the evidence presented during the trial, including the sworn testimony of the witnesses and

the exhibits. Remember that any statements, objections, or arguments made by the lawyers are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

During the trial I sustained objections to certain questions and exhibits. You must disregard those questions and exhibits entirely. Do not speculate as to what the witness would have said if permitted to answer the question or as to the contents of an exhibit. Also, you have been instructed to disregard certain questions. Do not consider any questions you have been told to disregard in reaching your decision. Your verdict must be based solely on the legally admissible evidence and testimony.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in this case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

INFERENCES—DIRECT AND CIRCUMSTANTIAL

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.

In considering the evidence, you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of events and circumstances indicating that something is or is not a fact. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

CREDIBILITY OF WITNESSES

I remind you that it is your job to decide whether the government has proved the existence of the non-statutory aggravating factors beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should decide whether you believe all or any part of what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions: Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say. In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point.

IMPEACHMENT BY PRIOR INCONSISTENCIES

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

Earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may consider the earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

IMPEACHMENT BY PRIOR CONVICTION

You have been told that witnesses Keenan Hurt, Ricardo Palleret, Clinton Alls, George Sarro, John L. Franklin a/k/a Jonathan Franklin, David Wengler, Dan Fortner, Larry Hallback, and Shaquan Smith have prior felony convictions. A conviction is a factor you may consider in deciding whether to believe that witness, but it does not necessarily destroy the witness's credibility. These convictions have been brought to your attention only because you may wish to

consider them when you decide whether you believe the witness's testimony. They are not evidence of anything else.

INFORMER TESTIMONY

The testimony of a witness who provides evidence against a defendant for a benefit, favored treatment, a reduction in sentence, placement in a special program, or for personal advantage must always be examined and weighed by the jury with greater care and caution than the testimony of ordinary witnesses. You, the jury, must decide whether the witness's testimony has been affected by any of those circumstances, or by the witness's interest in the outcome of the case, or by prejudice against the defendant, or by the benefits that the witness has or may receive from providing testimony in this case. You should keep in mind that such testimony is always to be received with caution and weighed with great care.

You should never find the existence of an aggravating factor in the selection phase based upon the unsupported testimony of such a witness unless you believe that testimony beyond a reasonable doubt.

EXPERT WITNESSES

During the trial, you heard the testimony of Dr. Tommy Brown, Mark Bezy, Dr. Oney Fitzpatrick, Dr. Mary Elizabeth Pelz, and Greg Hershberger, who expressed opinions concerning forensic pathology, prison administration, developmental psychology, prison culture, and prison operations, respectively. If scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified by knowledge, skill, experience, training, or education may testify and state an opinion concerning such matters.

Merely because such a witness has expressed an opinion does not mean, however, that you must accept this opinion. You should judge such testimony like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, and all other evidence in the case.

STATEMENT—VOLUNTARINESS

In determining whether any statement, claimed to have been made by a defendant outside of court and after an alleged crime has been committed, was knowingly and voluntarily made, you should consider the evidence concerning such a statement with caution and great care, and should give such weight to the statement that you feel it deserves under all the circumstances.

You may consider in that regard such factors as the age, sex, training, education, occupation, and physical and mental condition of the defendant and all the other circumstances in evidence surrounding the making of the statement.

Of course, any such statement should not be considered in any way whatsoever as evidence with respect to any other defendant on trial.

MULTIPLE DEFENDANTS

The case of each defendant and the evidence pertaining to that defendant should be considered separately and individually. The fact that you may find that one of the defendants should be sentenced to death should not control your verdict as to the other defendant.

SPECIFIC INSTRUCTIONS WITH RESPECT TO SELECTION PHASE

You have found the defendant guilty of the crime charged in the Indictment and eligible for the death penalty. You are now called upon to decide the issue of punishment, that is, whether the defendant should be sentenced to death or life in prison without the possibility of release.

The deliberative process that you must follow in this phase of the trial is as follows. First, you must consider whether the government has proved beyond a reasonable doubt, and to your unanimous satisfaction, the non-statutory aggravating factors that have been alleged. "Aggravate" means to make worse. An "aggravating factor" is a fact or circumstance that would tend to support imposition of the death penalty. The non-statutory aggravating factors the government has alleged are: (1) Defendant Mark Isaac Snarr poses a continuing and serious threat to the lives and safety of others because it is likely that he will commit criminal acts of violence in the future; and (2) the victim, Gabriel Rhone, was particularly vulnerable due to the fact that he was locked in a cell and devoid of any means with which to defend himself from the armed defendant, Mark Isaac Snarr.

