

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
) CRIMINAL NO. 13-10200-GAO
)
)
DZHOKHAR TSARNAEV)

**DEFENDANT’S PROPOSED
PENALTY PHASE VERDICT FORM**

Defendant, Dzhokhar Tsarnaev, by and through counsel, hereby files his proposed
Penalty Phase Verdict Form.

Respectfully submitted,

DZHOKHAR TSARNAEV
by his attorneys

/s/David I. Bruck

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Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 12, 2015.

/s/ David I. Bruck

DEFENDANT'S PROPOSED SPECIAL FINDINGS
AND SENTENCING VERDICT FORM

April 28, 2015

SECTION I. GATEWAY FACTORS

General Directions for Section I:

- As used in this section, the term “capital counts” refers to:

Count One:	Conspiracy to use a weapon of mass destruction
Count Two:	Use of a weapon of mass destruction (Pressure Cooker Bomb #1) on or about April 15, 2013, in the vicinity of 671 Boylston Street in Boston, Massachusetts, and aiding and abetting
Count Three:	Possession or use of a firearm (Pressure Cooker Bomb #1) during and in relation to a crime of violence, namely, use of a weapon of mass destruction as in Count Two of this section, and aiding and abetting
Count Four:	Use of a weapon of mass destruction (Pressure Cooker Bomb #2) on or about April 15, 2013, in the vicinity of 755 Boylston Street in Boston, Massachusetts, and aiding and abetting
Count Five:	Possession or use of a firearm (Pressure Cooker Bomb #2) during and in relation to a crime of violence, namely, use of a weapon of mass destruction as in Count Four of this section
Count Six:	Conspiracy to bomb a place of public use
Count Seven:	Bombing of a place of public use (Pressure Cooker Bomb #1) on or about April 15, 2013, in the vicinity of 671 Boylston Street, Boston, Massachusetts, and aiding and abetting
Count Eight:	Possession or use of a firearm (Pressure Cooker Bomb #1) during and in relation to a crime of violence, namely, the bombing of a place of public use as in Count Seven of this section
Count Nine:	Bombing of a place of public use (Pressure Cooker Bomb #2) on or about April 15, 2013, in the vicinity of 755 Boylston Street, Boston, Massachusetts, and aiding and abetting
Count Ten:	Possession or use of a firearm (Pressure Cooker Bomb #2) during and in relation to a crime of violence, namely, the bombing of a place of public as in Count Nine of this section

- Count Twelve: Malicious destruction of property by means of an explosive (Pressure Cooker Bomb #1) on or about April 15, 2013, in the vicinity of 671 Boylston Street in Boston, Massachusetts, and aiding and abetting
- Count Thirteen: Possession or use of a firearm (Pressure Cooker Bomb #1) during and in relation to a crime of violence, namely, the malicious destruction of property as in Count Twelve of this section
- Count Fourteen: Malicious destruction of property by means of an explosive (Pressure Cooker Bomb #2) on or about April 15, 2013, in the vicinity of 755 Boylston Street in Boston, Massachusetts, and aiding and abetting
- Count Fifteen: Possession or use of a firearm (Pressure Cooker Bomb #2) during and in relation to a crime of violence, namely, malicious destruction of property as in Count Fourteen of this section
- Count Sixteen: Possession or use of a firearm (Ruger P95 9mm semiautomatic handgun) on or about April 18, 2013, during and in relation to a crime of violence, namely, conspiracy to use a weapon of mass destruction as in Count One of this section, and aiding and abetting
- Count Seventeen: Possession or use of a firearm (Ruger P95 9mm semiautomatic handgun) on or about April 18, 2013, during and in relation to a crime of violence, namely, conspiracy to bomb a place of public use as in Count Six of this section, and aiding and abetting
- Count Eighteen: Possession or use of a firearm (Ruger P95 9mm semiautomatic handgun) on or about April 18, 2013, during and in relation to a crime of violence, namely, conspiracy to maliciously destroy property, and aiding and abetting

- Please indicate which, if any, of the following gateway factors you unanimously find that the Government has proven beyond a reasonable doubt. For each of the four gateway factors listed in Part A below, you must mark one of the responses.

Part A.

1. That Dzhokhar Tsarnaev intentionally killed the victim or victims of the particular capital count you are considering.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

2. That Dzhokhar Tsarnaev intentionally inflicted serious bodily injury that resulted in the death of the victim or victims of the particular capital count you are considering.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

3. That Dzhokhar Tsarnaev 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 the victim or victims of the particular capital count you are considering died as a direct result of the act.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

4. That Dzhokhar Tsarnaev 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 the victim or victims of the particular capital count you are considering died as a direct result of the act.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

Directions:

- For each capital count, if you do not unanimously find that the Government has proven beyond a reasonable doubt at least one of the above gateway factors with respect to that count, then your deliberations are over as to that count.
- If there is no capital count for which you unanimously find a gateway factor has been proved beyond a reasonable doubt, skip forward to Section VI and complete that section in accordance with the directions there. Then notify the Court that you have completed your deliberations.
- If you have found at least one gateway factor with regard to one or more capital counts, continue on to Section II.

