

**CASE NOS. 24-5322 AND 24-5768 (CAPITAL CASES)  
IN THE SUPREME COURT OF THE UNITED STATES**

**October Term, 2024**

---

**JAMES H. ROANE, JR.,**  
*Petitioner,*

**v.**

**UNITED STATES OF AMERICA,**  
*Respondent.*

**RICHARD TIPTON**  
*Petitioner,*

**v.**

**UNITED STATES OF AMERICA,**  
*Respondent.*

---

**On Petition for Writs of Certiorari to  
The United States Court of Appeals for the Fourth Circuit**

---

**REPLY IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI**

---

\*SHAWN NOLAN  
Chief, Capital Habeas Unit  
JULES WELSH  
Assistant Federal Defender  
Federal Community Defender for the  
Eastern District of Pennsylvania  
601 Walnut Street, Suite 545 West  
Philadelphia, PA 19106  
Shawn\_Nolan@fd.org  
(215) 928-0520

Counsel for Petitioner James H. Roane, Jr.  
*\*Counsel of Record*

\*GERALD W. KING, JR.  
Chief, Capital Habeas Unit  
for the Fourth Circuit  
129 West Trade Street, Suite 300  
Charlotte, NC 28202  
(704) 374-0720  
gerald\_king@fd.org

Counsel for Petitioner Richard Tipton  
*\*Counsel of Record*

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF APPENDICES..... ii

TABLE OF AUTHORITIES ..... iii

ARGUMENT..... 1

    I.    The Ninth Circuit’s decision in *United States v. Elmore*, 118 F.4th  
        1193 (9th Cir. 2024) further exposes the inaccuracy of the Fourth  
        Circuit’s approach..... 1

    II.   A favorable decision from this Court would have a practical effect on  
        Mr. Tipton and Mr. Roane’s sentences ..... 3

CONCLUSION..... 6

**TABLE OF APPENDICES**

SPECIAL FINDINGS IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION,  
*UNITED STATES v. ROANE*, FILED FEBRUARY 16, 1993 ..... 1a

SPECIAL FINDINGS IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION,  
*UNITED STATES v. TIPTON*, FILED FEBRUARY 16, 1993 ..... 11a

**TABLE OF AUTHORITIES**

**Cases**

*Alvarado-Linares v. United States*,  
44 F.4th 1334 (11th Cir. 2022)..... 1

*Bourgeois v. Whitley*,  
784 F.2d 718 (5th Cir. 1986) ..... 4

*Furman v Georgia*,  
408 U.S. 256 (1972) ..... 3

*James v. United States*,  
476 F.2d 936 (8th Cir. 1973) ..... 4

*Jerkins v. United States*,  
530 F.2d 1203 (5th Cir. 1976) ..... 4

*Johnson v. Mississippi*,  
486 U.S. 578 (1988) ..... 3, 4

*Lockett v. Ohio*,  
438 U.S. 586 (1978) ..... 3

*Mills v. Maryland*,  
486 U.S. 367 (1988) ..... 4

*States v. Thomas*,  
87 F.4th 267 (4th Cir. 2023)..... 1

*United States v. Adkins*,  
883 F.3d 1207 (9th Cir. 2018) ..... 2

*United States v. Elmore*,  
118 F.4th 1193 (9th Cir. 2024)..... 1, 2

*United States v. Laurent*,  
33 F.4th 63 (2nd Cir. 2022)..... 1

*United States v. Morris*,  
61 F.4th 311 (2nd Cir. 2023)..... 1

*United States v. Pastore*,  
36 F.4th 423 (2nd Cir. 2022)..... 1

*United States v. Toki*,  
23 F.4th 1277 (10th Cir. 2022)..... 1

*United States v. Tucker*,  
404 U.S. 443 (1972) ..... 3, 4

*United States v. White*,  
7 F.4th 90 (2nd Cir. 2021)..... 1

## ARGUMENT

### **I. The Ninth Circuit’s decision in *United States v. Elmore*, 118 F.4th 1193 (9th Cir. 2024) further exposes the inaccuracy of the Fourth Circuit’s approach.**

Contrary to the government’s assertion, the Ninth Circuit’s decision in *Elmore* does, in fact, squarely conflict with the decision below in this case. In *Elmore*, the Ninth Circuit joined the Second, Tenth, and Eleventh Circuits in holding that courts must apply the categorical approach to the state or federal statute underpinning the VICAR offense, deepening the circuit split on this issue. *Id.* at 1196.

