

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

EARL WHITTLEY DAVIS,
a/k/a Baby Earl,
a/k/a "E,"

Defendant

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CRIMINAL NO. RWT-07-0199

GOVERNMENT'S 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, **EARL WHITTLEY DAVIS** ("defendant"), that the Government believes the circumstances of the offense charged in Count Three of the 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 that is charged in Count Three of the Superseding Indictment, that is, Murder as a Result of Use of a Firearm During and in Relation to a Crime of Violence, 18 U.S.C. § 924(j), which carries a possible sentence of death.

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)**

The following statutory proportionality factors apply to Count Three:

1. Intentional Acts to Take Life or Use Lethal Force.

The defendant, **EARL WHITTLEY DAVIS**, 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 Jason Schwindler died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

2. Intentionally and Specifically Engaged in an Act of Violence Creating a Grave Risk of Death.

The defendant, **EARL WHITTLELY DAVIS**, 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 Jason Schwindler 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 Three:

1. Grave risk of death to additional persons.

The defendant, **EARL WHITTLELY DAVIS**, in the commission of the offense, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim, Jason Schwindler. 18 U.S.C. 3592(c)(5).

2. Pecuniary Gain

The defendant, **EARL WHITTLELY DAVIS**, 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).

3. Substantial planning and premeditation

The defendant, **EARL WHITTLELY DAVIS**, committed the offense after substantial planning and premeditation to cause the death of a person. 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 Three:

1. **Victim Impact Evidence**

The defendant, **EARL WHITTLEY DAVIS**, caused injury, harm, and loss to the victim Jason Schwindler and the victim's family, as evidenced by the victim's personal characteristics as an individual human being and the impact of the death upon the victim and the victim's family.

2. **Commission of Other Murders**

Apart from the offenses charged in the Superseding Indictment, the defendant, **EARL WHITTLEY DAVIS**, has participated in other murders including but not limited to one or more of the following:

- a. The murder of Adrian Brockenberry on or about September 20, 2003, in the District of Columbia;
- b. The murder of Grossett Harris during a residential robbery and carjacking on or about October 20, 2003, in Montgomery County, Maryland;
- c. The murder of Levi Hill on or about October 22, 2003, in the District of Columbia;
- d. The murder of John Edwards on or about December 19, 2002, in the District of Columbia;

3. **Continuing Pattern of Criminal Activity**

Apart from the offenses listed in the preceding non-statutory aggravating factor, the defendant, **EARL WHITTLEY DAVIS**, has engaged in long standing pattern of criminal activity and disregard of the law established by acts including, but not limited to, the offenses charged in the Superseding Indictment and also the following offenses:

- a. The possession of controlled substances from 1989 through 2004 as demonstrated by, for example,
 - 1. His possession of cocaine on or about December 11, 1989 in Montgomery County, Maryland;
 - 2. His possession of phencyclidine (PCP) on or about June 24, 2001 in the vicinity of Ohio Drive and Buckeye Drive, SW, Washington, DC;
 - 3. His possession of marijuana on or about June 8, 2003, in the District of Columbia.
- b. The distribution of cocaine, cocaine base, phencyclidine and heroin and participation in a conspiracy to do so from at least 1989 through at least August 2003;
- c. The participation in a conspiracy to rob drug traffickers in violation of 18 U.S.C. § 1951 from at least 1990 through 2004;
- d. The illegal and routine possession of firearms in the District of Columbia and Maryland from at least 1990 through 2004;
- e. The robbery of drug trafficker Kevin G. in or about 1990 in the District of Columbia;
- f. The aggravated assault of Gregory W. on or about October 22, 1996 in the District of Columbia;
- g. The residential break-in and attempted residential armed robbery of Marlon M. on or about August 29, 2000 in the Trinidad section of Washington, DC;
- h. The drive-by shooting of Harold J. on or about January 16, 2002 in Prince George's County, Maryland;
- i. The attempted murder of William W. on or about December 19, 2002; and
- j. The purchase of 300 grams of heroin during the Fall of 2003 in Silver Spring, Maryland.

4. **Post-Offense Obstruction of Justice**

The defendant, **EARL WHITTLEY DAVIS**, has wilfully obstructed or impeded or attempted to obstruct or impede the investigation and prosecution of the murder of Jason Schwindler.

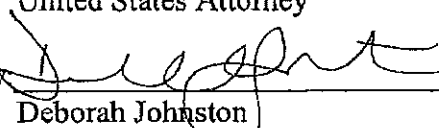
This is shown by facts including but not limited to one or more of the following:

- a. The defendant, **EARL WHITTLEY DAVIS** planned to escape from jail prior to trial and solicited others to assist him to do so; and
- b. The defendant, **EARL WHITTLEY DAVIS** has directly and indirectly threatened, encouraged, enticed and intimidated other individuals from providing information relevant to the investigation and prosecution of the murder of Jason Schwindler and the background of the defendant.

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 Superseding Indictment as they relate to the background and character of the defendant, **EARL WHITTLEY DAVIS**, his moral culpability, and the nature and circumstances of the offenses charged in the Superseding Indictment.

Respectfully submitted,

Rod J. Rosenstein
United States Attorney

By 
Deborah Johnston
Emily N. Glatfelter
Assistant United States Attorneys

CERTIFICATE OF SERVICE

This is to certify that on this 8th day of April, 2008, I caused a copy of the foregoing Government's Notice of Intent to Seek the Death Penalty to be mailed, by first-class mail, postage prepaid, to the following:

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