

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

United States of America
Plaintiff

v

Edison Burgos Montes
Defendant

Case No.: 06-CR-009-01 (JAG)

PRELIMINARY INSTRUCTIONS FOR PRE-TRIAL VOIR DIRE

Ladies and gentlemen, welcome, I am Judge Jay Garcia Gregory, Judge of the United States District Court for the District of Puerto Rico. Each of you is a potential juror in the criminal case of United States v. Edison Burgos Montes.

In this case, Edison Burgos-Montes is charged with killing Madelyn Semidey-Morales to prevent her attendance or testimony in an official proceeding and to prevent her from communicating to a law enforcement officer information about the commission or possible commission of a federal offense. The defendant is also charged with the murder of Madelyn Semidey-Morales in retaliation for Madelyn Semidey-Morales having provided information to a law enforcement officer about the commission or possible commission of a federal offense. Finally, the defendant is also charged with conspiring to possess with intent to distribute 5 kilograms or more of cocaine and conspiring to import into the customs territory of the United States 5 kilograms or more of cocaine.

This case presents the potential consideration by the jury of a sentence of life in prison without release or the death penalty, if Mr. Burgos Montes is in fact convicted of Count

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Three or Count Four of the superseding indictment. The fact that Mr. Burgos Montes has been charged through an indictment, with these offenses, does not mean, and I emphasize this, does not mean in any way that he is guilty of anything. An indictment is merely an accusation. It is proof of nothing, and you may draw no inferences against the defendant from the fact that he has been indicted. Mr. Burgos Montes has pleaded not guilty to each of the charges against him, and is presumed to be innocent which is a cardinal principle of our Constitutional law. I will now introduce the parties in this case:

[Parties allowed to introduce themselves]

Both parties have more than one attorney because of the complex nature of the charges, the amount of trial preparation required, and the potential penalty and projected length of the trial. Each of the defense attorneys have been appointed by the court. If now that you have seen them in person you realize that you do recognize or know any of the attorneys for either the government or the defense or the defendant himself please let us know when we question you individually.

The questionnaire asked about your views on the death penalty. The attorneys and I will be asking each of you individually detailed follow-up questions to help put those questions in context. I do want to advise you that, although the questionnaires indicated that the questioning would take place in private, because of constitutional concerns, I have decided to conduct the questioning in the open courtroom. Although the Court, the lawyers and others associated with the case have your names, we have agreed during these proceedings to refer to you only by your juror number, to protect you from any inquiries from the media. I would like to remind you that your candor in

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answering all questions posed to you is essential. Moreover, I want you to know that should you have any concerns about revealing personal information you may approach the side bar and discuss your concern with me in the presence of counsel and on the record. The side bar conversation will be on the record and will afford you considerable privacy as the public will be unable to hear what we are discussing.

I want to give you a general outline of how a federal sentencing phase operates. First, fairness and justice requires that you not reach any conclusions about the guilt or not guilt of the defendant until you have heard all of the evidence. Additionally, you are not to infer from the discussion about potential punishment that the defendant is guilty of murder or that the jury will definitely have to consider the death penalty. It is just that as I am sure you understand, in any case where the death penalty is even a possible issue, we must explore your attitude about the death penalty since it is something a jury may have to consider.

There are two potential phases in a federal death penalty trial. In the first phase the jury determines whether or not a defendant is guilty. If the jury determines that the defendant is not guilty, or is guilty of a lesser offense, then the jury's work is done and we never have to proceed to a second penalty phase. However, if the jury convicts of a death penalty eligible charge, then and only then is there a second phase trial where the jury decides the sentence to be imposed.

The crimes charged in Counts Three and Four of the Superseding Indictment may be punished by only one of two sentences - life in prison without the possibility of release, or the death penalty. A jury's decision to sentence a defendant

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to life without parole or to death is binding on the Judge. That means if the jury determines that Edison Burgos Montes should be sentenced to life without parole, that is the sentence I am required to impose. Likewise if the jury determines that Edison Burgos Montes should be sentenced to death, I am required by law to impose that sentence. If you do not return a verdict of death on Count Three or Four I will impose a sentence of life in prison without any possibility of release. In the federal system a life sentence means that the person must serve every day of his life in prison without any possibility of release or parole.

Finally, you should also know that no juror is ever required to vote for a sentence of death. The decision whether or not the death penalty is justified is a matter to be decided entirely by the jury.

Please understand that what I am about to tell you is not a substitute for my closing instructions given at the end of the trial. In a penalty phase, a jury must decide whether there are things about the circumstances of the offense or about the defendant which are aggravating, therefore tending to weigh in favor of the imposition of the death penalty. The fact that a jury finds a defendant guilty of murder is never sufficient for imposition of the death penalty. The death penalty is never automatic or required. There are no circumstances of any murder where death is the only appropriate punishment. Instead the law requires jurors to decide if the government has proved the aggravating factors beyond all reasonable doubt.

The law also requires that for an aggravating factor to be found all twelve jurors must agree that it exists beyond a reasonable doubt. If even a single juror disagrees the jury may not consider that aggravating factor. The word aggravate means

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to make worse or more intense or to intensify. An aggravating factor then is a fact or circumstance which would tend to support the imposition of the death penalty.