As the Ninth Circuit stated explicitly, “the modified categorical approach must be applied to determine the elements of Elmore’s charged VICAR offense.” *Id.* Accord *United States v. Pastore*, 36 F.4th 423, 429 (2nd Cir. 2022); *United States v. Morris*, 61 F.4th 311, 318 (2nd Cir. 2023); *United States v. Laurent*, 33 F.4th 63, 92 (2nd Cir. 2022); *United States v. White*, 7 F.4th 90, 104 (2nd Cir. 2021); *United States v. Toki*, 23 F.4th 1277, 1279–81 (10th Cir. 2022); *Alvarado-Linares v. United States*, 44 F.4th 1334, 1342–43 (11th Cir. 2022). Since, in *Elmore*, the charging documents identified crimes in the California penal code underpinning the VICAR conviction, the Ninth Circuit remanded to the lower court to analyze whether the California statutes were valid crimes of violence. *Elmore*, 118 F.4th at 1196. (“[W]e are persuaded that determining whether this charged [VICAR] offense ‘has as an element the ... use of physical force’ against another person requires considering whether California murder necessarily involves the requisite force[.]”). In *United States v. Thomas*, 87 F.4th 267 (4th Cir. 2023), by contrast, the Fourth Circuit held

that the underlying state or federal statute is completely irrelevant to the crime of violence analysis, as all VICAR predicates are categorically valid crimes of violence, regardless of the elements of the incorporated crime. The Fourth Circuit’s approach—which it applied to deny Mr. Tipton and Mr. Roane relief—is in direct conflict with the Ninth Circuit’s conclusion in *Elmore*.

The Ninth Circuit did not resolve the question of how to approach a VICAR conviction when there was no identified state or federal statute underpinning the VICAR offense, as that fact pattern was not before the court. However, the court in *Elmore* did note that affirming a VICAR conviction when a jury was not instructed on the definition of the state law predicate raised serious issues and was likely to result in prejudice. The Ninth Circuit stated that a hypothetical scenario where a jury was “instructed simply to find whether the defendant committed the offense of ‘murder’” without defining the elements of the state law predicate would be “seriously problematic because the defendant’s actions, as found by the jury, might not constitute murder [under state law].” *Elmore*, 118 F.4th at 1199 (quoting *United States v. Adkins*, 883 F.3d 1207, 1211 (9th Cir. 2018)). This “seriously problematic” hypothetical mirrors Mr. Tipton and Mr. Roane’s convictions. Indeed, while the Ninth Circuit did not decide an issue that was not properly before it, the court repeatedly emphasized that “a valid VICAR conviction requires proof of a predicate violation of state or federal law.” *Id. See also id* at 1199 (“The third [VICAR] element—requiring proof that a defendant has committed one of the

enumerated offenses, in violation of state or federal law—incorporates the elements of the relevant predicate violation.”).

**II. A favorable decision from this Court would have a practical effect on Mr. Tipton and Mr. Roane’s sentences.**

The Government argues that the legal issues raised in these cases are unsuitable for review because Mr. Tipton and Mr. Roane were sentenced to death pursuant to statutes separate from the ones challenged here. The Government overlooks the fact that the jury considered the invalid convictions when determining the ultimate sentences, and, as a result, the invalid convictions likely impacted the jury’s determination regarding the death penalty. This Court has previously deemed the use of an invalid conviction in a capital sentencing determination prejudicial and overturned a death sentence due to the possibility that the invalid conviction was “decisive in the choice between a life sentence and a death sentence.” *Johnson v. Mississippi*, 486 U.S. 578, 586 (1988); see also *United States v. Tucker*, 404 U.S. 443, 447 (1972) (authorizing review of “sentence[s] founded at least in part upon misinformation of constitutional magnitude.”). The fact that Mr. Tipton and Mr. Roane were sentenced to death under other statutes does not render these unconstitutional convictions irrelevant; on the contrary, the fact that death is “different” requires a greater degree of reliability and protection in such circumstances. See *Furman v Georgia*, 408 U.S. 256–57 (1972) (Stewart, J. concurring), see also *Lockett v. Ohio*, 438 U.S. 586, 604–05 (1978) (plurality opinion).

When sentencing Mr. Roane and Mr. Tipton, the jury took into consideration the invalid convictions at issue here as part of the sentencing package. As this

Court held in *Tucker*, “the real question” for a court reviewing whether a sentence imposed by a jury so misinformed—as Mr. Tipton and Mr. Roane’s jury was in sentencing them to death—is “whether the sentence” for those of their convictions that remain in place “might have been different if the [jury] had known that at least two of [Mr. Tipton’s or Mr. Roane’s] previous convictions had been unconstitutionally obtained.” 404 U.S. at 448. In keeping with *Johnson* and *Tucker*, courts have held that a defendant must be resentenced on any valid convictions “unless it can be ascertained from the record that a [jury’s] sentence on a valid conviction was not affected” by invalid convictions. *Bourgeois v. Whitley*, 784 F.2d 718, 721 (5th Cir. 1986); *see also Jerkins v. United States*, 530 F.2d 1203, 1204 (5th Cir. 1976) (same); *James v. United States*, 476 F.2d 936 (8th Cir. 1973) (same).