SECTION II. STATUTORY AGGRAVATING FACTORS

General Directions for Section II:

- As used in this section, the term “capital count(s)” refers only to those counts for which you found at least one gateway factor in Section I. Do not consider statutory aggravating factors in this section with regard to any counts for which you have not found at least one gateway factor in Section I.
- In this section, please indicate which, if any, of the following statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. For each of the six statutory aggravating factors listed in Part A below, you must mark one of the responses.

Part A.

- 1. The death, and injury resulting in death, occurred during the commission and attempted commission of, and during the immediate flight from the commission of another offense. [Applies to all Capital Counts.]**

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

- 2. Dzhokhar Tsarnaev knowingly created a grave risk of death to one or more persons in addition to the victim of the offense in the commission of the**

offense and in escaping apprehension for the violation of the offense. [Applies to all Capital Counts.]

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

3. Dzhokhar Tsarnaev committed the offense in an especially heinous, cruel and depraved manner in that it involved serious physical abuse to the victim. [Only applies to Capital Counts 1-10 and 12-15.]

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

4. Dzhokhar Tsarnaev committed the offense after substantial planning and premeditation to cause the death of a person and commit an act of terrorism. [Only applies to Capital Counts 1-10 and 12-15.]

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

5. Dzhokhar Tsarnaev intentionally killed and attempted to kill more than one person in a single criminal episode. [Only applies to Capital Counts 1-10 and 12-15.]

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

6. Dzhokhar Tsarnaev is responsible for the death of a victim, Martin Richard, who was particularly vulnerable due to youth. [Only applies to Capital Counts 1, 4-6, 9, 10, 14, and 15.]

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

Directions:

- For each capital count you are considering in this section, if you do not unanimously find that the Government has proven beyond a reasonable doubt at least one of the above statutory aggravating factors with respect to that count, then your deliberations are over as to that capital count.
- If there is no capital count for which you unanimously find that at least one statutory aggravating factor has been proved beyond a reasonable doubt, skip forward to Section VI and complete that section in accordance with the directions there. Then notify the Court that you have completed your deliberations.
- If you have found one or more statutory aggravating factors with regard to one or more capital counts, continue on to Section III.

SECTION III. NON-STATUTORY AGGRAVATING FACTORS

General directions for Section III:

- As used in this section, the term “capital count(s)” refers only to those counts for which you have found at least one gateway factor in Section I and at least one statutory aggravating factor in Section II. Do not consider non-statutory aggravating factors in this section with regard to the count(s) for which you have not found at least one gateway factor in Section I and at least one statutory aggravating factor in Section II.
- In this section, please indicate which, if any, of the following six non-statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. For each of the proposed factors, you must mark one of the responses provided.

1. In conjunction with committing acts of violence and terrorism, Dzhokhar Tsarnaev made statements suggesting that others would be justified in committing additional acts of violence and terrorism against the United States. [Applies to all Capital Counts.]

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

2. Tsarnaev caused injury, harm and loss to Krystle Marie Campbell and her family and friends, Lingzi Lu and her family and friends, and Officer Sean Collier and his family and friends. [Applies to all Capital Counts.]

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

3. Dzhokhar Tsarnaev targeted the Boston Marathon, an iconic event that draws large crowds of men, women and children to its final stretch, making it especially susceptible to the act and effects of terrorism. [Only applies to Capital Counts 1-10 and 12-15.]

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

4. Dzhokhar Tsarnaev has demonstrated a lack of remorse. [Applies to all Capital Counts.]

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

5. Dzhokhar Tsarnaev murdered Officer Sean Collier, a law enforcement officer who was engaged in the performance of his official duties at the time of his death. [Only applies to Capital Counts 1, 6, and 16-18.]

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

6. Dzhokhar Tsarnaev participated in additional uncharged crimes of violence, including assault with a dangerous weapon, assault with intent to maim, mayhem, and attempted murder, on April 15, 2013 in Boston, Massachusetts

and on or about April 19, 2013 in Watertown, Massachusetts. [Applies to all Capital Counts.]

_____ We unanimously find that this factor has been proved beyond a reasonable doubt for all applicable counts.

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt for any applicable counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

Directions:

- After you have completed your findings in this section (whether or not you have found any of the above non-statutory aggravating factors to have been proved), continue on to Section IV.

SECTION IV. MITIGATING FACTORS

General directions for Section IV:

- As used in this section, the term “capital count(s)” refers only to those counts for which you found at least one gateway factor in Section I and at least one statutory aggravating factor in Section II.
- There are __ factors urged by Dzhokhar Tsarnaev as mitigating factors that involve matters of law not in dispute. You should consider these mitigating factors in the weighing process:

[Insert mitigating factors submitted by the Defendant which involve matters of law not in dispute (*e.g.*, The law mandates that if Defendant is not sentenced to death, he will be subject to life in prison without possibility of release.).]