On the other side of the scale are mitigating factors. The law requires each individual member of the jury to determine whether there are factors about the crime or about the defendant which are mitigating. Factors which are mitigating are those which weigh against imposition of a sentence of death and in favor of a sentence of life in prison without the possibility of parole. Unlike the case with aggravating factors, mitigating factors need only be proven by the lesser preponderance of the evidence standard, something which is more likely to be true than not true. Also unlike aggravating factors, such findings do not have to be unanimous, meaning all jurors do not have to agree. If even one member of the jury finds that a mitigating circumstance has been proven, that juror is allowed to weigh that factor in deciding whether or not to impose a death sentence.

The word mitigating means to make less severe or moderate. The defendant may present evidence in mitigation consisting of anything about his background, record, character, or the circumstances of the offense that would lead a juror to conclude that he should not be put to death, but instead should be punished by life in prison without release.

Once this process of deciding the mitigating and aggravating factors has been completed the jury is asked to balance one against the other and decide whether the aggravating factors outweigh the mitigating factors sufficiently to justify a death sentence. Even if there have been no mitigating factors found, the jury must decide whether one or more aggravating

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factors standing alone, justify a sentence of death. In carrying out this weighing and balancing process the members of the jury are not mere fact finders. Instead jurors are called upon to make a unique individual judgment about the appropriateness of sentencing a person to life in prison without parole or death. This is not a mechanical process. Neither is the decision by raw numbers. Members of a death penalty jury do not simply count factors. Instead individual jurors consider such factors qualitatively. Any one aggravating factor proved if sufficiently serious may outweigh several mitigating factors. On the other hand a single mitigating factor may outweigh several or all aggravating factors.

In short what is called for in weighing the various factors is not arithmetic but an individual juror's careful considered and mature judgment. Jurors are called upon to decide whether a defendant should live in prison for the remainder of his life without the possibility of parole, or be sentenced to death. When I say without the possibility of parole, it means that he will not be released.

As we begin this process there are two final points I wish to make. Perhaps emphasize. The first mentioned briefly before is that you are never required to return a verdict of death and whether or not the circumstances of this case justify a sentence of death is a decision that is entirely yours as jurors. You are the ones who decide the punishment. The law provides you with guidance in making a decision, but as stated earlier your decision on the question of life or death is a uniquely individual judgment which the law leaves up to each of you.

The last thing I wish to explain that is in order to impose a sentence of death all twelve jurors must agree beyond all

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reasonable doubt that death is the only appropriate sentence. If the jury is unable to agree, if even a single juror decides a death sentence is not justified, then the defendant will receive a sentence of life in prison without possibility of release.

The trial of this case, once the jury selection process is complete, may last approximately eight weeks or more. Once the trial starts this case will be in session generally speaking four days a week. We will be working Monday through Thursday and will not work on Friday. We will sit, usually 10:00 in the morning to 5:00 in the afternoon, with breaks in the morning and in the afternoon, and a lunch hour. We will observe all federal holidays. There are no plans to sequester the jury. That means you will be able to go about your business at the end of each trial day, and you will have Friday, weekends and federal holidays off. If this case proceeds to the penalty stage we will take some time off between the two phases, probably one week or a week and a half.

I also want to comment on one other general subject. From the beginning to the end of the trial jurors may not talk about the case or read listen or watch reports about the trial or do any independent investigations. I don't want anybody to start looking into the internet about what the death penalty is, or about this case. I want complete open minds. Only the evidence properly admitted, is what you will be taking into account if you are selected as jurors. I know that the press and the media have to report, but the problem is that that goes through a filter, it goes through a mind before. The minds that I need are yours, directly on the evidence. I am not criticizing the media, because they have to inform the community, but I don't want your minds contaminated. I will remind you every day that you are not to talk about the case, even among yourselves or with family

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members. Additionally, jurors may not post comments about or otherwise speak about this case on any social media outlets like Facebook, Google Plus, Twitter, My Space, etc.

This means that you cannot go home and talk with your spouse or partner, coworkers, friends or neighbors about the questions that you're asked here today. So please take this very seriously, very seriously. You will be exercising a solemn duty and here the decisions are very important. You cannot read any newspaper articles or watch or listen to television or radio accounts about this case. If you are listening to the radio or television and a report begins regarding this case you must switch stations, leave the room or turn the radio or television off. To the extent that you believe you already know something about the case you must put that knowledge aside and be prepared to approach jury service on the facts of this case and the law that applies to it.

If anybody should approach you and start inquiring about this case or any aspect of this case, I must know immediately. So it could be, I don't think it will happen, but if any member of the press or radio or whatever would like to talk to you about this case, you are to tell him that the Judge says no.

Now, we are going to proceed to the individual questioning of the jurors regarding your views about the death penalty, and other aspects of the answers that you gave to the questionnaire. If you believe jury service will be a hardship, and I understand that some of you will, there will be an opportunity to raise that issue later.

You will be told certain jurors are to remain at the courthouse and certain of the remaining jurors will be contacted

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by the clerk to return tomorrow or next week until we finish the individual questioning.

Now we will swear you in as jurors, so please stand up.

(The jurors will be sworn)