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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)	
)	CR No. 07-023-N-EJL
Plaintiff,)	
)	GOVERNMENT'S NOTICE OF
vs.)	AGGRAVATING FACTORS AND
)	INTENT TO SEEK THE DEATH
JOSEPH EDWARD DUNCAN, III,)	PENALTY
)	
Defendant.)	
)	

The United States of America, pursuant to 18 U.S.C. § 3593(a), notifies the Court and defendant JOSEPH EDWARD DUNCAN, III, that the United States believes the circumstances of the offenses charged in Counts One, Five and Seven of the 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 following offenses: (1) kidnapping resulting in death, to-wit: the kidnapping resulting in death of Dylan Groene, in violation of Title 18, United States Code, Section 1201(a)(1),(g) [Count One]; (2) sexual exploitation of a child resulting in death, to-wit: the sexual exploitation resulting in death of Dylan Groene, in violation of Title 18, United States Code, Section 2251(a) and (e) [Count Five]; and (3) using a firearm during and in relation to a crime of violence resulting in death, to-wit: using a firearm during and in relation to the crime of kidnapping of Dylan and Shasta Groene, during the course of which use of the firearm resulted in the death of Dylan Groene, in violation of Title 18, United States Code, Sections 924(c)(1)(A)(ii), (c)(1)(B)(i) and (j)(1).

The United States 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 each of Counts One, Five and Seven:

1. **Intentional Acts to Take Life of Another Person.** The defendant intentionally killed Dylan Groene. 18 U.S.C. § 3591(a)(2)(A).
2. **Intentional Inflection of Serious Bodily Injury Resulting in Death.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Dylan Groene. 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 a participant in the offense, and Dylan Groene died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

4. **Intentional Acts of Violence Creating Grave Risk of Death.** The defendant intentionally and specifically engaged in one or more acts of violence, knowing that the act or acts created a grave risk of death to a person, other than a participant in the offense, such that participation in such act or acts constituted a reckless disregard for human life, and Dylan Groene died as a direct result of such act or acts. 18 U.S.C. § 3591(a)(2)(D).

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

The following statutory aggravating factors apply to each of Counts One, Five and Seven:

1. **Death During Commission of Another Crime.** The defendant caused the death of Dylan Groene during the commission of a violation of 18 U.S.C. § 1201 (kidnapping). 18 U.S.C. § 3592(c)(1).

2. **Previous Conviction of Offense for Which a Sentence of Death or Life Imprisonment Was Authorized.** The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment was authorized by statute, to-wit: first-degree murder and first-degree kidnapping in case number CR F05-13674, Kootenai County, State of Idaho. 18 U.S.C. § 3592(c)(3).

3. **Heinous, Cruel or Depraved Manner of Committing Offense.** The defendant committed the offense in an especially heinous, cruel, and depraved manner, in that it involved torture and serious physical abuse to Dylan Groene. 18 U.S.C. § 3592(c)(6).

4. **Substantial Planning and Premeditation.** The defendant killed Dylan Groene after substantial planning and premeditation to cause the death of Dylan Groene. 18 U.S.C. § 3592(c)(9).

5. **Vulnerability of Victim.** The defendant's victim, Dylan Groene, was particularly vulnerable due to youth, to-wit: Dylan Groene was 9 years old. 18 U.S.C. § 3592(c)(11).

C. Statutory Aggravating Factors Enumerated Under 18 U.S.C. §3592(c) Applicable to Selected Counts

The following statutory aggravating factor applies to each of Counts One and Seven:

1. **Previous Conviction of Violent Felony Involving Firearm.** The defendant committed the offense charged after having been previously convicted of a Federal or State offense punishable by a term of imprisonment of more than 1 year, involving the use or attempted or threatened use of a firearm (as defined in 18 U.S.C. § 921) against another person, to-wit: rape in case number CR 57116, Pierce County, State of Washington. 18 U.S.C. § 3592(c)(2).

The following statutory aggravating factor applies to Count Five:

2. **Prior Conviction of Sexual Assault or Child Molestation.** The defendant committed the offense charged after having been previously convicted of a crime of sexual assault, to-wit: rape in case number CR 57116, Pierce County, State of Washington. 18 U.S.C. § 3592(c)(15).

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

Under 18 U.S.C. § 3593(a)(2), the following non-statutory aggravating factors apply to each of Counts One, Five and Seven:

1. **Effect of the Offense on the Victim and the Victim's Family.**

a. In committing the offense, the defendant did cause emotional trauma to Shasta Groene in that she witnessed the abuse and death of her brother, Dylan Groene, and was told by the defendant about how he killed her mother, Brenda Groene, her brother Slade Groene, and her mother's boyfriend, Mark McKenzie.

b. In committing the offense, the defendant did cause emotional trauma to Shasta Groene and her family by depriving them of Dylan, Brenda and Slade Groene and Mark McKenzie.

2. **Future Dangerousness of the Defendant.** 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. Continuing Pattern of Violence. The defendant has engaged in a continuing pattern of violence, attempted violence, and threatened violence, including, at least, the crimes alleged against the defendant in the Indictment in Counts One, Two, Three, Four, Five and Seven, and the crimes of which the defendant was previously convicted, as described in paragraphs B2, C1 and C2.

b. Admission of Other Crimes Against Children. The defendant did commit the offense after having previously killed three other children, offenses for which he has not yet been prosecuted, to-wit: The defendant has confessed to killing Sammiejo White, age 11, and Carmen Cubias, age 9. The children disappeared from Seattle, Washington, on July 6, 1996. The bones and teeth of these children were recovered by law enforcement in February 1998 in Bothell, Washington, and their deaths have been confirmed. The defendant confessed to abducting and killing Anthony Michael Martinez, age 10, in April of 1997. Anthony Michael Martinez disappeared on April 4, 1997, from Beaumont, California. His body was recovered north of Indio, California, and his death has been confirmed.


c. Flight Risk. The defendant poses a future danger to the lives and safety of other persons, as demonstrated by his flight from Fargo, North Dakota, in April 2005 to avoid prosecution in the State of Minnesota on charges that he engaged in criminal sexual contact with

a person under 13 and that he engaged in attempted criminal sexual contact with a person under 13, as charged in Case No. K3-05-389 in Becker County, Minnesota.

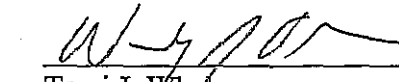
The United States further gives notice that in support of imposition of the death penalty it intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial and the offenses of conviction as described in the Indictment as they relate to the background and character of the defendant, JOSEPH EDWARD DUNCAN, III, his moral culpability and the nature and circumstances of the offenses charged in the Indictment.

Respectfully submitted this 23rd day of January, 2007.

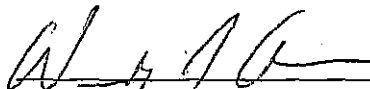
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Idaho, and that a copy of the foregoing Government's Notice of Aggravating Factors and Intent to Seek the Death Penalty was served on all parties named below this 23rd day of January, 2007.

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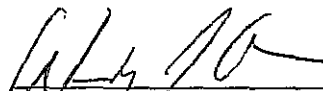
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