The Supreme Court has made clear that “[t]he *possibility* that [a defendant’s] jury conducted its task improperly certainly is great enough to require resentencing.” *Mills v. Maryland*, 486 U.S. 367, 383-84 (1988) (emphasis added). And there is more than a possibility here. The record shows that the government’s penalty phase case relied almost exclusively on evidence from the guilt-innocence phase of the trial. The government “did not put on a great deal of evidence” during the penalty phase. T. 3883-3884, 3392-3893. Rather, it urged the jury to rely upon its findings “in your guilt phase verdict.” T. 3893. Thus, the jury’s decision to impose the death penalty was intertwined with the invalid section 924(c) convictions.

In both cases, moreover, the jury found substantial mitigation. In Mr. Roane’s case, the jury found unanimously the following mitigating factors: “That

another defendant or defendants, equally culpable in the crime(s), will not be punished by death”; “That the victim(s) consented to the criminal conduct that resulted in his (their) deaths”; that Mr. Roane “was subjected to emotional, physical and sexual abuse, abandonment and neglect as a child, and was deprived of the parental guidance and protection that he needed”; that Mr. Roane “grew up in an impoverished, violent and brutal environment, and was exposed to extreme violence as a child and throughout his life”; and that Mr. Roane “if not sentenced to death, will be sentenced to life in prison without any possibility of parole.” App. 1a–10a. A majority of the jurors also found that Mr. Roane “suffers from neurological impairments which were identified and which could have been treated when he was a child or adolescent” and that Mr. Roane “has responded well to structured environments, and would likely make an adaptation to prison if he were sentenced to life imprisonment.” App. 7a–8a. As an aggravating factor, the jury found that Mr. Roane had “a substantial criminal history.” App. 5a.

As to Mr. Tipton, the jury unanimously found that: he had no significant prior criminal record; he was introduced to addictive drugs and alcohol while still a child; his full scale I.Q. is only 85, one standard deviation below the mean; and that he grew up in an impoverished, chaotic, and brutal environment that exposed him to extreme violence as a child and throughout his life. App. 18a-20a. Ten or eleven jurors further found that another defendant or other defendants who were equally culpable in the crimes would not be punished by death; that the victims consented to the criminal conduct that resulted in their deaths; that Mr. Tipton was subjected

to emotional and physical abuse and neglect as a child, and was deprived of the parental guidance and protection that he needed; and that Mr. Tipton suffers from dysfunction in the frontal lobe of his brain that went untreated when he was a child. App. 17a-19a.

In light of the considerable mitigating evidence the jurors found, it is not merely possible, but likely, that Mr. Tipton's and Mr. Roane's unconstitutional section 924(c) convictions profoundly affected the jury's decision to impose a sentence of death.

**CONCLUSION**

For all the reasons set forth above, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

/s/ Shawn Nolan  
\*SHAWN NOLAN  
Chief, Capital Habeas Unit  
Federal Community Defender for the  
Eastern District of Pennsylvania  
601 Walnut Street, Suite 545 West  
Philadelphia, PA 19106  
Shawn\_Nolan@fd.org  
(215) 928-0520

Counsel for Petitioner James H. Roane, Jr.

*\*Counsel of Record*

/s/ Gerald W. King, Jr.  
\*GERALD W. KING, JR.  
Chief, Capital Habeas Unit  
for the Fourth Circuit  
129 West Trade Street, Suite 300  
Charlotte, NC 28202  
(704) 374-0720  
gerald\_king@fd.org

Counsel for Petitioner Richard Tipton

*\*Counsel of Record*

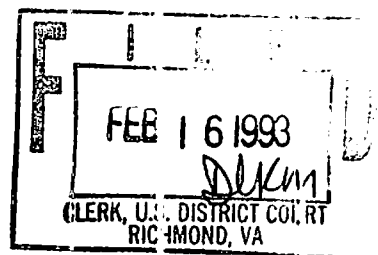
Dated: December 5, 2024

## **APPENDIX**

**TABLE OF CONTENTS**

|   | <i>Page</i> |
|---|-------------|
| SPECIAL FINDINGS IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION, <i>UNITED STATES v. ROANE</i> , FILED FEBRUARY 16, 1993.....  | 1a          |
| SPECIAL FINDINGS IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION, <i>UNITED STATES v. TIPTON</i> , FILED FEBRUARY 16, 1993..... | 11a         |