You must consider each of the non-statutory aggravating factors, and the evidence pertaining to each of those factors, separately. You may consider all the evidence you have heard at all phases of the trial in making your decision as to whether the government has proven the existence of the non-statutory aggravating factors beyond a reasonable doubt. Your findings as to the non-statutory aggravating factors alleged by the government in this phase of the trial must be unanimous. In other words, if you are not unanimous in finding a non-statutory aggravating factor, you may not consider that factor in any further deliberations.

Second, you must consider whether any mitigating factors offered by the defendant have been established by a preponderance of the evidence. A “preponderance of the evidence” means evidence that persuades you that the defendant’s claims are more likely true than not true. A “mitigating factor” is any aspect of a defendant’s background, record, or character, or any other circumstance of the offense, that mitigates against imposition of the death penalty. The defendant has argued and submitted evidence relevant to certain mitigating factors. You may also consider any other factor about the defendant’s background, record, or character or the circumstances of the offense, whether or not argued by defense counsel, that you believe to be mitigating, if such a factor has been established by a preponderance of the evidence. Any member of the jury who finds the existence of a mitigating factor should consider such a factor regardless of the number of jurors who concur that the factor has been established. Unanimity is not required.

Third, you must decide whether the following four (4) statutory aggravating factors, which you determined were proved in the eligibility phase:

1. that the defendant has previously been convicted of two (2) or more Federal or State offenses, punishable by a term of imprisonment of more than one (1) year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person; and
2. that the defendant, in the commission of the offense, knowingly created a grave risk of death to one (1) or more persons in addition to the victim of the offense, Gabriel Rhone; and
3. that the defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim, Gabriel Rhone; and
4. that the defendant committed the offense after substantial planning and premeditation to cause the death of Gabriel Rhone;

and the non-statutory aggravating factors, if any, which you find have been proven unanimously and beyond a reasonable doubt in this selection phase, sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factors alone are sufficient to justify a sentence of death.

If, however, you do not find that the government has proven the existence of a non-statutory aggravating factor alleged in the selection phase beyond a reasonable doubt, you must then decide whether the four (4) statutory aggravating factors set forth above sufficiently outweigh all mitigating factors found to exist.

Based upon your individual consideration of all of the aggravating factors you have found unanimously, and all of the mitigating factors you have found individually, the jury must decide whether it unanimously finds that justice requires the imposition of the death penalty. Understand that each of you may not be weighing the same mitigating factors. How much weight you give to any aggravating or mitigating factor is in the discretion of each juror.

If you find no mitigating factors, you must still determine whether the aggravating factors standing alone justify a sentence of death.

Any one aggravating factor proven by the government, if sufficiently serious in your mind, may outweigh several mitigating factors. Thus, for example, even if you were to find the government did not prove the non-statutory aggravating factors in the selection phase, you would still have to weigh the statutory aggravating factors found in the eligibility phase against the mitigating factors. A single mitigating factor may outweigh several aggravating factors, and any juror who finds a single mitigating factor would still have to weigh that mitigating factor against the aggravating factors.

In order to impose a sentence of death or life imprisonment without the possibility of release, all twelve jurors must unanimously agree that a sentence of death or a sentence of life imprisonment without the possibility of release is the appropriate sentence. Only if you are unanimously persuaded that the aggravating factors sufficiently outweigh the mitigating factor or factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factors alone are sufficient to justify a sentence of death, may you then return a verdict in favor of death.

Passion, prejudice, and any arbitrary considerations have no role to play in your efforts to reach a just result in this case. In carefully weighing the various factors at issue, you are called upon to make a unique, individualized judgment about the appropriateness of imposing the death penalty on the defendant. This is not a mechanical process. Neither is it determined by raw numbers. You should not simply count factors. Instead, you must consider the factors qualitatively.

In short, what is called for in weighing the various factors is not mathematical skill, but rather your careful, considered, and mature judgment. You are called upon to make a reasoned judgment, based upon all the evidence before you, as to whether the death penalty is the appropriate punishment for the defendant, or whether the defendant should be sentenced to life imprisonment without the possibility of release. Please understand, however, that a sentence of death is never mandatory under the law. Thus, even if you find that the aggravating factors outweigh any mitigating factor or factors, or in the absence of any mitigating factors, you may still find that the aggravating factors alone are not sufficient to justify a sentence of death and return a verdict in favor of life imprisonment without the possibility of release.

