

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA

vs.

WALTER LEFIGHT CHURCH

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Criminal No. 1:00CR00104

THIRD AMENDED NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to 21 U.S.C. 848(h)(1), by and through its undersigned counsel, and notifies the Court and the defendant in the above-captioned case that the Government believes the circumstances of the offenses charged in Counts Two through Four of the Third Superseding Indictment are such that, in the event of a conviction on any one or more of the offenses charged therein, a sentence of death is justified under Chapter 13 (Section 848) of Title 21 of the United States Code, and that the Government will seek the sentence of death for these offenses: Title 21, United States Code, Section 848(e)(1)(A)(three counts), each of which carries a possible sentence of death.

The Government proposes to prove the following factors as justifying a sentence of death.

COUNT TWO: MURDER OF ROBERT DAVIS:

A. Statutory Intent Factors Enumerated under 21 U.S.C. § 848(n)(1)

1. Intentional Killing under §848(n)(1)(A). The defendant intentionally killed Robert Davis.

2. Intentional Infliction of Serious Bodily Injury under §848(n)(1)(B). The defendant intentionally inflicted serious bodily injury that resulted in the death of Robert Davis.

3. **Intentional Participation in a Lethal Act under §848(n)(1)(C).** The defendant intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim and,

4. **Intentionally Creating a Grave Risk of Death under §848(n)(1)(D)(i) and (ii).** The Defendant intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense, and resulted in the death of the victim.

B. **Statutory Aggravating Factors Enumerated under 21 U.S.C. 848(n)(2)-(12).**

1. Church committed the offense as consideration for the receipt, or the expectation of the receipt of cocaine and cash. [21 U.S.C. 848(n)(7)]

2. Church committed the offense after substantial planning and premeditation. [21 U.S.C. 848(n)(8)].

3. In 1990, Church was convicted of a serious federal drug offense for which a sentence of five or more years might be imposed. [21 U.S.C. 848(n)(10)]

COUNT THREE: MURDER OF UNA DAVIS:

A. **Statutory Intent Factors Enumerated under 21 U.S.C. § 848(n)(1)**

1. **Intentional Killing under §848(n)(1)(A).** The defendant intentionally killed Una Davis.

2. **Intentional Infliction of Serious Bodily Injury under §848(n)(1)(B).** The defendant intentionally inflicted serious bodily injury that resulted in the death of Una Davis.

3. Intentional Participation in a Lethal Act under §848(n)(1)(C). The defendant intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim and,

4. Intentionally Creating a Grave Risk of Death under §848(n)(1)(D)(i) and (ii). The Defendant intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense, and resulted in the death of the victim.

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. 848(n)(2)-(12).

1. Church committed the offense as consideration for the receipt, or the expectation of the receipt of cocaine and cash. [21 U.S.C. 848(n)(7)]

2. Church committed the offense after substantial planning and premeditation. [21 U.S.C. 848(n)(8)].

3. In 1990, Church was convicted of a serious federal drug offense for which a sentence of five or more years might be imposed. [21 U.S.C. 848(n)(10)]

COUNT FOUR: MURDER OF ROBERT HOPEWELL:

A. Statutory Intent Factors Enumerated under 21 U.S.C. § 848(n)(1)

1. Intentional Killing under §848(n)(1)(A). The defendant intentionally killed Robert Hopewell.

2. Intentional Infliction of Serious Bodily Injury under §848(n)(1)(B). The defendant intentionally inflicted serious bodily injury that resulted in the death of Robert

Hopewell.

3. **Intentional Participation in a Lethal Act under §848(n)(1)(C).** The defendant intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim and,

4. **Intentionally Creating a Grave Risk of Death under §848(n)(1)(D)(i) and (ii).** The Defendant intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense, and resulted in the death of the victim.

