

CP:SH:SD:JPL
F.# 2004R01761

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

NOTICE OF INTENT TO SEEK THE
DEATH PENALTY

- against -

04 CR 706 (S-5) (DGT)

DAMION HARDY,
also known as "World,"

Defendant.

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Pursuant to the requirements of 18 U.S.C. § 3593(a), the United States hereby gives notice that it believes that the circumstances of this case are such that, in the event that the defendant DAMION HARDY, also known as "World," is convicted of the capital offense relating to the death of victim Ivery Davis, a sentence of death is justified and that the United States will seek the death penalty. Specifically, the United States will seek a sentence of death for Count Eight of the Fifth Superseding Indictment (the "Indictment"), which charges murder in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(1); and Count Eighteen of the Indictment, which charges death through the use of a firearm in violation of 18 U.S.C. § 924(j)(1).

A. **Statutory Proportionality Factors**
Enumerated under 18 U.S.C. § 3591(a)(2)

Pursuant to 18 U.S.C. § 3591(a)(2), the United States will rely on the following proportionality factors to establish the defendant's eligibility for the death penalty:

1. **Intentional Killing**

The defendant intentionally killed Ivery Davis. (18 U.S.C. § 3591(a)(2)(A)).

2. **Intentional Infliction of Serious Bodily Injury That Resulted in Death**

The defendant intentionally inflicted serious bodily injury that resulted in the death of Ivery Davis. (18 U.S.C. § 3591(a)(2)(B)).

3. **Intentional Participation in an Act Which Caused Death**

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 one of the participants in the offense, and Ivery Davis died as a direct result of the act. (18 U.S.C. § 3591(a)(2)(C)).

4. **Intentional Engagement in an Act of Violence Which Created a Grave Risk of Death**

The defendant 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 Ivery Davis 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)

Pursuant to 18 U.S.C. §§ 3592(c), the United States will rely on the following statutory aggravating factors as justifying a sentence of death:

1. **Previous conviction of
violent felony involving firearm**

As to Count Eight, the defendant committed the offense after having been previously convicted of a State offense punishable by a term of imprisonment of more than one 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: on or about June 2, 1999, the defendant was convicted in the Supreme Court, Kings County, of attempted assault in the second degree, in violation of New York Penal Law Sections 120.05 and 110.05. (18 U.S.C. § 3592(c)(2)).

2. **Grave risk of death to additional persons**

The defendant committed the offense and during the commission of that offense he knowingly created a gave risk of death to one or more persons in addition to Ivery Davis. (18 U.S.C. § 3592(c)(5)).

3. **Substantial Planning and Premeditation**

The defendant 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)**

1. **Contemporaneous Convictions**

The defendant faces contemporaneous convictions for multiple acts of violence, including murders, attempted murders, murder conspiracies, robberies, and kidnaping.

2. **Future Dangerousness of the Defendant**

The defendant represents a continuing danger to the lives and safety of other persons. 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, threatened violence and narcotics distribution, including, at least, the crimes alleged against the defendant in the Indictment and the crimes of which the defendant was previously convicted, to wit: (i) the conviction for attempted assault in the second degree, in violation of N.Y. Penal Law §§ 120.05 and 110.05, on or about June 2, 1999 in

Supreme Court, Kings County; and (ii) the conviction for tampering with a witness in the third degree, in violation of N.Y. Penal Law § 215.11, on or about March 10, 1997, in Supreme Court, Kings County.

(b) Lack of Remorse

The defendant has demonstrated a lack of remorse for the capital offenses committed in this case, as indicated by the defendant's statements and actions during the course of and following the offenses alleged in the Indictment.

(c) Institutional Misconduct

The defendant poses a future danger to the lives and safety of other persons, as demonstrated by, at least, his repeated acts of institutional misconduct while in the custody of the United States Bureau of Prisons, the United States Marshals Service, the New York Police Department, the New York City Department of Corrections, the New York State Department of Corrections or other law enforcement agencies, and while under the supervision of the New York State and New York City Departments of Parole or other law enforcement agencies.

(d) Low Rehabilitative Potential

The defendant has demonstrated a low potential for rehabilitation as evidenced by his longstanding involvement in criminal activities, including but not limited to drug trafficking, possession of deadly weapons, acts of violence and

attempted violence and threats of violence against witnesses and others, obstruction of justice, and also including but not limited to all of the offenses, including the capital offenses, charged in the Indictment.

3. **Death and Injury to Others**

In addition to the death of Ivery Davis, the defendant's commission of the crimes charged in Counts Eight and Eighteen resulted in death and injury to others, specifically, the death of Johan Camitz and injury to Justine Kurland.

4. **Victim Impact Evidence**

As reflected by the personal characteristics of the victim, Ivery Davis, as a human being and the impact of the offenses on the victim and the victim's family, the defendant caused loss, injury, and harm to the victim and the victim's family, see Payne v. Tennessee, 501 U.S. 808, 825-827 (1991), including, but not limited to, the following:

(a) Characteristics of Victim

The defendant caused the death of Ivery Davis, a twenty-seven year-old man who enjoyed a strong relationship with his family, including his mother.

(b) Impact of the Offense on
the Family of the Victim

The victim's family has suffered severe and irreparable harm. Ivery Davis provided emotional support to his entire family.

The Government further gives notice that in support of imposition of the death penalty on Counts Eight and Eighteen, it intends to rely upon all the evidence admitted by the Court during 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, his moral culpability, and the nature and circumstances of the offenses charged in the Indictment.

Dated: December 7, 2007
Brooklyn, New York

Respectfully submitted,



BENTON J. CAMPBELL
UNITED STATES ATTORNEY

cc: David Ruhnke, Esq.
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