

7/23/03

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) CRIMINAL NO. 02-778-01 (S-1)(SJ)
)
 Richard James,)
)
 Defendant.)

**NOTICE OF INTENT TO SEEK DEATH PENALTY AS TO
DEFENDANT RICHARD JAMES**

The United States of America notifies the Court and defendant Richard James under Chapter 228 (Sections 3591-3598) of Title 18 United States Code, that if defendant is convicted for one or more of the intentional killing(s) of Hardeo Sewnanan and Basdeo Somaipersaud, as charged by Count One of the Superseding Indictment, the Government will seek the sentence of death for Richard James as to each offense.

As required by 18 U.S.C. §§ 3593(a), (d), and (e), for (each of) Count One, the United States will introduce evidence establishing beyond a reasonable doubt:

- a. One or more of the statutory proportionality factors set forth by 18 U.S.C. § 3591(a)(2)(A-D), and
- b. One or more of the statutory aggravating factors set forth by 18 U.S.C. §§ 3592(c)(1)-(16).

As permitted by 18 U.S.C. §§ 3593(a) and (d), the United States will also seek to prove certain non-statutory aggravating factors set forth in this Notice. The United States believes that the circumstances of each charged offense are such that, if the defendant Richard James is convicted, a sentence of death is justified under Chapter 228 of Title 18 of the United States Code.

The United States will seek to prove the following factors as justifying a sentence of death as to Count One.

A. Statutory Proportionality Factors under 18 U.S.C. § 3591(a)(2)(A-D):

1. **Intentional Killing.** The defendant intentionally killed Hardeo Sewnanan and Basdeo Somaipersaud. 18 U.S.C. § 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Hardeo Sewnanan and Bosdeo Somaipersaud. 18 U.S.C. § 3591(a)(2)(B).

3. **Intentional Act to Take Life or Use Lethal Force.** The defendant intentionally participated in an act, contemplating that the lives of Hardeo Sewnanan and Basdeo Somaipersaud would be taken or intending that lethal force would be used in connection with Hardeo Sewnanan and Basdeo Somaipersaud, who were not among the participants in the offense, and Hardeo Sewnanan and Basdeo Somaipersaud died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

4. **Intentional Act in Reckless Disregard for Life.** The defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to Hardeo Sewnanan and Basdeo Somaipersaud, who were not among the participants in the offense, such that participation in the act constituted a reckless disregard for human life, and Hardeo Sewnanan and Basdeo Somaipersaud died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

B. Statutory Aggravating Factors under 18 U.S.C. §§ 3592(c)(1)-(16):

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

2. **Procurement of the Offense by Payment.** The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 18 U.S.C. § 3592(c)(7).

3. **Pecuniary Gain.** The defendant committed the killings of Hardeo Sewnanan and Basdeo Somaipersaud as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value. 18 U.S.C. § 3592(c)(8).

4. **Substantial Planning and Premeditation.** The defendant committed the killing of the victim named in each respective count of the indictment after substantial planning and premeditation to cause the deaths of Hardeo Sewnanan and Basdeo Somaipersaud. 18 U.S.C. § 3592(c)(9).

5. **Vulnerability of Victim.** Hardeo Sewnanan and Basdeo Somaipersaud were both particularly vulnerable due to their status as substance abusers – which masked the actual cause of death – and their lack of knowledge of the life insurance policies taken out on their lives. 18 U.S.C. § 3592(c)(11).

C. Non-Statutory Factors Under 18 U.S.C. § 3593(a):

1. **Future Dangerousness.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of other persons, including , but not limited to, inmates and correctional officers in an institutional correctional setting, as evidenced by the offenses charged in the superseding indictment and the statutory aggravating factors alleged in this Notice. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994). In addition to the capital offense charged in the Superseding Indictment and the statutory aggravating factors alleged in this Notice, the circumstances that demonstrate the defendant's future dangerousness include: his making specific threats of violence; his continuing pattern of violent criminal conduct; his specific admissions of violence; his threats of violence toward others; and his demonstrated lack of remorse.

The Government 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 Superseding Indictment as they relate to the background and character of the Defendant, Richard James, in his moral culpability, and the nature and circumstances of the offenses charged in the Superseding Indictment.