If, after weighing the aggravating and mitigating factors, you unanimously recommend that a sentence of death shall be imposed, then the Court is required to sentence the defendant to death. If you unanimously recommend that a sentence of life imprisonment without the possibility of release shall be imposed, then the Court is required to sentence the defendant to life imprisonment without the possibility of release. Life imprisonment means that the defendant will, in fact, serve the remainder of his natural life in prison. He will never be paroled. Parole has been abolished under federal law.

NON-STATUTORY AGGRAVATING FACTORS

The government has alleged the following two (2) non-statutory aggravating factors:

1. That the defendant poses a continuing and serious threat to the lives and safety of others because it is likely that he will commit criminal acts of violence in the future. The defendant is likely to commit criminal acts of violence in the future that would constitute a continuing and serious threat to the lives and safety of others, as evidenced by, at least, one of the following:
 - a. the defendant has engaged in a continuing pattern of violence, attempted violence, and threatened violence;
 - b. the defendant has engaged in repeated acts of institutional misconduct;
 - c. the defendant has demonstrated a lack of remorse, as indicated by defendant's statements and actions during the course of and following the offense;
 - d. the defendant has demonstrated a low potential for rehabilitation as evidenced by his record of institutional misconduct and his longstanding involvement in criminal activities; and/or
 - e. the defendant has demonstrated an allegiance to and active membership in a gang in and out of prison.

To establish the existence of this non-statutory aggravating factor, the government must prove beyond a reasonable doubt that the defendant represents a continuing danger to the lives and safety of others.

2. That the victim, Gabriel Rhone, was particularly vulnerable due to the fact that he was locked in a cell and devoid of any means with which to defend himself from the armed defendant.

To establish the existence of this non-statutory aggravating factor, the government must prove beyond a reasonable doubt that the victim was particularly vulnerable due to the fact that he was locked in a cell and devoid of any means with which to defend himself from the armed defendant.

Because these are the only non-statutory aggravating factors alleged by the government, they are—by law—the only non-statutory aggravating factors you may consider, in addition to the four (4) statutory aggravating factors set forth on Page 10 of these instructions that you found were established in phase two of the trial, in arriving at your decision.

MITIGATING FACTORS

It is the defendant's burden to establish mitigating factors by a preponderance of the evidence. This is a lesser standard of proof under the law than proof beyond a reasonable doubt, the standard to which the government must be held in proving aggravating factors.

Preponderance of the evidence means that evidence which, when considered as a whole, leads you to believe that the defendant's claims are more likely true than not.

Mitigating factors differ from aggravating factors in another important way. Unlike aggravating factors, which the jury must unanimously agree exist, any member of the jury who finds the existence of a mitigating factor by a preponderance of the evidence must consider such

factor established, regardless of the number of other jurors who concur that the factor has been established.

Unlike aggravating factors, you should consider any other factor, whether specifically argued by defense counsel or not, which you believe to be mitigating, if such a factor, in your judgment, has been established by a preponderance of the evidence. In short, you have greater discretion in considering mitigating factors than you have in considering aggravating factors.

The defendant has submitted the following proposed mitigating factors with respect to the defendant's background, record, or character, or any other circumstance of the offense that mitigate against the imposition of the death penalty:

1. Gabriel Rhone was not a peaceful and law abiding inmate;
2. Gabriel Rhone was a racist;
3. Gabriel Rhone frequently yelled religious slurs at non-Muslim inmates;
4. Gabriel Rhone made threats to Mark Isaac Snarr;
5. Gabriel Rhone was a District of Columbia inmate, and District of Columbia inmates are the most disrespectful and brutal inmates in Federal prison;
6. As an inmate in the Bureau of Prisons ("BOP"), Gabriel Rhone was a behavior management problem;
7. Gabriel Rhone engaged in defiant behavior;
8. Gabriel Rhone's behavior was unpredictable;
9. Gabriel Rhone displayed a negative and angry approach to others;
10. Gabriel Rhone ejaculated onto Correctional Officer Dawn Gallagher's shoe on November 12, 2007, and Mark Isaac Snarr was aware of the incident;
11. Gabriel Rhone provoked the incident when he threatened Mark Isaac Snarr's family by saying that he was "going to fuck [his] mother and give her a black baby";

