

Virginia and the District of Columbia; and

- iii) served as an enforcer for other co-conspirators, using violence and the threat of violence to collect money and enforce discipline within the conspiracy, within the Commonwealth of Virginia and elsewhere.

b. Possession of Prohibited Weapons.

From on or about sometime in 1995 and continuing until August of 2002, the defendant, Shawn Arnette Breeden obtained, possessed, and distributed numerous firearms, knives, and other dangerous weapons, in the Commonwealth of Virginia, the District of Columbia, and elsewhere.

c. Malicious Wounding - May 25, 1997.

On or about May 25, 1997, in the Commonwealth of Virginia, the defendant, Shawn Arnette Breeden, maliciously wounded Joshua H. Hightower by stabbing him with a knife in the chest and abdomen, causing serious bodily injury to Joshua H. Hightower, resulting in his conviction in the Albemarle County General District Court.

4. Assaults and Threats Against Law Enforcement Personnel.

On several specific occasions, the defendant Shawn Arnette Breeden, has assaulted law enforcement personnel with the intent to cause serious injury and to interfere with their performance of official duty. Each of these instances of assaultive conduct serves as a non-statutory aggravating factor in the event of the defendant's conviction for the murder of Kevin Lee Hester:

a. Malicious Wounding of Officer Douglas Brooks - August 3, 2002.

On or about August 3, 2002, in the Commonwealth of Virginia, the defendant, Shawn Arnette Breeden, maliciously wounded Officer Douglas Brooks of the Charlottesville Police Department by stabbing him with a knife.

b. Assault on Correctional Officer Harold Terry - July 4, 2003.

On or about July 4, 2003, at the Albemarle County Jail in the Commonwealth of Virginia, the defendant, Shawn Arnette Breeden, assaulted Correctional Officer Harold Terry by hitting him in the face with a foreign object.

c. Threats Against Other Correctional Officers - 2002-2003.

In or about 2002 or 2003, at the Charlottesville/Albemarle County Regional Jail in the Commonwealth of Virginia, the defendant, Shawn Arnette Breeden, threatened to kill a Correctional Officer.

5. Future Dangerousness.

The defendant, Shawn Arnette Breeden, is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of others, including, but not limited to, inmates and correctional officers resident in an institutional correctional setting as evidenced by the offenses charged in the Indictment, and the aforementioned statutory and non-statutory aggravating factors alleged in this Notice. See Simmons v. South Carolina, 512 U.S. 154, 162 (1994). In addition to the offenses charged in the Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the circumstances which demonstrate his future dangerousness include: the defendant's long-term pattern of violent criminal conduct; incidents of assaultive conduct within the correctional setting; his demonstrated low rehabilitative potential; and his lack of remorse for his criminal activities which have caused significant damage to the community and numerous victims and their families.

6. Victim Impact.

The defendant caused injury, harm, and loss to the friends and family of Kevin Lee Hester

because of Kevin Lee Hester's personal characteristics as an individual human being and the impact of his death upon those persons. See Payne v. Tennessee, 501 U.S. 808, 825-27 (1991). The government will present information concerning the effect of the offense on Kevin Lee Hester and his family, which may include oral testimony, a victim impact statement that identifies Kevin Lee Hester as the victim of the offense and the extent and scope of the injury and loss suffered by Kevin Lee Hester and his family, and any other relevant information.

COUNT SIX

USE OF FIREARM IN COURSE OF INTERSTATE TRAVEL TO INTIMIDATE, RESULTING IN DEATH OF KEVIN LEE HESTER

A. Statutory Proportionality Factors Enumerated Under 18 U.S.C. § 3591(a)(2)(A)-(D).

1. **Intentional Killing.** The defendant intentionally killed Kevin Lee Hester. Section 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Kevin Lee Hester. Section 3591(a)(2)(B).

3. **Intentional Acts to Take Life or Use Lethal Force.** The defendant 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 Kevin Lee Hester died as a direct result of the act. Section 3591(a)(2)(C).

4. **Intentional Acts in Reckless Disregard for Life.** The defendant 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 Kevin Lee Hester died as a direct result of the act. Section

3591(a)(2)(D).

B. Statutory Aggravating Factors Enumerated Under 18 U.S.C. § 3592(c).

1. **Especially Heinous and Cruel.** The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim. Section 3592(c)(6)

2. **Procurement of the Offense by Payment.** The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. Section 3592(c)(7).

3. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism. Section 3592(c)(9).

C. Other, Non-Statutory, Aggravating Factors Identified Under 18 U.S.C. § 3593(a)(2).

1. **Committed the Offense by Deception.**

The method the defendant, Shawn Arnette Breeden selected to carry out the offense preyed on the victim's trust and hospitality. The defendant took advantage of his prior friendship and close business relationship with Hester by luring Hester to a remote area under false pretenses. When Hester arrived at the location identified by the defendant, Shawn Arnette Breeden and his co-conspirators robbed and killed Kevin Lee Hester.