B. **Statutory Aggravating Factors Enumerated under 21 U.S.C. 848(n)(2)-(12).**

1. Church committed the offense as consideration for the receipt, or the expectation of the receipt of cocaine and cash. [21 U.S.C. 848(n)(7)]

2. Church committed the offense after substantial planning and premeditation. [21 U.S.C. 848(n)(8)].

3. The 14 year old victim, Robert Hopewell, was a vulnerable victim by virtue of his youth and infirmity. [21 U.S.C. 848(n)(9)]

4. In 1990, Church was convicted of a serious federal drug offense for which a sentence of five or more years might be imposed. [21 U.S.C. 848(n)(10)]

C. **Non-Statutory Aggravating Factors per 21 U.S.C. 848(h)(1)(B)**

The non-statutory aggravating factors under Section 848 (h)(1)(B) (“other aggravating factors which the Government will seek to prove as the basis for the death penalty”) which are applicable

to the homicide and to the defendant are as follows.

COUNTS TWO THROUGH FOUR:

1. Victim impact: The impact on the family and friends of the victims caused by their murders. *Payne v. Tennessee*, 501 U.S. 808 (1991). Specifically, the surviving members of the Davis family, including the daughter of Robert Davis, his mother, father, brothers, and the family of Una Davis and Robert Hopewell, have been deprived of their loved ones and the benefits of having those loved ones in their lives. As a result, their lives have changed and they have experienced significant emotional trauma.

2. Obstruction of Justice: All three victims were killed in an effort by Church to obstruct justice by preventing them from providing information about the commission of a possible federal crime to law enforcement officials or in retaliation for cooperating with authorities.¹

3. Multiple killings: The defendant murdered all three members of the Davis family in a single criminal episode.

4. Future Dangerousness: Church constitutes a future danger to the lives and safety of other persons, as evidenced by one or more of the following:

a. he has made specific threats to kill Deborah Myers Knick, Sherri Howell and Ruby Powers,

b. he has exhibited a continuing pattern of violence. Church has been involved in at least three cases of actual violence involving the use of firearms against individuals.

c. he has low rehabilitative potential, as evidenced by Church's criminal record and

¹ See 18 U.S.C. §§ 1510, 1512, and 1513.

continuing recidivism.

d. he has demonstrated a total lack of remorse, as evidenced by statements made after the crime concerning the victim Robert Hopewell.

The government gives further notice that in support of imposition of the death penalty it intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial and the offense of conviction as described in the Fourth Superseding Indictment as they relate to the background and character of the defendant, his moral culpability and the nature and circumstances of the offense of conviction.

Respectfully submitted,
JOHN L. BROWNLEE
United States Attorney
Western District of Virginia

Anthony P. Giorno
Assistant United States Attorney
Western District of Virginia

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Third Amended Notice of Intent to Seek the Death Penalty has been mailed to

James C. Turk, Jr., Esq.
P.O. Box 2968
Radford, Virginia 24143

Beverly Davis, Esq.
P.O. Box 3448
Radford, Virginia 24143

on this _____ day of August, 2002.

Anthony P. Giorno
Assistant United States Attorney
VSB Code # 15830

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED
for Abingdon
MAY 11 2001

MORGAN E. SCOTT, JR., CLERK
BY: *[Signature]*
DEPUTY CLERK

UNITED STATES OF AMERICA)
)
vs.)
)
WALTER LEFIGHT CHURCH)

Criminal No. 1:00CR00104

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to 18 U.S.C. § 3593(a) and 21 U.S.C. 848(h)(1), by and through its undersigned counsel, and notifies the Court and the defendant in the above-captioned case that the Government believes the circumstances of the offenses charged in Counts Two through Seven of the Superseding Indictment are such that, in the event of a conviction on any one or more of the offenses charged therein, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code and Chapter 13 (Section 848) of Title 21 of the United States Code, and that the Government will seek the sentence of death for these offenses: Title 18, United States Code, Sections 1512(a)(1)(C), and Title 21, United States Code, Section 848(e)(1)(A), each of which carries a possible sentence of death.

The Government proposes to prove the following factors as justifying a sentence of death.

