

AS READ

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

United States of America

Plaintiff,

v.

Thomas Anthony Galan,

Defendant.

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CASE NO. 3:06CR730

JUDGE JAMES G. CARR

FINAL INSTRUCTIONS FOR THE ELIGIBILITY PHASE

INSTRUCTION NO. 1

INTRODUCTION

Ladies and gentlemen of the jury, because you unanimously found defendant Thomas Galan guilty of the offense of Murder with a Firearm in Relation to a Drug Trafficking Crime as charged in Counts Two and Three of the Indictment, you must now decide whether a sentence of death is justified as to either or both of the Counts of conviction, or whether the defendant should be sentenced to life imprisonment without the possibility of release for commission of these crimes.

The instructions I am about to read are for the Eligibility Phase of the Sentencing Portion of Thomas Galan's trial.

INSTRUCTION NO. 2

BURDEN OF PROOF

The government must meet its burden of proving the defendant eligible for a sentence of death beyond a reasonable doubt.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts.

A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof that is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives.

INSTRUCTION NO. 3

EVIDENCE TO BE CONSIDERED IN THE ELIGIBILITY PHASE

When making your findings, you may not rely solely upon your previous guilty verdict or your factual determinations during your prior deliberations. Instead, you must now each decide this issue for yourselves again.

In making the determinations you are required to make in this phase of the trial, however, you may consider any evidence presented during the guilt phase, as well as the evidence presented at this sentencing hearing.

INSTRUCTION NO. 4

ELEMENTS OF ELIGIBILITY FINDINGS

To find that the defendant is eligible for the death penalty, you must unanimously find that the government has proven the following three elements beyond a reasonable doubt:

First, that the defendant was at least eighteen years of age at the time of the offense.

Second, the existence of at least one of the “intent factors,” as I define those factors in these instructions.

Third, the existence of at least one statutory aggravating factor, as I define those aggravating factors in these instructions.

The government has the burden of proving each of the above three findings beyond a reasonable doubt as to a Count before the defendant is eligible for the death penalty as to that Count.

You must determine whether the defendant is eligible for a death sentence as to each Count separately.

Determine first if the government has met its burden of proof as to each of the three elements as to Count Two.

Then determine if the government has met its burden of proof as to each of the three elements as to Count Three.

As mentioned, you can find the defendant eligible for death only if all of you agree as to each of the three findings.

If any one of you does not make each ^{of} these three findings beyond a reasonable doubt as to a particular Count, your deliberations as to that Count are over. You cannot proceed to the Selection

Phase as to that Count and defendant will be sentenced to life imprisonment without the possibility of release as to that Count.

In the ensuing instructions I instruct you first as to the “intent factors” and then as to the “aggravating factors.”

INSTRUCTION NO. 5

INTENT FACTORS: INTENT DEFINED

Where I instruct you that must find that the defendant acted with intention or intentionally, the government has the burden of proving his intent by proof beyond a reasonable doubt.

A person's intent or knowledge may not ordinarily be proved directly, because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or intended at a particular time, you may consider any statements made or acts done by that person, and all other facts and circumstances in evidence which may aid in your determination of that person's knowledge or intent.

A person of sound mind and discretion may be presumed to have intended the ordinary, natural, and probable consequences of his knowing and voluntary acts.

Thus, you may – but the law does not require you to – infer from the defendant's conduct that the defendant intended to kill a person if you find:

- 1) The defendant was a person of sound mind and discretion;
- 2) The victim's death was an ordinary, natural, and probable consequence of the defendant's acts; and
- 3) The defendant committed these acts knowingly and voluntarily.

INSTRUCTION NO. 6

“INTENT FACTORS” DEFINED

The “intent factors,” as I use that term in these instructions, are that the defendant either:

1. Intentionally killed either or both victims; or
2. Intentionally inflicted serious bodily injury that resulted in the death of either or both victims.

Before the defendant can be eligible for death as to a Count, you must unanimously find that the government has proven the existence of at least one of the intent factors beyond a reasonable doubt.

If you do not unanimously agree as to at least either intent factor as to a Count, you must not deliberate further as to that Count, and the defendant shall be sentenced to life imprisonment without the possibility of release.

INSTRUCTION NO. 7

INTENT FACTOR ONE: INTENTIONAL KILLING

The first intent factor is that the defendant Intentionally killed either or both victims.

An intentional killing does not occur by accident or involuntarily.