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION



UNITED STATES OF AMERICA )  
 )  
v. )  
 )  
JAMES H. ROANE, JR. )  
a.k.a. "J.R." )

Criminal Case No. 3:92CR68-03

SPECIAL FINDINGS

I. Statutory Aggravating Factors:

Category One: (21 U.S.C. § 848(n)(1))

WE, THE JURY, FIND as follows:

1A. That defendant JAMES H. ROANE, JR., intentionally killed the victim of the capital crime.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

|                                    |                           |
|------------------------------------|---------------------------|
| As to Douglas Moody .....          | <u>Yes</u><br>(Yes or No) |
| As to Peyton Maurice Johnson ..... | <u>Yes</u><br>(Yes or No) |
| As to Louis J. Johnson, Jr. ....   | <u>Yes</u><br>(Yes or No) |

1B. That defendant JAMES H. ROANE, JR., intentionally inflicted serious bodily injury which resulted in the death of the victim of the capital crime.

Proven to the jury's unanimous satisfaction, beyond a reasonable doubt:

As to Douglas Moody ..... Yes  
(Yes or No)

As to Peyton Maurice Johnson ..... Yes  
(Yes or No)

As to Louis J. Johnson, Jr. .... Yes  
(Yes or No)

1C. That defendant JAMES H. ROANE, JR., intentionally engaged in conduct intending that the victim of the capital crime be killed, or that lethal force be employed against the victim, which resulted in the death of the victim.

Proven to the jury's unanimous satisfaction, beyond a reasonable doubt:

As to Douglas Moody ..... Yes  
(Yes or No)

As to Peyton Maurice Johnson ..... Yes  
(Yes or No)

As to Louis J. Johnson, Jr. .... Yes  
(Yes or No)

1D. That defendant JAMES H. ROANE, JR., intentionally engaged in conduct which defendant ROANE knew would create a grave risk of death to a person, other than one of the participants in the offense, and that such conduct resulted in the death of the victim of the capital crime.

Proven to the jury's unanimous satisfaction, beyond a reasonable doubt:

As to Douglas Moody ..... Yes  
(Yes or No)

As to Peyton Maurice Johnson ..... Yes  
(Yes or No)

As to Louis J. Johnson, Jr. .... Yes  
(Yes or No)

**Jurors:**

At this point, review your findings on the Category One aggravating factors as to each individual victim. Each victim represents a separate capital crime. If, as to any victim, you have not found one of the Category One aggravating factors proven to your unanimous satisfaction, beyond a reasonable doubt, you must now complete Section A of the Decision Form for defendant JAMES H. ROANE, JR., that relates to that victim.

If, as to one or more victims, you have found a Category One aggravating factor proven to your unanimous satisfaction, continue to the Category Two factors on the following page.

**Category Two:** (21 U.S.C. §§ 848(n)(2)-(12))

WE, THE JURY, find as follows:

2A. That defendant JAMES H. ROANE, JR., committed the killing of the victim of the capital crime after substantial planning and premeditation.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

As to Douglas Moody ..... Yes  
(Yes or No)

As to Peyton Maurice Johnson ..... Yes  
(Yes or No)

As to Louis J. Johnson, Jr. .... Yes  
(Yes or No)

**Jurors:** At this point, again review your findings as to each individual victim. If, as to any victim, you now have not found proven, to your unanimous satisfaction, both one of the Category One factors and one of the Category Two factors, you must complete Section A of the decision for JAMES H. ROANE, JR., that relates to that victim, if you have not already done so.

If, however, you have found both a Category One factor and a Category Two factor proven to your unanimous satisfaction as to one or more victims (i.e., one or more capital crimes), continue your deliberations with regard to those particular capital crimes by proceeding to the section on the next page dealing with nonstatutory aggravating factors.

**II. Nonstatutory Aggravating Factors:**

**WE, THE JURY, FIND as follows:**

1. That defendant JAMES H. ROANE, JR., committed multiple murders.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

Yes  
(Yes or No)

2. That defendant JAMES H. ROANE, JR., has a substantial criminal history.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

Yes  
(Yes or No)

3. That defendant JAMES H. ROANE, JR., was knowingly and willfully a member of a conspiracy which had as one of its goals the murder of individuals other than those for which the defendant was charged.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

Yes  
(Yes or No)

**Jurors:** Regardless of your findings as to these nonstatutory aggravating factors, proceed to the next section concerning mitigating factors.