COUNT TWO: MURDER OF ROBERT DAVIS:

A. Statutory Eligibility Factors Enumerated under 21 U.S.C. § 848(n)(1)

1. Intentional Killing under §848(n)(1)(A). The defendant intentionally killed Robert Davis.
2. Intentional Infliction of Serious Bodily Injury under §848(n)(1)(B). The defendant intentionally inflicted serious bodily injury that resulted in the death of Robert Davis.

3. **Intentional Participation in a Lethal Act under §848(n)(1)(C).** 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 the victims died as a direct result of the act or,

4. **Intentionally Creating a Grave Risk of Death under §848(n)(1)(D)(i) and (ii).** 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 the victim died as a direct result of the act.

B. **Statutory Aggravating Factors Enumerated under 21 U.S.C. 848(n)(2)-(12).**

1. Church and his accomplice committed the offense as consideration for the receipt, or the expectation of the receipt of cocaine and cash. [21 U.S.C. 848(n)(7)]

2. In 1990, Church was convicted of a serious federal drug offense for which a sentence of five or more years might be imposed. [21 U.S.C. 848(n)(10)]

COUNT THREE: MURDER OF UNA DAVIS:

A. **Statutory Eligibility Factors Enumerated under 21 U.S.C. § 848(n)(1)**

1. **Intentional Killing under §848(n)(1)(A).** The defendant intentionally killed Una Davis.

2. **Intentional Infliction of Serious Bodily Injury under §848(n)(1)(B).** The defendant intentionally inflicted serious bodily injury that resulted in the death of Una Davis.

3. **Intentional Participation in a Lethal Act under §848(n)(1)(C).** 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 the victim died as a direct result of the act or,

4. Intentionally Creating a Grave Risk of Death under §848(n)(1)(D)(i) and (ii).

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 the victim died as a direct result of the act.

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. 848(n)(2)-(12).

1. In 1990, Church was convicted of a serious federal drug offense for which a sentence of five or more years might be imposed. [21 U.S.C. 848(n)(10)]

COUNT FOUR: MURDER OF ROBERT HOPEWELL:

A. Statutory Eligibility Factors Enumerated under 21 U.S.C. § 848(n)(1)

1. **Intentional Killing under §848(n)(1)(A).** The defendant intentionally killed Robert Hopewell.

2. **Intentional Infliction of Serious Bodily Injury under §848(n)(1)(B).** The defendant intentionally inflicted serious bodily injury that resulted in the death of Robert Hopewell.

3. **Intentional Participation in a Lethal Act under §848(n)(1)(C).** 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 the victim died as a direct result of the act or,

4. Intentionally Creating a Grave Risk of Death under §848(n)(1)(D)(i) and (ii).

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 the victim died as a direct result of the act.

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n)(2)-(12).

1. The 14 year old victim, Robert Hopewell, was a vulnerable victim by virtue of his youth. [21 U.S.C. 848(n)(9)]

2. In 1990, Church was convicted of a serious federal drug offense for which a sentence of five or more years might be imposed. [21 U.S.C. 848(n)(10)]

COUNT FIVE : MURDER OF ROBERT DAVIS

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

1. **Intentional Killing.** The defendant intentionally killed Robert Davis. 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 Robert Davis. Section 3591(a)(2)(B);

3. **Intentional Participation in a Lethal Act.** 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 the victim died as a direct result of the act. Section 3591(a)(2)(C); or,

4. **Intentionally Creating a Grave Risk of Death.** 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 the victims 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. Pecuniary Gain under § 3592(c)(8). Church and his accomplice committed the offense as consideration for the receipt, or the expectation of the receipt of cocaine and cash.

2. Conviction for serious Federal drug offenses under § 3592(c)(12) In 1990, Church was convicted of a serious federal drug offense for which a sentence of 5 years or more might be imposed.

3. Multiple killings under § 3592(c)(16). Church and his accomplice intentionally murdered three members of the Davis family in a single criminal episode.

