

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

UNITED STATES OF AMERICA,

v.

22-CR-109-LJV

PAYTON GENDRON,

Defendant.

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 PAYTON GENDRON that the United States believes the circumstances in Counts 11-20 of the Indictment, Dkt. 6, are such that, in the event of a conviction, a sentence of death is justified under 18 U.S.C. §§ 3591-98, and that the United States will seek the sentence of death for these offenses: Use and Discharge of a Firearm to Commit Murder During and in Relation to a Crime of Violence, 18 U.S.C. § 924(c) and (j).

The United States proposes to prove the following factors as justifying a sentence of death with regard to Counts 11-20 (unless otherwise specified):

(A) PAYTON GENDRON was 18 years of age or older at the time of the offense.

(B) Statutory Threshold Factors Enumerated Under 18 U.S.C. §§ 3591(a)(2)(A)-(D):

1. **Intentional Killing.** PAYTON GENDRON intentionally killed Roberta Drury, Pearl Young, Heyward Patterson, Ruth Whitfield, Celestine Chaney, Aaron W.

Salter, Jr., Andre Mackniel, Margus Morrison, Katherine Massey, and Geraldine Talley. 18 U.S.C. § 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** PAYTON GENDRON intentionally inflicted serious bodily injury that resulted in the deaths of Roberta Drury, Pearl Young, Heyward Patterson, Ruth Whitfield, Celestine Chaney, Aaron W. Salter, Jr., Andre Mackniel, Margus Morrison, Katherine Massey, and Geraldine Talley. 18 U.S.C. § 3591(a)(2)(B).

3. **Intentional Participation in an Act Resulting in Death.** PAYTON GENDRON intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and Roberta Drury, Pearl Young, Heyward Patterson, Ruth Whitfield, Celestine Chaney, Aaron W. Salter, Jr., Andre Mackniel, Margus Morrison, Katherine Massey, and Geraldine Talley died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

4. **Intentional Engagement in an Act of Violence, Knowing That the Act Created a Grave Risk of Death to a Person.** PAYTON GENDRON 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 the participation in the act constituted a reckless disregard for human life, and Roberta Drury, Pearl Young, Heyward Patterson, Ruth Whitfield, Celestine Chaney, Aaron W. Salter, Jr., Andre Mackniel, Margus

Morrison, Katherine Massey, and Geraldine Talley died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

(C) Statutory Aggravating Factors Enumerated Under 18 U.S.C. § 3592(c):

1. **Grave Risk of Death to Additional Persons.** PAYTON GENDRON, in the commission of the offense, and 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 of the offense. 18 U.S.C. § 3592(c)(5).

2. **Substantial Planning and Premeditation.** PAYTON GENDRON committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C. § 3592(c)(9).

3. **Vulnerable Victim.** PAYTON GENDRON committed the offenses charged in Counts 12, 13, 14, 15, and 19 against a victim who was particularly vulnerable due to old age and infirmity. 18 U.S.C. § 3592(c)(11).

4. **Multiple Killings and Attempted Killings.** PAYTON GENDRON intentionally killed and attempted to kill more than one person in a single criminal episode. 18 U.S.C. § 3592(c)(16).

(D) Non-Statutory Aggravating Factors Authorized by 18 U.S.C. §§ 3592(c) and 3593(a)(2):

1. **Victim Impact.** PAYTON GENDRON caused injury, harm, and loss to the families and friends of Roberta Drury, Pearl Young, Heyward Patterson, Ruth Whitfield, Celestine Chaney, Aaron W. Salter, Jr., Andre Mackniel, Margus Morrison, Katherine Massey, and Geraldine Talley. The injury, harm, and loss caused by PAYTON GENDRON with respect to each victim is evidenced by the victim's personal characteristics and by the impact of the victim's death upon his or her family and friends.

2. **Injury To Surviving Victims.** PAYTON GENDRON caused serious physical and emotional injury, and severe psychological impact to individuals who survived the offense and are listed in Counts 21 through 26 of the Indictment (Z.G., C.B., and J.W.).

3. **Racially-Motivated Killings.** PAYTON GENDRON expressed bias, hatred, and contempt toward Black persons and his animus toward Black persons played a role in the killings of Roberta Drury, Pearl Young, Heyward Patterson, Ruth Whitfield, Celestine Chaney, Aaron W. Salter, Jr., Andre Mackniel, Margus Morrison, Katherine Massey, and Geraldine Talley.

4. **Attempt To Incite Violence.** PAYTON GENDRON, in preparation for and in committing the acts of violence charged in this case, attempted to incite violent action by others.

5. **Selection of Site.** PAYTON GENDRON selected the Tops Friendly Market, located at 1275 Jefferson Avenue in Buffalo, New York, in order to maximize the number of Black victims of the offense.

DATED: Buffalo, New York January 12, 2024

Respectfully submitted,

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