

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA)
) No. 4:04CR00035 WRW-2
v.)
)
VERTIS CLAY)

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

The United States of America, pursuant to 18 U.S.C. § 3593(a), notifies the Court and defendant VERTIS CLAY that the Government believes the circumstances of the offense charged in Count Three of the Third Superseding Indictment are such that, in the event of a conviction, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the Government will seek the sentence of death for the offense of using a firearm and causing the death of an individual during and in relation to a drug trafficking crime and a crime of violence in violation of Title 18, United States Code, sections 924(c) and 924(j)(1) which carries a possible sentence of death.

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

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

The following statutory proportionality factors apply to Count 3.

1. Intentionally Killing the Victim

The defendant intentionally killed Darryl Johnson. 18 U.S.C. § 3591(a)(2)(A).

2. Intentionally Inflicted Serious Bodily Injury that Resulted in the Death of the Victim

The defendant intentionally inflicted serious bodily injury that resulted in the death of Darryl Johnson. 18 U.S.C. § 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 Darryl Johnson died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

4. Intentionally and Specifically Engaged in an Act of Violence 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 Darryl Johnson died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

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

The following statutory aggravating factors apply to Count 3.

1. Heinous, Cruel, and Depraved Manner of Committing Offense

The defendant committed the homicide offense in an especially heinous, cruel, and depraved manner in that the offense involved torture and serious physical abuse to the victim. 18 U.S.C. § 3592(c)(6).

2. Procurement of Offense

The defendant procured the commission of the homicide offense by payment, or promise of payment, of anything of pecuniary value. 18 U.S.C. § 3592(c)(7).

3. Pecuniary Gain

The defendant committed the homicide offense as consideration for the receipt, and in the expectation of the receipt, of anything of pecuniary value. 18 U.S.C. § 3592(c)(8).

4. Substantial Planning and Premeditation

The defendant committed the offense after substantial planning and premeditation to cause the death of Darryl Johnson. 18 U.S.C. § 3592(c)(9).

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

The following non-statutory, aggravating factors apply to Count 3.

1. Victim Impact Evidence

The defendant caused injury, harm, and loss to the family and friends of Darryl Johnson as evidenced by Darryl Johnson's personal characteristics and the impact of his death on his family and friends.

2. Future dangerousness

The defendant is likely to commit criminal acts of violence in the future that would constitute a continuing and serious threat to the lives and safety of others, as evidenced by, at least, one or more of the following:

a. Pattern of Violence and Threatened Violence

The defendant has engaged in a pattern of violence, attempted violence, and threatened violence, including, at least, the crimes alleged against defendant in the Third Superseding Indictment, and a threat by the defendant to kill a potential witness if the potential witness ever reported or discussed the defendant's participation in one or more of the crimes alleged in the Third Superseding Indictment.

b. Threat to Kill a Potential Witness to the Charged Offense

The defendant threatened a potential witness with murder if the potential witness ever reported or discussed the defendant's participation in one or more of the crimes alleged in the Third Superseding Indictment.

WHEREFORE, the Government further gives 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 offenses of conviction as described in the Third Superseding Indictment as they relate to the background and character of the defendant, VERTIS CLAY, his moral culpability, and the nature and circumstances of the offenses charged in the Third Superseding Indictment.

DATE: October 20, 2005.

Respectfully Submitted,
Bud Cummins
United States Attorney

/s/ Joe J. Volpe
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Clerk of the Court using the CM/ECF system and delivered via e-filing requirements to Assistant Federal Defender Chris Tarver, attorney for Darryl Walker, and to J. Blake Hendrix and Mark Hampton, attorneys for Vertis Clay, on this day, October 21, 2005.

/s/ Joe J. Volpe
Joe J. Volpe