COUNT SIX : MURDER OF UNA DAVIS

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

1. **Intentional Killing.** The defendant intentionally killed Una Davis. 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 Una Davis. Section 3591(a)(2)(B);

3. **Intentional Participation in a Lethal Act.** 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 the victim died as a direct result of the act. Section 3591(a)(2)(C); or,

4. **Intentionally Creating a Grave Risk of Death.** 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 the victim 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. Conviction for serious Federal drug offenses under § 3592(c)(12) In 1990, Church was convicted of a serious federal drug offense for which a sentence of 5 years or more might be imposed.

2. Multiple killings under § 3592(c)(16). Church and his accomplice intentionally murdered three members of the Davis family in a single criminal episode.

COUNT SEVEN : MURDER OF ROBERT HOPEWELL

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

1. **Intentional Killing.** The defendant intentionally killed Robert Hopewell. 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 Robert Hopewell. Section 3591(a)(2)(B);

3. **Intentional Participation in a Lethal Act.** 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 the victim died as a direct result of the act. Section 3591(a)(2)(C); or,

4. **Intentionally Creating a Grave Risk of Death.** 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 the victims 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. Vulnerable Victim under § 3592(c)(11). Robert Hopewell was an especially vulnerable victim because of his age.

2. Conviction for serious Federal drug offenses under § 3592(c)(12) In 1990, Church was convicted of a serious federal drug offense for which a sentence of 5 years or more might be imposed.

3. Multiple killings under § 3592(c)(16). Church and his accomplice intentionally murdered three members of the Davis family in a single criminal episode.

C. Non-Statutory Aggravating Factors per 18 U.S.C. § 3593(a) and 21 U.S.C. 848(h)(1)B).

The non-statutory aggravating factors under Section 3593(a) (other “factors concerning the effect of the offense on the victim and the victim’s family. . .and any other relevant information”) and 848(h)(1)(B) (“other aggravating factors which the Government will seek to prove as the basis for the death penalty”) which are applicable to the homicide and to the defendant are as follows.

1. The impact on the family and friends of the victims caused by their murders. *Payne v. Tennessee*, 501 U.S. 808 (1991).

2. All three victims were killed in an effort by Walter “Pete” Church to obstruct justice by preventing them from providing information about the commission of a possible federal crime to law enforcement officials or in retaliation for cooperating with authorities.¹

¹ See 18 U.S.C. §§ 1510, 1512, and 1513.

3. Church constitutes a future danger to the lives and safety of other persons, as evidenced by one or more of the following:

a. he has made specific threats to kill Deborah Myers Knick, Sherri Howell and Ruby Powers.

b. he has exhibited a continuing pattern of violence. Church has been involved in at least three cases of actual violence involving the use of firearms against individuals.

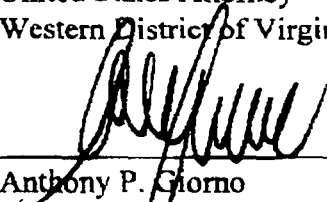
c. he has low rehabilitative potential, as evidenced by Church's criminal record and continuing recidivism.

d. he has demonstrated a total lack of remorse, as evidenced by statements made after the crime concerning the victim Robert Hopewell.

4. Church committed multiple murders on a single occasion. (Only applicable as to Counts Two, Three and Four).

The government gives further notice that in support of imposition of the death penalty it intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial and the offense of conviction as described in the Indictment as they relate to the background and character of the defendant, his moral culpability, his future dangerousness, and the nature and circumstances of the offense of conviction.

Respectfully submitted,
RUTH PLAGENHOEF
United States Attorney
Western District of Virginia



Anthony P. Giorno
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Notice of Intent to Seek the Death Penalty has

been mailed to

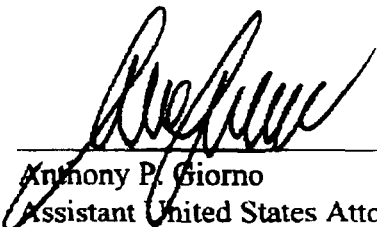
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on this 11th day of May, 2001.



Anthony P. Giorno
Assistant United States Attorney
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