12. Gabriel Rhone provoked the incident when he threatened Mark Isaac Snarr's family by saying that he was "going to rape [his] sister and give her a black baby";
13. Gabriel Rhone provoked the incident by calling Mark Isaac Snarr a "bitch" in front of other inmates;
14. Gabriel Rhone provoked the incident on November 28, 2007, by yelling insults at Mark Isaac Snarr the night of November 27, 2007, and until 3:00 a.m. on November 28, 2007;
15. Mark Isaac Snarr told Edgar Baltazar Garcia not to hit the officers anymore;
16. Mark Isaac Snarr initially used his fists, not his knife, during the assault on the correctional officers;
17. Mark Isaac Snarr did not kill Gabriel Rhone for any racial reason;
18. Mark Isaac Snarr expressed remorse by stating that he was sorry about the officers getting harmed;
19. Mark Isaac Snarr stated that "it wasn't supposed to happen that way";
20. Mark Isaac Snarr had to act against Gabriel Rhone to avoid placing himself in danger;
21. After the death of Gabriel Rhone, Mark Isaac Snarr voluntarily surrendered his knife to correctional officers;
22. Mark Isaac Snarr had no intent to kill the correctional officers;
23. After the death of Gabriel Rhone, Mark Isaac Snarr voluntarily submitted to restraint and handcuffs;
24. Mark Isaac Snarr was not a member of a BOP-identified "Disruptive Group";
25. The BOP Beaumont Special Housing Unit ("SHU") facility lacked proper leadership on November 28, 2007;
26. The BOP Beaumont SHU facility lacked proper staffing on November 28, 2007;

27. The BOP Beaumont SHU facility lacked proper training on November 28, 2007;
28. The BOP Beaumont SHU facility leaders failed to properly post orders for the staff on November 28, 2007;
29. The BOP correctional officers sometimes allowed the inmates to police themselves in the BOP SHU facility;
30. The BOP Beaumont SHU facility employees habitually failed to follow proper SHU policies;
31. The BOP Beaumont SHU facility employees failed to properly shackle or restrain Mark Isaac Snarr on November 28, 2007;
32. The BOP Beaumont SHU facility employees failed to properly escort Mark Isaac Snarr on November 28, 2007;
33. The BOP Beaumont SHU facility employees failed to keep Mark Isaac Snarr separate from the other inmates on November 28, 2007;
34. The failure of the BOP Beaumont SHU facility employees to follow proper policies contributed to the occurrence of the offense on November 28, 2007;
35. The internal investigation of the BOP following the incident concluded that the BOP Beaumont SHU facility's numerous failures permitted the event to occur;
36. The offense on November 28, 2007, would not have occurred if the BOP Beaumont SHU facility had followed proper policies and procedures;
37. Investigative Agent Swain, a BOP official at the Beaumont facility, anticipated that an incident like the offense on November 28, 2007, was likely to occur if Mark Isaac Snarr was not transferred to ADX;
38. The BOP had previously approved Mark Isaac Snarr for transfer to ADX prior to November 28, 2007;
39. The BOP delayed transferring Mark Isaac Snarr to ADX prior to the offense on November 28, 2007;
40. Mark Isaac Snarr was transferred to ADX immediately following the incident on November 28, 2007;

41. The BOP has the capability to safely house Mark Isaac Snarr in ADX in Florence, Colorado;
42. Utah Juvenile Probation Officer Gangwer believes that Mark Isaac Snarr came from a dysfunctional family;
43. Utah Juvenile Probation Officer Gangwer liked Mark Isaac Snarr;
44. Regarding the incident involving inmate Prieto in January 2004 in the Davis County, Utah, jail, Mark Isaac Snarr was found not guilty of possession of a dangerous weapon;
45. Mark Isaac Snarr has never previously been charged or convicted of the offense of murder;
46. Mark Isaac Snarr was raised in a family of violence;
47. Mark Isaac Snarr was raised in a family of drug abuse and sexual abuse;
48. Mark Isaac Snarr learned to cope with life by the violence he experienced as a child;
49. Mark Isaac Snarr had redeeming qualities outside of prison;
50. Mark Isaac Snarr had to assume the parenting role and responsibility of tending to the needs of siblings at the age of 8;
51. Mark Isaac Snarr tried to get a job at the age of 8 to take care of his family;
52. Mark Isaac Snarr assumed the role of protector in his family;
53. Mark Isaac Snarr's mother taught him to steal at an early age;
54. Mark Isaac Snarr's parents taught him to use drugs at an early age;
55. Mark Isaac Snarr never had a stable home;
56. There was widespread criminal conduct within Mark Isaac Snarr's family;
57. Mark Isaac Snarr was led into a life of crime by his family;
58. Mark Isaac Snarr was assaulted by a counselor at Mill Creek Youth Center as part of his counseling program;

