

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO.
94-CR-328

WALTER DIAZ,
A/K/A ERIC ROGERS,

DEFENDANT.

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

The United States of America, by its attorney, Thomas J. Maroney, the United States Attorney for the Northern District of New York (by Assistant United States Attorney Miroslav Lovric), pursuant to Title 21, United States Code, Sections 848(h)(1)(A) and (B), notifies the Court and the defendant in the above-captioned matter that in the event of the defendant's conviction for intentionally killing Michael Monsour, as alleged in Counts Two and Three of the superseding indictment, the government will seek the sentence of death.

The government will seek to prove the following aggravating factors as the basis for imposition of the death penalty.

A. Statutory Aggravating Factors Enumerated Pursuant To Title 21, United States Code, Sections 848(n)(1)(A) Through (D):

1. Walter Diaz intentionally killed Michael Monsour [Section 848(n)(1)(A)].

2. Walter Diaz intentionally inflicted serious bodily injury which resulted in the death of Michael Monsour [Section 848(n)(1)(B)].

3. Walter Diaz intentionally engaged in conduct intending that Michael Monsour be killed and that lethal force be employed against Michael Monsour, which resulted in Michael Monsour's death [Section 848(n)(1)(C)].

4. Walter Diaz intentionally engaged in conduct which:
(i) Walter Diaz knew would create a grave risk of death to a person, other than one of the participants in the offense, AND
(ii) resulted in the death of Michael Monsour
[Section 848(n)(1)(D)].

B. Statutory Aggravating Factors Enumerated Pursuant To Title 21, United States Code, Sections 848(n)(2) Through (12):

1. Walter Diaz, in committing the offenses described in Counts Two and Three of the superseding indictment, knowingly created a grave risk of death to other persons in addition to victim Michael Monsour, that is, Anne Marie Johnson; Michelle Johnson; Miledy Figueroa; and Anna Griffin [Section 848(n)(5)].

2. Walter Diaz committed the offenses described in Counts Two and Three of the superseding indictment as consideration for the

receipt and in the expectation of the receipt of something of pecuniary value, that is, drugs and money [Section 848(n)(7)].

3. Walter Diaz committed the offenses described in Counts Two and Three of the superseding indictment after substantial planning and premeditation [Section 848(n)(8)].

C. Other, Non-Statutory Aggravating Factors Enumerated Pursuant To Title 21, United States Code, Sections 848(h)(1)(B) And 848(k):

1. On or about February 23, 1993, at approximately 8:50 A.M., in the course of an attempted armed robbery of Ms. Bonnie Bear, Walter Diaz directly participated in the killing of Ms. Bonnie Bear in Manhattan, New York, at which time Ms. Bear was shot in the back of the head/neck.

2. On or about February 23, 1993, at approximately 12:50 P.M., Walter Diaz directly participated in the attempted armed robbery of Mr. Herbert Muskin in Brooklyn, New York, at which time a gunshot was fired at Mr. Muskin at close range, and for which attempted robbery Walter Diaz was convicted in Brooklyn, New York.

3. Walter Diaz has previously been convicted of a State felony offense punishable by a term of imprisonment of more than one year, involving the possession of controlled substances, in that, on November 1, 1991, in the Supreme Court of Sullivan County, New York, Walter Diaz was convicted of Criminal Possession of a Controlled Substance, a felony under the laws of the State of New York. Walter Diaz's conviction resulted from the October 3, 1991 possession of twenty-four packets of cocaine which Diaz had

secreted in his crotch area.

4. Future dangerousness based upon the probability that Walter Diaz would commit criminal acts of violence that would constitute a continuing threat to society, as evidenced for example, by one or more of the following, among others:

a. On or about August 25, 1990, in Sullivan County, New York, Walter Diaz illegally possessed a loaded firearm.

b. On or about August 25, 1990, in Sullivan County, New York, Walter Diaz possessed a dangerous weapon, that is, a double-edged dagger.

c. On or about December 18, 1990, in Sullivan County, New York, Walter Diaz escaped from the custody of law enforcement personnel as Walter Diaz was being transported from the courthouse where he had just been sentenced for possession of a loaded firearm.

d. Walter Diaz was on parole from the New York State Parole Board at the time that he directly participated in the killing of Mr. Michael Monsour, Ms. Bonnie Bear and the attempted armed robbery of Mr. Herbert Muskin.

e. At his sentencing in 1994 in Brooklyn, New York, following his conviction for the attempted robbery of Mr. Herbert Muskin, the trial judge asked Walter Diaz if he had anything to say prior to the imposition of sentence. Walter Diaz replied, in substance, I'll be back.

f. While incarcerated in the Federal Correctional Institution in Otisville, New York, and on or about January 31,

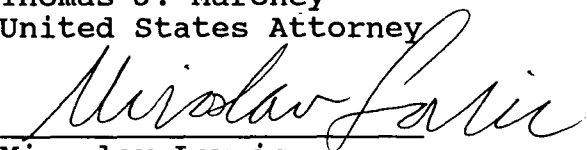
1995, Walter Diaz did set a fire in his jail cell.

5. Victim impact, as evidenced by the impact of the murder upon Michael Monsour's family.

6. Walter Diaz, while committing the offenses described in Counts One, Two, Three and Four of the superseding indictment, and being at least eighteen years of age, did distribute a controlled substance to a person under twenty-one years of age.

Respectfully submitted,
Thomas J. Maroney
United States Attorney

Dated: May 31, 1995


By: Miroslav Lovric
Assistant U.S. Attorney
Bar Roll No. 301490

CERTIFICATE OF SERVICE BY MAIL

UNITED STATES OF AMERICA

v.

TYRONE WALKER, WALTER DIAZ,
a/k/a ERIC ROGERS,
ANTHONY "TONY" WALKER,
Defendants.

94-CR-328

(Hon. Thomas J. McAvoy)

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of New York and is a person of such age and discretion as to be competent to serve papers.

That on May 31, 1995 she served a copy of the attached

Government's Notice of Intent to Seek the Death Penalty by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail of Binghamton, New York 13902.

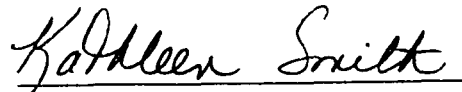
Addressee(s):

Richard M. Allen, Esq.
96 Hawley Street
Binghamton, NY 13901

Albert J. Millus, Jr., Esq.
700 Security Mutual Bldg.
80 Exchange Street
Binghamton, NY 13901

David Runhke, Esq.
20 Northfield Ave.
West Orange, N.J. 07052

eter Orville
PO Box 410
Vestal, NY 13851-410



KATHLEEN SMITH

Carl Herman, Esq.
349 East Northfield Road
Livingston, N.J. 07039