

CLERK'S OFFICE U.S. DIST COURT
AT ROANOKE, VA
FILED
In Abingdon
JUL 03 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

JOHN F. CORCORAN, CLERK
BY: *J. Justice*
DEPUTY CLERK

UNITED STATES OF AMERICA)
)
vs.)
)
CHARLES WESLEY GILMORE)

Criminal No. 1:00CR00104

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to 21 U.S.C. 848(h)(1), by and through its undersigned counsel, and notifies the Court and the defendant in the above-captioned case that the Government believes the circumstances of the offenses charged in Counts Two through Four of the Sixth Superseding Indictment are such that, in the event of a conviction on any one or more of the offenses charged therein, a sentence of death is justified under Chapter 13 (Section 848) of Title 21 of the United States Code, and that the Government will seek the sentence of death for these offenses: Title 21, United States Code, Section 848(e)(1)(A)(three counts), each of which carries a possible sentence of death.

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

COUNT TWO: MURDER OF ROBERT DAVIS:

A. That CHARLES WESLEY GILMORE was then 18 years of age or older at the time of his commission of the offense charged in Count Two of the Sixth Superseding Indictment.

B. Statutory Intent Factors Enumerated under 21 U.S.C. § 848(n)(1)

i. Intentional Participation in a Lethal Act under §848(n)(1)(C). CHARLES WESLEY GILMORE intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim and,

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ii. **Intentionally Creating a Grave Risk of Death under §848(n)(1)(D)(i) and**

(ii). CHARLES WESLEY GILMORE intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense, and resulted in the death of the victim.

C. **Factors Enumerated under 21 U.S.C. 848(n)(2)-(12).**

i. In 1990, CHARLES WESLEY GILMORE was convicted of a serious federal drug offense for which a sentence of five or more years might be imposed. [21 U.S.C. 848(n)(10)]

COUNT THREE: MURDER OF UNA DAVIS:

A. That CHARLES WESLEY GILMORE was then 18 years of age or older at the time of his commission of the offense charged in Count Three of the Sixth Superseding Indictment.

B. **Statutory Intent Factors Enumerated under 21 U.S.C. § 848(n)(1)**

i. **Intentional Participation in a Lethal Act under §848(n)(1)(C).** CHARLES WESLEY GILMORE intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim and,

ii. **Intentionally Creating a Grave Risk of Death under §848(n)(1)(D)(i) and**
(ii). CHARLES WESLEY GILMORE intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense, and resulted in the death of the victim.

C. Factors Enumerated under 21 U.S.C. 848(n)(2)-(12).

i. In 1990, CHARLES WESLEY GILMORE was convicted of a serious federal drug offense for which a sentence of five or more years might be imposed. [21 U.S.C. 848(n)(10)]

COUNT FOUR: MURDER OF ROBERT HOPEWELL:

A. That CHARLES WESLEY GILMORE was then 18 years of age or older at the time of his commission of the offense charged in Count Four of the Sixth Superseding Indictment.

B. Statutory Intent Factors Enumerated under 21 U.S.C. § 848(n)(1)

i. Intentional Participation in a Lethal Act under §848(n)(1)(C). CHARLES WESLEY GILMORE intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim and,

ii. Intentionally Creating a Grave Risk of Death under §848(n)(1)(D)(i) and (ii). CHARLES WESLEY GILMORE intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense, and resulted in the death of the victim.

C. Factors Enumerated under 21 U.S.C. 848(n)(2)-(12).

i. Robert Hopewell was a vulnerable victim by virtue of his youth and infirmity. [21 U.S.C. 848(n)(9)]

ii. In 1990, CHARLES WESLEY GILMORE was convicted of a serious federal drug offense for which a sentence of five or more years might be imposed. [21 U.S.C. 848(n)(10)]

C. Non-Statutory Aggravating Factors per 21 U.S.C. 848(h)(1)(B)

The non-statutory aggravating factors under Section 848 (h)(1)(B) (“other aggravating factors which the Government will seek to prove as the basis for the death penalty”) which are applicable to the homicide and to the defendant are as follows.

COUNTS TWO THROUGH FOUR:

1. Victim impact: The impact on the family and friends of the victims caused by their murders. *Payne v. Tennessee*, 501 U.S. 808 (1991). Specifically, the surviving members of the Davis family, including the daughter of Robert Davis, his mother, father, brothers, and the family of Una Davis and Robert Hopewell, have been deprived of their loved ones and the benefits of having those loved ones in their lives. As a result, their lives have changed and they have experienced significant emotional trauma.

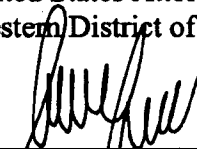
2. Obstruction of Justice: All three victims were killed in an effort by Gilmore to obstruct justice by preventing them from providing information about the commission of a possible federal crime to law enforcement officials or in retaliation for cooperating with authorities.¹

3. Multiple killings: All three members of the Davis family in a single criminal episode.

The government gives further 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 offense of conviction as described in the Sixth Superseding Indictment as they relate to the background and character of the defendant, his moral culpability and the nature and circumstances of the offense of conviction.

¹ See 18 U.S.C. §§ 1510, 1512, and 1513.

Respectfully submitted,
JOHN L. BROWNLEE
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Western District of Virginia



Anthony P. Giorno
Assistant United States Attorney
Western District of Virginia


CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Notice of Intent to Seek the Death Penalty has been mailed to

Stephen Kalista, Esq.
P.O. Box 1186
Big Stone Gap, Virginia 24219

Anthony Anderson, Esq.
P.O. Box 1525
Roanoke, Virginia 24007

on this 30th day of July, 2003.



Anthony P. Giorno
Assistant United States Attorney
VSB Code # 15830