59. Mark Isaac Snarr loves his family deeply;
60. Mark Isaac Snarr's family loves him deeply;
61. Mark Isaac Snarr provided emotional support and leadership to Angelique Atmore;
62. Mark Isaac Snarr is the father figure to Angelique Atmore;
63. Mark Isaac Snarr is a dedicated family member, even arranging Christmas gifts for Christa Frew's children from a prison cell by contacting a radio station;
64. Mark Isaac Snarr is opposed to the use of alcohol and drugs;
65. Mark Isaac Snarr learned to cope in prison by using violence because that is how he was taught to cope with his dysfunctional life;
66. Mark Isaac Snarr has committed no violent act in prison since being placed into the ADX facility in Florence, Colorado, following the offense on November 28, 2007;
67. Prior to November 28, 2007, the BOP Beaumont facility had a reputation for having more incidents of violence than other U.S. Penitentiaries;
68. There are alternatives in the BOP to protect inmates and staff other than executing Mark Isaac Snarr;
69. Any other fact or circumstance that you can recall from any evidence or information that you have heard during this trial that you may find to have some value or significance to mitigate against a death sentence for Mark Isaac Snarr.

In the appropriate section of the Verdict Form prepared for this phase of the trial, you are asked to identify any additional mitigating factors, outside of those proposed by the defendant. You may, but are not required to, write in any additional mitigating factors found by a preponderance of the evidence by any juror. If you think that there is some other mitigating factor present as to the defendant, but you simply are not able to articulate it with any specificity, you may still fully consider that factor without recording it on the Verdict Form.

DUTY TO DELIBERATE—VERDICT FORM

The verdict must represent the considered judgment of each juror. It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. During your deliberations, do not hesitate to reexamine your own views and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Any notes that you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. The notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, BlackBerry, or computer; the Internet, any Internet service, or any text or instant messaging service; or any Internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube, or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until you are discharged from jury service.

Remember at all times, you are judges—judges of the facts. Your duty is to decide whether a sentence of death or life imprisonment without the possibility of release is the appropriate sentence in this case.

In considering whether a death sentence is justified, you must not consider the race, color, religious beliefs, national origin, or sex of the defendant or the victim in this case. These facts are completely irrelevant to the important issues you must consider. You are not to recommend a sentence of death unless you have concluded that you would recommend a sentence of death for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of either the defendant or the victim might have been. To emphasize the importance of this consideration, attached to the Verdict Form is a certificate that must be signed by each juror attesting that considerations of race, color, religious beliefs, national origin, or sex of the defendant or the victim were not involved in reaching your individual decisions.

As you retire to begin your deliberations, you will be provided with a Verdict Form. Section I of the Verdict Form contains space to record your written findings on the non-statutory aggravating factors.

Section II of the Verdict Form contains space to record written findings on the mitigating factors. Because any one juror may find the existence of any mitigating factor, Section II also provides space for you to record how many jurors have found any particular mitigating factor. Additionally, Section II provides extra space for you to record additional mitigating factors, which were not specifically listed or argued by counsel, but which one or more jurors found to be proven by a preponderance of the evidence.

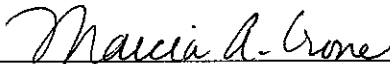
Section III of the Verdict Form is where you should record your ultimate finding as to whether the defendant should be sentenced to death or life imprisonment without the possibility of release.

Section IV contains the Jury Certification which must be signed by each juror and dated by the jury foreperson.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the court security officer. I will either reply in writing or bring you back into the courtroom to respond to your inquiry.

Bear in mind that you are never to reveal to any person, not even to the Court, how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict.

SIGNED at Beaumont, Texas, this 21st day of May, 2010.



Marcia A. Crone
United States District Judge