III. Mitigating Factors:

WE, THE JURY, FIND as follows:

Jurors: Consideration of the following mitigating factors is specifically provided for by statute.

1. That defendant JAMES H. ROANE, JR.'s capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge(s).

Number of jurors who so find,  
by a preponderance of the evidence:

0  
(Number)

2. That defendant JAMES H. ROANE, JR., is punishable as a principal (as defined in section 2 of Title 18 of the United States Code) in the offense(s), which was (were) committed by another, but defendant JAMES H. ROANE, JR.'s participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge(s).

Number of jurors who so find,  
by a preponderance of the evidence:

0  
(Number)

3. That defendant JAMES H. ROANE, JR., could not reasonably have foreseen that his conduct in the course of the commission of the murder(s) would cause, or would create a grave risk of causing, death to any person.

Number of jurors who so find,  
by a preponderance of the evidence:

0  
(Number)

4. That defendant JAMES H. ROANE, JR., was youthful, although not under the age of 18.

Number of jurors who so find,  
by a preponderance of the evidence:

0  
(Number)

5. That defendant JAMES H. ROANE, JR., did not have a significant prior criminal record.

Number of jurors who so find,  
by a preponderance of the evidence:

0  
(Number)

6. That defendant JAMES H. ROANE, JR., committed the offense(s) under severe mental or emotional disturbance.

Number of jurors who so find,  
by a preponderance of the evidence:

0  
(Number)

7. That another defendant or defendants, equally culpable in the crime(s), will not be punished by death.

Number of jurors who so find,  
by a preponderance of the evidence:

12  
(Number)

8. That the victim(s) consented to the criminal conduct that resulted in his (their) deaths.

Number of jurors who so find,  
by a preponderance of the evidence:

12  
(Number)

9. That the following other factors in the defendant's background or character mitigate against imposition of a death sentence:

Jurors: The following are nonstatutory mitigating factors.

- a) That defendant JAMES H. ROANE, JR., was subjected to emotional, physical and sexual abuse, abandonment and neglect as a child, and was deprived of the parental guidance and protection that he needed.

Number of jurors who so find,  
by a preponderance of the evidence:

12  
(Number)

- b) That defendant JAMES H. ROANE, JR., suffers from neurological impairments which were identified and which could have been treated when he was a child or adolescent.

Number of jurors who so find,  
by a preponderance of the evidence:

10  
(Number)

c) That defendant JAMES H. ROANE, JR., suffers from brain dysfunction which has gravely impaired his ability to function in the absence of strong support and guidance.

Number of jurors who so find,  
by a preponderance of the evidence: 5  
(Number)

d) That defendant JAMES H. ROANE, JR., has developed a paranoid mental disorder as a result of his untreated neurological impairment.

Number of jurors who so find,  
by a preponderance of the evidence: 0  
(Number)

e) That defendant JAMES H. ROANE, JR., has responded well to structured environments, and would likely make an adaptation to prison if he were sentenced to life imprisonment.

Number of jurors who so find,  
by a preponderance of the evidence: 8  
(Number)

f) That defendant JAMES H. ROANE, JR.'s full scale I.Q. is 85.

Number of jurors who so find,  
by a preponderance of the evidence: 4  
(Number)

g) That defendant JAMES H. ROANE, JR., grew up in an impoverished, violent and brutal environment, and was exposed to extreme violence as a child and throughout his life.

Number of jurors who so find,  
by a preponderance of the evidence: 12  
(Number)

h) That defendant JAMES H. ROANE, JR., if not sentenced to death, will be sentenced to life in prison without any possibility of parole.

Number of jurors who so find,  
by a preponderance of the evidence: 12  
(Number)

**Jurors:** If any juror or jurors find(s) that a mitigating factor not listed above has been proven to exist by a preponderance of the evidence, please identify that mitigating factor on the following page, together with the number of jurors who so find. Remember, however, that you need not be able to articulate a mitigating factor with specificity to consider it in your deliberations.

If additional space is needed, use the back of this page.