To prove this intent factor, the government must prove beyond a reasonable doubt that the defendant shot and killed a victim willfully, deliberately, and with a conscious desire to cause death.

INSTRUCTION NO. 8

**INTENT FACTOR TWO: INTENTIONAL INFLICTION
OF SERIOUS BODILY INJURY**

The second intent factor is that the defendant intentionally inflicted serious bodily injury that resulted in the death of either or both victims.

To prove this intent factor, the government must prove beyond a reasonable doubt that the defendant intentionally inflicted serious bodily injury that resulted in the death of either or both victims.

“Serious bodily injury” means a significant or considerable amount of injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of a body member, organ or mental faculty.

INSTRUCTION NO. 9

“AGGRAVATING FACTORS”: INTRODUCTION

For the defendant to be eligible for death, the government, in addition to one or more intent factors, must prove, and you must find beyond a reasonable doubt, the existence of one or more statutory “aggravating factors.”

An aggravating factor is a factor that tends to "make worse or more offensive" or "to intensify" the underlying crime.

In the federal death penalty statute, the aggravating factors set forth in the statute are called "statutory aggravating factors." You may only consider the statutory aggravating factors that I list for you: you may not consider anything else to be an aggravating factor.

For the defendant to be eligible for death as to a Count, the government must prove the existence of at least one statutory aggravating factor beyond a reasonable doubt, and you must agree unanimously that it has done so as to the same such factor.

INSTRUCTION NO. 10

“AGGRAVATING FACTORS”: DEFINED

For the defendant to be eligible for death, the government must prove, and you must unanimously find beyond a reasonable doubt, the existence of at least one of the following statutory aggravating factors in conjunction ^{with} the defendant's commission of murder with a firearm in relation to a drug trafficking crime:

1. The defendant killed either or both of the victims after substantial planning and premeditation to cause the death of either or both of them;
2. The defendant killed either or both the victims expecting to receive something of pecuniary value;
3. The defendant, in killing either or both the victims, or in escaping apprehension for the offense of murder, knowingly created a grave risk of death to one or more persons in addition to the murder victims; or
4. The defendant intentionally killed more than one person in a single criminal episode.

INSTRUCTION NO. 11

**AGGRAVATING FACTOR ONE: SUBSTANTIAL PLANNING
AND SUBSTANTIAL PREMEDITATION**

The first aggravating factor is the defendant killed either or both of the victims after substantial planning and premeditation to cause the death of either or both of them.

This statutory aggravating factor requires the government to prove, beyond a reasonable doubt, that the defendant killed either or both the victims after substantial planning and substantial premeditation to cause the death of either or both of them.

The government cannot merely prove that the killing of either or both victims was intentional. Rather, the government must prove, beyond a reasonable doubt, that the defendant killed either or both of the victims after substantial planning and substantial premeditation.

"Substantial" means considerable in amount.

"Planning" means the act or process of making or carrying out plans. A plan, as used in these instructions, means a method of achieving something, or a way of carrying out a design.

"Premeditation" means planning or deliberation. The passage of time is a factor which you may consider in attempting to determine if a defendant acted with "premeditation." The amount of time needed for premeditation of a killing can depend on the person and the circumstances.

The time must be long enough after forming the intent to kill for the killer to have been fully conscious of the intent and to have considered the killing.

This factor, substantial planning and substantial premeditation, is not established by simply showing that a murder was premeditated, or that some small amount of planning came before it.

Rather, it must be shown that there was both a considerable amount of premeditation and that there was a considerable amount of planning before the murder.

INSTRUCTION NO. 12

AGGRAVATING FACTOR TWO: EXPECTATION OF RECEIVING SOMETHING OF PECUNIARY VALUE

The second aggravating factor is that the defendant killed either or both the victims expecting to receive something of pecuniary value.

To prove this factor, the government must prove, beyond a reasonable doubt, that the defendant murdered either or both the victims in the expectation of receiving something in the form of money, property, or anything else having some economic value, benefit, or advantage.

To prove this aggravating factor, the government is not required to prove that something of pecuniary value actually changed hands. The words "receipt or expectation ~~of~~ receipt" includes obtaining or expecting to obtain something of value.