2. **Participation in Other Criminal Conduct on August 8 and 9, 2002.**

In addition to the capital offense charged in Count Six of the Indictment, the defendant engaged in a series of other criminal offenses in the hours before and after the murder of Kevin Lee Hester. That pattern of criminal conduct includes the specific criminal offenses set forth in the

Indictment, including conspiring to distribute and possess with intent to distribute illegal drugs (Count One), traveling in interstate commerce with intent to commit the crimes of robbery and conspiracy (Count Two), and traveling in interstate commerce with the intent to kill, injure, harass and intimidate Kevin Lee Hester (Count Three). That pattern also includes the following specific acts, each of which serves as a non-statutory aggravating factor in the event of the defendant's conviction for the murder of Kevin Lee Hester.

a. **Conspiracy to Commit Robbery:** On or about August 8 and 9, 2002, in Washington, D.C. and the Commonwealth of Virginia, the defendant, Kevin Thomas Cassell, and co-conspirators agreed to travel to Charlottesville, Virginia and rob individuals with whom the defendant and his co-conspirators were acquainted of money, illegal drugs and other personal property.

b. **Possession of Prohibited Weapons:** On or about August 8 and 9, 2002, in Washington, D.C. and the Commonwealth of Virginia, the defendant, Shawn Arnette Breeden and co-conspirators armed themselves with two firearms and a knife and concealed those weapons, without having a license to carry or conceal any of those weapons, in violation of local and federal law.

c. **Robbery of Unknown Individual:** On or about August 8 and 9, 2002, in Charlottesville, Virginia, the defendant Shawn Arnette Breeden co-conspirators, while armed with firearms, robbed an unknown individual of currency and other personal property with the intent to permanently deprive them thereof.

d. **Assault and Robbery of Tammy T. Brown and Steven D. Oakes:** On or about August 9, 2002, in the Commonwealth of Virginia, the defendant Shawn Arnette Breeden, and

co-conspirators, while armed with firearms, assaulted Tammy T. Brown and Steven D. Oakes by hitting them with unknown objects, causing serious bodily injury to Tammy T. Brown and Steven D. Oakes, and robbed Tammy T. Brown and Steven D. Oakes of money and other personal property with the intent to permanently deprive them thereof.

e. **Obstruction of Justice:** On or about August 8 and 9, 2002, in the District of Columbia and the Commonwealth of Virginia, the defendant, Shawn Arnette Breeden and co-conspirators disposed of weapons, clothing, personal property, and other evidence of their commission of the robbery and murder of Kevin Lee Hester.

3. **Other Criminal Conduct.**

In addition to his criminal conduct on August 8 and 9, 2002, the defendant has committed numerous other criminal offenses. Those offenses include the following specific incidents, each of which serves as a non-statutory aggravating factor in the event of the defendant's conviction for the murder of Kevin Lee Hester.

a. **Narcotics Trafficking.**

From on or about sometime in 1995 and continuing until August of 2002, the defendant, Shawn Arnette Breeden, in concert with other persons, willfully and knowingly combined, conspired, confederated, and agreed together, with each other, and with diverse other persons to distribute and to possess with intent to distribute quantities of powder cocaine, cocaine base, also known as crack cocaine, and marijuana. Defendant Breeden performed several functions within this conspiracy:

- i) obtained quantities of powder cocaine, cocaine base, and marijuana from various sources in and around the Commonwealth of Virginia

and the District of Columbia;

- ii) redistributed that powder cocaine, cocaine base, and marijuana to retail and wholesale purchasers in and around the Commonwealth of Virginia and the District of Columbia; and
- iii) served as an enforcer for other co-conspirators, using violence and the threat of violence to collect money and enforce discipline within the conspiracy, within the Commonwealth of Virginia and elsewhere.

b. Possession of Prohibited Weapons.

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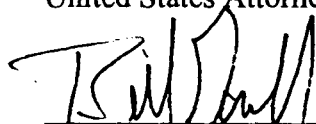
his lack of remorse for his criminal activities which have caused significant damage to the community and numerous victims and their families.

6. **Victim Impact.**

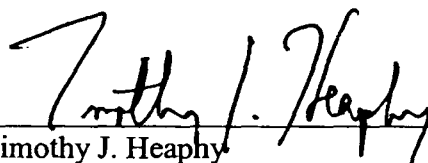
The defendant caused injury, harm, and loss to the friends and family of Kevin Lee Hester because of Kevin Lee Hester's personal characteristics as an individual human being and the impact of his death upon those persons. See Payne v. Tennessee, 501 U.S. 808, 825-27 (1991). The government will present information concerning the effect of the offense on Kevin Lee Hester and his family, which may include oral testimony, a victim impact statement that identifies Kevin Lee Hester as the victim of the offense and the extent and scope of the injury and loss suffered by Kevin Lee Hester and his family, and any other relevant information.

Respectfully submitted,

JOHN L. BROWNLEE
United States Attorney



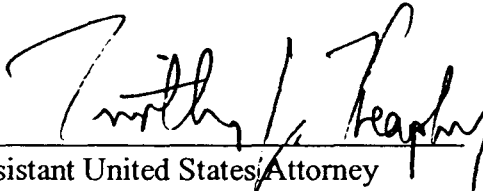
William F. Gould
Assistant United States Attorney



Timothy J. Heaphy
Assistant United States Attorney

C E R T I F I C A T E

I hereby certify that a true and correct copy of the foregoing has been sent to counsel for all four defendants, Denise Lunsford, Steven Rosenfield, Richard Davis, Lloyd Snook, David Heilberg, and Pamela Johnson, by telecopy on July 15, 2003. In addition, a copy has been mailed on the same date to Ms. Lunsford at 700 East High Street, Charlottesville, Virginia, 22902; Mr. Rosenfield at 913 East Jefferson Street, Charlottesville, Virginia, 22902; Mr. Davis at Post Officer Box 2487, Charlottesville, Virginia, 22902; Mr. Snook at Post Office Box 2486, Charlottesville, Virginia, 22902; Mr. Heilberg at 246 East High Street, Charlottesville, Virginia, 22902; and Ms. Johnson at 202 Third Street, N.E., Charlottesville, Virginia, 22902.


Assistant United States Attorney