**Factor:** \_\_\_\_\_

Number of jurors who so find,  
by a preponderance of the evidence: \_\_\_\_\_  
(Number)

**Factor:** \_\_\_\_\_

Number of jurors who so find,  
by a preponderance of the evidence: \_\_\_\_\_  
(Number)

**Factor:** \_\_\_\_\_

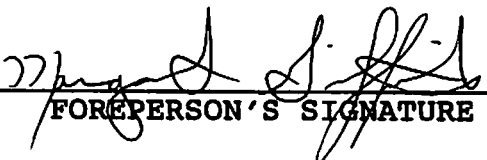
Number of jurors who so find,  
by a preponderance of the evidence: \_\_\_\_\_  
(Number)

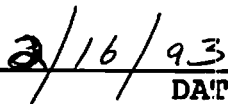
**Factor:** \_\_\_\_\_

Number of jurors who so find,  
by a preponderance of the evidence: \_\_\_\_\_  
(Number)

**Jurors:** You have completed the Special Findings as to defendant JAMES H. ROANE, JR., and must now begin the process of weighing the aggravating and mitigating factors to determine if the death penalty is justified as to this defendant. Remember, you are now considering only those capital crimes for which you have not already completed Section A of the Decision Form. Upon completing your deliberations as to the remaining capital crimes charged to this defendant, complete Section B, C or D of the Decision Form for each crime as appropriate.

The date and your foreperson's signature should appear below, certifying that these are your Special Findings as to defendant JAMES H. ROANE, JR.

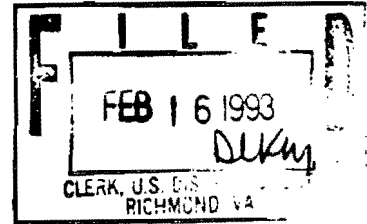
  
\_\_\_\_\_  
FOREPERSON'S SIGNATURE

  
\_\_\_\_\_  
DATE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

UNITED STATES OF AMERICA  
  
v.  
  
RICHARD TIPTON  
a.k.a. "Whitney"

Criminal Case No. 3:92CR68-01



SPECIAL FINDINGS

I. Statutory Aggravating Factors:

Category One: (21 U.S.C. § 848(n)(1))

WE, THE JURY, FIND as follows:

1A. That defendant RICHARD TIPTON intentionally killed the victim of the capital crime.

Proven to the jury's unanimous satisfaction, beyond a reasonable doubt:

|                                   |  |
|-----------------------------------|--|
| As to Douglas A. Talley .....     | <u>Yes</u><br>(Yes or No)                |
| As to Bobby Long .....            | <del>Yes</del> <u>Yes</u><br>(Yes or No) |
| As to Anthony Carter .....        | <del>Yes</del> <u>Yes</u><br>(Yes or No) |
| As to Dorothy Mae Armstrong ..... | <u>Yes</u><br>(Yes or No)                |
| As to Curtis Thorne .....         | <u>Yes</u><br>(Yes or No)                |
| As to Linwood Chiles .....        | <u>Yes</u><br>(Yes or No)                |

*Handwritten initials and marks:* 7/22/93, 7/22/93

500

1B. That defendant RICHARD TIPTON intentionally inflicted serious bodily injury which resulted in the death of the victim of the capital crime.

Proven to the jury's unanimous satisfaction, beyond a reasonable doubt:

|                                   |   |
|-----------------------------------|---|
| As to Douglas A. Talley .....     | <u>Yes</u><br>(Yes or No)               |
| As to Bobby Long .....            | <del>NO</del> <u>Yes</u><br>(Yes or No) |
| As to Anthony Carter .....        | <del>NO</del> <u>Yes</u><br>(Yes or No) |
| As to Dorothy Mae Armstrong ..... | <u>Yes</u><br>(Yes or No)               |
| As to Curtis Thorne .....         | <u>Yes</u><br>(Yes or No)               |
| As to Linwood Chiles .....        | <u>Yes</u><br>(Yes or No)               |

no  
my

1C. That defendant RICHARD TIPTON intentionally engaged in conduct intending that the victim of the capital crime be killed, or that lethal force be employed against the victim, which resulted in the death of the victim.

Proven to the jury's unanimous satisfaction, beyond a reasonable doubt:

|                                   |                           |
|-----------------------------------|---------------------------|
| As to Douglas A. Talley .....     | <u>Yes</u><br>(Yes or No) |
| As to Bobby Long .....            | <u>Yes</u><br>(Yes or No) |
| As to Anthony Carter .....        | <u>Yes</u><br>(Yes or No) |
| As to Dorothy Mae Armstrong ..... | <u>Yes</u><br>(Yes or No) |
| As to Curtis Thorne .....         | <u>Yes</u><br>(Yes or No) |
| As to Linwood Chiles .....        | <u>Yes</u><br>(Yes or No) |

1D. That defendant RICHARD TIPTON intentionally engaged in conduct which defendant TIPTON knew would create a grave risk of death to a person, other than one of the participants in the offense, and that such conduct resulted in the death of the victim of the capital crime.