- As to the other alleged mitigating factors that are listed below, please indicate which, if any you find that the defense has proven by a preponderance of the evidence.
- Recall that your vote as a jury need not be unanimous with regard to each question in this section. A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established in making his or her individual determination of whether or not a sentence of death shall be imposed, regardless of the number of other jurors who agree that the factor has been established.
- In the space provided, please indicate the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence with regard to each of the capital counts.

[Insert all other mitigating factors submitted by Defendant.]

- The law does not limit your consideration of mitigating factors to those that can be articulated in advance. Therefore, you may consider during your deliberations any other factor or factors in Dzhokhar Tsarnaev’s background, record, character, or any other circumstances of the offense that mitigate against imposition of a death sentence.
- The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors. If more space is needed, write “CONTINUED” and use the reverse side of this page.

#.

Number of jurors who so find. _____

#.

Number of jurors who so find. _____

#.

Number of jurors who so find. _____

#.

Number of jurors who so find. _____

#.

Number of jurors who so find. _____

Directions:

- After you have completed your findings in this section (whether or not you have found any mitigating factors in this section), continue on to Section V.

SECTION V. DETERMINATION OF SENTENCE

General directions for Section V:

- As used in this section, the term “capital count(s)” refers only to those counts for which you found at least one gateway factor in Section I and at least one statutory aggravating factor in Section II. You may not impose a sentence of death on a particular capital count unless you have first found with regard to that count, unanimously and beyond a reasonable doubt, at least one gateway factor in Section I and at least one statutory aggravating factor in Section II.
- In this section, enter your determination of Dzhokhar Tsarnaev’s sentence with regard to each of the capital count(s). Your vote as a jury must be unanimous with regard to each question in this section.

After considering the information presented by both sides during the penalty phase and individually balancing the aggravating factors found to exist against the mitigating factors found to exist:

_____ We, the jury, unanimously find beyond a reasonable doubt, for all of the capital count(s), that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist or, in the absence of any mitigating factors, that the aggravating factor or factors are themselves sufficient—so that death is the appropriate sentence for Dzhokhar Tsarnaev. We vote unanimously that Dzhokhar Tsarnaev shall be sentenced to death as to each count.

_____ We, the jury, unanimously find beyond a reasonable doubt that a sentence of life in prison without possibility of release is the appropriate sentence for Dzhokhar Tsarnaev for all of the capital counts. We vote unanimously that Dzhokhar Tsarnaev shall be sentenced to life imprisonment without the possibility of release.

_____ We, the jury, are unable to reach a unanimous verdict in favor of a death sentence or in favor of a life sentence, for any of the capital counts. We understand that the consequence of this is that Dzhokhar Tsarnaev will be sentenced to life imprisonment without the possibility of release.

_____ We, the jury, unanimously find beyond a reasonable doubt, for some of the capital counts, that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist or, in the absence of any mitigating factors, that the aggravating factor or factors are themselves sufficient—so that death is the appropriate sentence for Dzhokhar Tsarnaev with regard to each of the following capital counts only (identify each count by count number):

With regard to the above listed capital counts, we vote unanimously that Dzhokhar Tsarnaev shall be sentenced to death separately as to each count. With regard to each of the remaining capital counts, we sentence Dzhokhar Tsarnaev to life imprisonment without the possibility of release separately as to each count.

SECTION VI. DETERMINATION OF SENTENCE

Each juror must sign his or her name [or if using an anonymous jury, his or her juror number] below, indicating that the above sentence determination reflects the jury's unanimous decision:

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

Foreperson (Juror No. ____)

The foreperson shall indicate the date of signing:

Date: _____

Directions:

- After you have completed your sentence determination in this section (regardless of what that determination was), continue on to Section VII.

SECTION VII. CERTIFICATION

By signing your name [or if using an anonymous jury, his or her juror number] below, each of you individually certifies that consideration of the race, color, religious beliefs, national origin, or the sex of Dzhokhar Tsarnaev or the victims was not involved in reaching your individual decision. Each of you further certifies that you, as an individual, would have made the same recommendation regarding a sentence for the crime or crimes in question regardless of the race, color, religious beliefs, national origin, or the sex of Dzhokhar Tsarnaev, or the victims.

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

Foreperson (Juror No. ____)

The foreperson shall indicate the date of signing:

Date: _____

Directions:

- After you have completed this form, you will each be given a new certification, headed Juror No. _____, and an envelope which bears your juror number on the outside. Please sign that certificate using your real name, place the certificate in the envelope, seal the envelope and give the envelope to the Marshal. All of the certificates bearing your real name will be kept by the Court under seal.