

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED - CLERK
U.S. DISTRICT COURT
2004 FEB 24 PM 4: 06
TX EASTERN-BEAUMONT

UNITED STATES OF AMERICA *
V. * NO. 1:03-CR-173
SHANNON WAYNE AGOFSKY *

BY BCarter

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW, the United States of America, by and through the United States Attorney for the Eastern District of Texas, and pursuant to Title 18, United States Code, Section 3593(a), and files this Notice of Intent to Seek the Death Penalty, notifying the Court and the Defendant, **SHANNON WAYNE AGOFSKY**, that in the event of Defendant's conviction on any of Counts One and Two, wherein Defendant is charged respectively with murder by a federal prisoner, in violation of 18 U.S.C. § 1118, and murder with malice, in violation of 18 U.S.C. § 1111, the Government will seek the sentence of death, in that the circumstances of the offenses are such that a sentence of death is justified.

A. Statutory Factors Enumerated Pursuant to Title 18, United States Code, Section (a)(2)

The Government will seek to prove the following threshold findings as the basis for imposition of the death penalty in relation to Counts One and Two of the Superseding Indictment:

1. **SHANNON WAYNE AGOFSKY** was more than 18 years of age at the time of the offense(s) (18 U.S.C. §3591(a)).
2. **SHANNON WAYNE AGOFSKY** intentionally killed Luther Plant (18 U.S.C. §3591(a)(2)(A)).

3. **SHANNON WAYNE AGOFSKY** intentionally inflicted serious bodily injury which resulted in the death of Luther Plant (18 U.S.C. §3591 (a)(2)(B)).

4. **SHANNON WAYNE AGOFSKY** intentionally participated in an act, contemplating that the life of Luther Plant would be taken or intending that lethal force would be used in connection with Luther Plant, a person other than a participant in the offense, and Luther Plant died as a result of the act (18 U.S.C. §3591(a)(2)(C)).

5. **SHANNON WAYNE AGOFSKY** intentionally and specifically engaged in an act of violence which **SHANNON WAYNE AGOFSKY** knew would create a grave risk of death to Luther Plant, a person other than a participant of the offense, such that **SHANNON WAYNE AGOFSKY'S** participation in the act constituted a reckless disregard for human life, and Luther Plant died as a direct result of the act (18 U.S.C. §3591 (a)(2)(D)).

B. Statutory Aggravating Factors Enumerated Pursuant to Title 18, United States Code, Section 3592(c)

The Government will seek to prove the following statutory aggravating factors as the basis for imposition of the death penalty in relation to Counts One and Two of the Superseding Indictment:

1. The death or injury resulting in the death of Luther Plant occurred during the commission of an offense under 18 U.S.C. §1118 (prisoners serving life term) (18 U.S.C. §3592(c)(1)).

2. **SHANNON WAYNE AGOFSKY** committed the offence (s) after previously being convicted of a federal offense punishable by a term of imprisonment of more than 1 year involving the use or attempted or threatened use of a firearm, as defined in 18 U.S.C. §921, against another person, namely, on or about November 23, 1992, **SHANNON WAYNE**

AGOFSKY was convicted in the United States District Court for the Western District of Missouri of Armed Bank Robbery and Killing Another Person to Avoid Apprehension, and Use of a Firearm During a Crime of Violence in Case Number 3:92 CR 05006-1 (18 U.S.C. §3592(c)(2)).

3. **SHANNON WAYNE AGOFSKY** committed the offense(s) after previously being convicted of a federal offense resulting in the death of another for which a sentence of life imprisonment was authorized by statute, namely, on or about November 23, 1992, **SHANNON WAYNE AGOFSKY** was convicted in the United States District Court for the Western District of Missouri of Armed Bank Robbery and Killing Another Person to Avoid Apprehension in Case Number 3:92 CR05006-1 (18 U.S.C. §3592 (c)(3)).

4. **SHANNON WAYNE AGOFSKY** committed the offense(s) in an especially heinous, cruel, or depraved manner in that it involved serious physical abuse to the victim, Luther Plant (18 U.S.C. §3592(c)(6)).

C. Non-statutory Aggravating Factors Enumerated Pursuant to Title 18, United States Code, Section 3593(a)

The Government will seek to prove the following non-statutory aggravating factors as the basis for imposition of the death penalty in relation to Counts One and Two of the Indictment:

1. **SHANNON WAYNE AGOFSKY** represents a continuing danger to the lives and safety of other persons. The Defendant has committed the acts alleged in the capital offenses charged in the Indictment and in the statutory and non-statutory aggravating factors contained in this Notice, and, in addition, has committed and exhibited acts and characteristics including but not limited to the following:

a) Specific acts and threats of violence- The Defendant has threatened other inmates in

a similar manner by striking one inmate with his fists and then stomping on the inmate's head until he was rendered unconscious. The Defendant was also involved in a riot among a group of inmates. The Defendant, on two occasions previous to the incident in this case, was found with two handmade metal weapon fashioned into long knife-like blades and a long pointed metal instrument fashioned into a weapon.

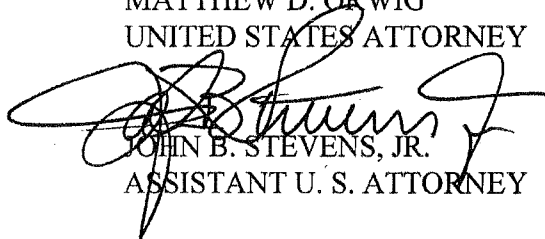
b) Lack of remorse- After the commission of the offense charged in the Indictment, the Defendant, through his actions and statements, demonstrated utter lack of remorse over having committed the offense.

2. **SHANNON WAYNE AGOFSKY** has prior criminal convictions for interstate transportation of stolen property, a 1992 armed bank robbery, bank robbery resulting in the death of another, and the use of a firearm during the commission of the offense.

3. **SHANNON WAYNE AGOFSKY** has a significant history of disciplinary violations while he has been incarcerated.

Respectfully submitted,

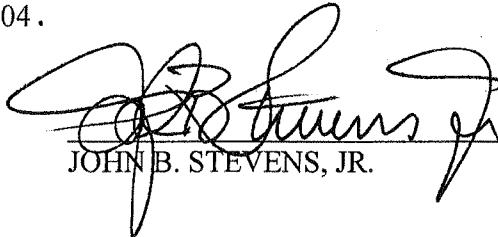
MATTHEW D. ORWIG
UNITED STATES ATTORNEY



JOHN B. STEVENS, JR.
ASSISTANT U. S. ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been furnished to Pat Black, Federal Public Defender, 200 East Ferguson, Suite 407, Tyler, Texas 75702 and Doug Barlow, Attorney at Law, 485 Milam, Beaumont, Texas 77701 via U.S. Mail on this the 24th day of February, 2004.



JOHN B. STEVENS, JR.