Proven to the jury's unanimous satisfaction, beyond a reasonable doubt:

|                                   |                           |
|-----------------------------------|---------------------------|
| As to Douglas A. Talley .....     | <u>Yes</u><br>(Yes or No) |
| As to Bobby Long .....            | <u>Yes</u><br>(Yes or No) |
| As to Anthony Carter .....        | <u>Yes</u><br>(Yes or No) |
| As to Dorothy Mae Armstrong ..... | <u>Yes</u><br>(Yes or No) |
| As to Curtis Thorne .....         | <u>Yes</u><br>(Yes or No) |
| As to Linwood Chiles .....        | <u>Yes</u><br>(Yes or No) |

Jurors: At this point, review your findings on the Category One aggravating factors as to each individual victim. Each victim represents a separate capital crime. If, as to any victim, you have not found one of the Category One aggravating factors proven to your unanimous satisfaction, beyond a reasonable doubt, you must now complete Section A of the Decision Form for defendant RICHARD TIPTON that relates to that victim.

If, as to one or more victims, you have found a Category One aggravating factor proven to your unanimous satisfaction, continue to the Category Two factors on the following page.

Category Two: (21 U.S.C. §§ 848(n)(2)-(12))

WE, THE JURY, find as follows:

2A. That defendant RICHARD TIPTON committed the killing of the victim of the capital crime after substantial planning and premeditation.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

|                                   |                           |
|-----------------------------------|---------------------------|
| As to Douglas A. Talley .....     | <u>yes</u><br>(Yes or No) |
| As to Bobby Long .....            | <u>yes</u><br>(Yes or No) |
| As to Anthony Carter .....        | <u>yes</u><br>(Yes or No) |
| As to Dorothy Mae Armstrong ..... | <u>yes</u><br>(Yes or No) |
| As to Curtis Thorne .....         | <u>yes</u><br>(Yes or No) |
| As to Linwood Chiles .....        | <u>yes</u><br>(Yes or No) |

2B. That, in the commission of the capital crime, defendant RICHARD TIPTON knowingly created a grave risk of death to one or more persons in addition to the victim of the capital crime.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

|                            |                           |
|----------------------------|---------------------------|
| As to Curtis Thorne .....  | <u>yes</u><br>(Yes or No) |
| As to Linwood Chiles ..... | <u>yes</u><br>(Yes or No) |

2C. That defendant RICHARD TIPTON committed the killing of the victim of the capital crime in an especially heinous, cruel or depraved manner in that it involved serious physical abuse to the victim.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

As to Douglas A. Talley ..... Yes  
(Yes or No)

Jurors: At this point, again review your findings as to each individual victim. If, as to any victim, you now have not found proven, to your unanimous satisfaction, both one of the Category One factors and one of the Category Two factors, you must complete Section A of the Decision Form for defendant RICHARD TIPTON that relates to that victim, if you have not already done so.

If, however, you have found both a Category One factor and a Category Two factor proven to your unanimous satisfaction as to one or more victims (i.e., one or more capital crimes), continue your deliberations with regard to those particular capital crimes by proceeding to the section on the next page dealing with nonstatutory aggravating factors.

II. Nonstatutory Aggravating Factors:

WE, THE JURY, FIND as follows:

1. That defendant RICHARD TIPTON committed multiple murders.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

Yes  
(Yes or No)

2. That defendant RICHARD TIPTON has a substantial criminal history.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

Yes  
(Yes or No)

3. That defendant RICHARD TIPTON seriously wounded two individuals in the course of committing the CCE murders for which he has been convicted.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

Yes  
(Yes or No)

4. That defendant RICHARD TIPTON was knowingly and willfully a member of a conspiracy which had as one of its goals the murder of individuals other than those for which the defendant was charged.

Proven to the jury's unanimous satisfaction,  
beyond a reasonable doubt:

Yes  
(Yes or No)

Jurors: Regardless of your findings as to these nonstatutory aggravating factors, proceed to the next section concerning mitigating factors.

III. Mitigating Factors:

WE, THE JURY, FIND as follows:

Jurors: Consideration of the following mitigating factors is specifically provided for by statute.

- 1. That defendant RICHARD TIPTON's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge(s).

Number of jurors who so find,  
by a preponderance of the evidence:           1            
(Number)

- 2. That defendant RICHARD TIPTON is punishable as a principal (as defined in section 2 of Title 18 of the United States Code) in the offense(s), which was (were) committed by another, but defendant RICHARD TIPTON's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge(s).

Number of jurors who so find,  
by a preponderance of the evidence:           1            
(Number)

- 3. That defendant RICHARD TIPTON could not reasonably have foreseen that his conduct in the course of the commission of the murder(s) would cause, or would create a grave risk of causing, death to any person.

