

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

1. **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).

2. **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).

3. **Prior Drug Felony.** The defendant committed the offense after having been convicted of a serious Federal drug felony. Section 3592(c)(12).

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

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

In addition to the capital offense charged in Count Five 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, Kevin Thomas Cassell, 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 the Commonwealth of Virginia, the defendant, Kevin Thomas Cassell, and 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, Kevin Thomas Cassell, 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 9, 2002, in the District of Columbia and the Commonwealth of Virginia, the defendant, Kevin Thomas Cassell, 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, 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 1996 and continuing until August of 2002, the defendant, Kevin Thomas Cassell, 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 Cassell's role in this conspiracy included:

- i) obtaining quantities of powder cocaine, cocaine base, and marijuana from various sources in and around the Commonwealth of Virginia and the District of Columbia;
- ii) redistributing 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) specifically conspiring with other individuals in Charlottesville, Virginia, in 1996 to possess with intent to distribute cocaine base, otherwise known as crack cocaine, resulting in defendant Cassell's conviction in the United States District Court for the Western District

of Virginia for Conspiracy to Possess with Intent to Distribute Cocaine Base (DKT #96-00019-002).

b. Possession of Prohibited Weapons.

From on or about sometime in 1996 and continuing until August of 2002, the defendant, Kevin Thomas Cassell, obtained, possessed, and distributed numerous firearms and other dangerous weapons, in the Commonwealth of Virginia, the District of Columbia, and elsewhere.

c. Unlawful Wounding - June 27, 1994.

On or about June 27, 1994, in the Commonwealth of Virginia, the defendant, Kevin Thomas Cassell, unlawfully wounded Baugan Romer by stabbing him with a broken bottle, causing serious bodily injury to Baugan Romer.

d. Failure to Appear in Court - July 19, 1995.

On or about July 19, 1995, in the Commonwealth of Virginia, the defendant, Kevin Thomas Cassell, failed to appear in court, having sworn before a judicial officer of the Commonwealth of Virginia that he would appear in court for a judicial proceeding on that date, resulting in his conviction in the Albemarle County General District Court.

e. Assault and Resisting Arrest - October 19, 1995.

On or about October 19, 1995, in the Commonwealth of Virginia, the defendant, Kevin Thomas Cassell, assaulted Officer Ronald Kesner of the Albemarle County Police Department and interfered with Officer Kesner in the performance of his official duty, resulting in his conviction in the Albemarle County General District Court.

5. Future Dangerousness.

The defendant, Kevin Thomas Cassell, 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, 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 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).

2. **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. **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).

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3. **Prior Drug Felony.** The defendant committed the offense after having been convicted of a serious Federal drug felony. Section 3592(c)(12).

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

1. **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.

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b. **Possession of Prohibited Weapons:** 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 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 the Commonwealth of Virginia, the defendant, Kevin Thomas Cassell, and 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, Kevin Thomas Cassell, 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 9, 2002, in the District of Columbia and the Commonwealth of Virginia, the defendant, Kevin Thomas Cassell, 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.**

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5. **Future Dangerousness.**

The defendant, Kevin Thomas Cassell, 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.

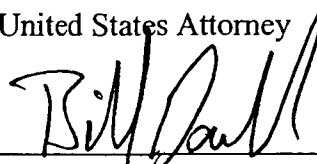
6. **Victim Impact.**

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

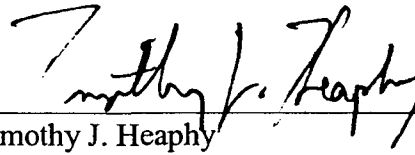
his family, the extent and scope of the injury and loss suffered by Kevin Lee Hester and his family,
and any other relevant information.

Respectfully submitted,

JOHN L. BROWNLEE
United States Attorney



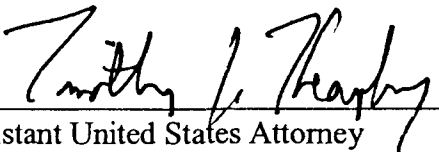
William F. Gould
Assistant United States Attorney



Timothy J. Heaphy
Assistant United States Attorney

CERTIFICATE

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