INSTRUCTION NO. 13

**AGGRAVATING FACTOR THREE: CREATING A GRAVE RISK
OF DEATH TO OTHERS IN COMMITTING OR
ESCAPING APPREHENSION FROM THE OFFENSE**

The third aggravating factor is that the defendant, in killing either or both the victims, or in escaping apprehension for the offense of murder, knowingly created a grave risk of death to one or more persons in addition to the two murder victims.

To prove this factor, the government must prove beyond a reasonable doubt that the defendant knowingly created a grave risk of death to one or more persons in addition to the victims in committing the offense of murder or escaping apprehension for that offense.

“Knowingly” creating such a risk means that the defendant was conscious and aware that his conduct in the course of committing the murders might have this result. His conduct cannot merely have been the product of ignorance, mistake, or accident.

Knowledge may be proved like anything else. You may consider any of the defendant’s statements and acts, and all the facts and circumstances in evidence which may aid in a determination of his knowledge.

“Grave risk of death” means a significant and considerable possibility that another person might be killed.

“Persons in addition to the victim” does not include other participants in the offense. You may not consider the murder victims as persons placed in grave risk of death by the defendant’s actions.

The government alleges that the defendant's action placed Damere Lockett in grave risk of death.

To find this factor, you must agree unanimously that the government has proven beyond a reasonable doubt that the defendant's actions placed Damere Lockett in grave risk of death.

INSTRUCTION NO. 14

AGGRAVATING FACTOR FOUR: KILLING OF MORE THAN ONE PERSON IN A SINGLE CRIMINAL EPISODE

The fourth aggravating factor is that the defendant intentionally killed more than one person in a single criminal episode. You must unanimously agree on the actual victims to find this factor has been proven beyond a reasonable doubt.

The government alleges that the defendant intentionally killed more than one person, namely both victims, in a single criminal episode. To prove the existence of this factor, the government must prove that the defendant intentionally killed more than one person in a single criminal episode.

“Intentionally killing” a person means killing a person on purpose, that is: willfully, deliberately, or with a conscious desire to cause a person’s death and not just accidentally or involuntarily.

“More than one person” means one or more other persons in addition to killing the victim referred to in a particular count. In this case, the government alleges that the defendant intentionally killed both victims in a single criminal episode.

“A single criminal episode” is an act or series of related criminal acts which occur within a relatively limited time and place, or are directed at the same person, or are part of a continuous course of conduct related in time, place, or purpose.

~~It is not necessary to agree on the identity of the persons whom the defendant killed.~~

INSTRUCTION NO. 15

SEPARATE CONSIDERATION FOR EACH COUNT

Once you have made your determinations for Count Two, you now must repeat the process for Count Three. Your findings as to Count Two are separate and distinct from your findings as to Count Three.

In other words, simply because you made a finding with regard to Count Two does not mean that you have to make the same finding with regard to Count Three.

INSTRUCTION NO. 16

DELIBERATIONS

Now that you have heard and seen all the evidence, I have given these instructions and counsel have presented their closing arguments, you may talk about the case in the jury room. Indeed, it is your duty to talk with each other about the evidence and make every reasonable effort to reach unanimous agreement.

Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what each other has to say.

Try your best to work out your differences.

Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with.

In the end, your vote must be exactly that – your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

Remember that you are judges – judges of the facts. You are not partisans or advocates for one side or the other, or for a particular outcome.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself if the government has proven the defendant eligible for death beyond a reasonable doubt.

JURY INSTRUCTION NO. 17

DECISION FOR YOU ALONE

You alone make the decision as to whether the defendant is eligible for death. I am not permitted to alter your decision – whether it is death or life imprisonment – after you have reached it.

JURY INSTRUCTION NO. 18

VERDICT FORMS

I have prepared ¹ verdict forms that you should use to record your verdicts.:

[Read Forms]

If you unanimously decide that the government has proved beyond a reasonable doubt what the law requires it to prove, have your foreperson mark the appropriate place on the appropriate form.

Each of you are then to sign the form or forms.

Then notify the clerk that you have reached your verdicts. Hand the verdicts to her.

Before your verdicts are read in court, do not disclose them to anyone.

Your verdict as to the defendant's death eligibility and the findings you must make before finding him eligible for death must be unanimous.

~~If you unanimously decide that the government has not met its burden of proof as to any element of the offense, the defendant is entitled to a verdict of acquittal. If you unanimously decide that the government has met its burden of proof as to any element of the offense, the defendant is entitled to a verdict of death and the sentence of life in prison without the possibility of parole.~~

~~W. J. [Signature]~~