Number of jurors who so find,  
by a preponderance of the evidence:           1            
(Number)

- 4. That defendant RICHARD TIPTON was youthful, although not under the age of 18.

Number of jurors who so find,  
by a preponderance of the evidence:           10            
(Number)

5. That defendant RICHARD TIPTON did not have a significant prior criminal record.

Number of jurors who so find,  
by a preponderance of the evidence: 12  
(Number)

6. That defendant RICHARD TIPTON committed the offense(s) under severe mental or emotional disturbance.

Number of jurors who so find,  
by a preponderance of the evidence: ~~0~~  
(Number)

7. That another defendant or defendants, equally culpable in the crime(s), will not be punished by death.

Number of jurors who so find,  
by a preponderance of the evidence: 11  
(Number)

8. That the victim(s) consented to the criminal conduct that resulted in his (her) (their) deaths.

Number of jurors who so find,  
by a preponderance of the evidence: 11  
(Number)

9. That the following other factors in the defendant's background or character mitigate against imposition of a death sentence:

Jurors: The following are nonstatutory mitigating factors.

a) That defendant RICHARD TIPTON was subjected to emotional and physical abuse and neglect as a child, and was deprived of the parental guidance and protection that he needed.

Number of jurors who so find,  
by a preponderance of the evidence: 10  
(Number)

b) That defendant RICHARD TIPTON suffers from attention deficit and hyperactivity disorder that went untreated when he was a child.

Number of jurors who so find,  
by a preponderance of the evidence: ~~0~~  
(Number)

- c) That defendant RICHARD TIPTON suffers from frontal lobe brain dysfunction that went untreated when he was a child.

Number of jurors who so find,  
by a preponderance of the evidence:

10  
(Number)

- d) That defendant RICHARD TIPTON has a history of birth complications, illness, disease and/or head injury and suffers brain dysfunction which has affected his ability to function, and/or his behavior.

Number of jurors who so find,  
by a preponderance of the evidence:

4  
(Number)

- e) That defendant RICHARD TIPTON was introduced to addictive drugs and alcohol while still a child.

Number of jurors who so find,  
by a preponderance of the evidence:

12  
(Number)

- f) That defendant RICHARD TIPTON is impulsive and is impaired in thinking about the consequences of his actions and in adjusting his thinking to changing events.

Number of jurors who so find,  
by a preponderance of the evidence:

8  
(Number)

- g) That defendant RICHARD TIPTON's full scale I.Q. is 85.

Number of jurors who so find,  
by a preponderance of the evidence:

12  
(Number)

- h) That defendant RICHARD TIPTON grew up in an impoverished, violent and brutal environment, and was exposed to extreme violence as a child and throughout his life.

Number of jurors who so find,  
by a preponderance of the evidence:

12  
(Number)

- i) That defendant RICHARD TIPTON, if not sentenced to death, will be sentenced to life in prison without any possibility of parole.

Number of jurors who so find,  
by a preponderance of the evidence:

12  
(Number)

Jurors: If any juror or jurors find(s) that a mitigating factor not listed above has been proven to exist by a preponderance of the evidence, please identify that mitigating factor on the following page, together with the number of jurors who so find. Remember, however, that you need not be able to articulate a mitigating factor with specificity to consider it in your deliberations.

If additional space is needed, use the back of the this page.

Factor: \_\_\_\_\_

Number of jurors who so find,  
by a preponderance of the evidence:

\_\_\_\_\_  
(Number)

Factor: \_\_\_\_\_

Number of jurors who so find,  
by a preponderance of the evidence:

\_\_\_\_\_  
(Number)

Factor: \_\_\_\_\_

Number of jurors who so find,  
by a preponderance of the evidence:

\_\_\_\_\_  
(Number)

Factor: \_\_\_\_\_

Number of jurors who so find,  
by a preponderance of the evidence:

\_\_\_\_\_  
(Number)

Jurors: You have completed the Special Findings as to defendant RICHARD TIPTON, and must now begin the process of weighing the aggravating and mitigating factors to determine if the death penalty is justified as to each capital crime for which this defendant has been convicted. Remember, you are now considering only those capital crimes for which you have not already completed Section A of the Decision Form. Upon completing your deliberations as to the remaining capital crimes charged to this defendant, complete Section B, C or D of the Decision Form for each crime as appropriate.

The date and your foreperson's signature should appear below, certifying that these are your Special Findings as to defendant RICHARD TIPTON.

  
FOREPERSON'S SIGNATURE

2/13/93  
DATE