

*Fac 502 227 4669
Kevin McNally*

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

JOHN RICHARD MAYHEW, JR.

)
)
)
)
)

Criminal No. CR2-03-165

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

NOW comes the United States of America, pursuant to 18 U.S.C. §3593(a), by and through its undersigned counsel, and notifies the Court and the defendant in the above-captioned case that the Government believes the circumstances involved in the offenses charged in Counts One and Seven of the Indictment are such that, in the event of the defendant's conviction on those Counts, a sentence of death is justified under Chapter 228 (Sections 3591 through 3596) of Title 18 of the United States Code, and that the Government will seek the sentence of death for these offenses: Kidnaping, resulting in death, in violation of 18 U.S.C. §1201, and Use, Carry, Brandish and Discharge a Firearm During and in Relation to a Crime of Violence, resulting in death, in violation of 18 U.S.C. §§924(c) and 924(j)(1).

COUNT ONE

The Government believes that the evidence will support submission of the following factors to the jury justifying a sentence of death as these factors relate to Kidnaping, resulting in death, in Count One of the Indictment:

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

1. **Intentional Killing.** The defendant intentionally killed Christina McKibben. (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 Christina McKibben. (18 U.S.C. §3591(a)(2)(B)).

B. Statutory Aggravating Factors Enumerated under 18 U.S.C. §3592(c).

1. **Death During Commission of Another Crime.** The defendant caused the death, or injury resulting in death, of Christina McKibben, during the commission or attempted commission of, or during the immediate flight from the commission of, the offense of kidnaping, in violation of 18 U.S.C. §1201 (18 U.S.C. §3592(c)(1)).

2. **Previous Conviction of Violent Felony Involving Firearm.** The defendant has previously been convicted of an offense punishable by a term of imprisonment exceeding one year, involving the use or attempted or threatened use of a firearm against another person, that is: on or about August 31, 1992 defendant, JOHN

RICHARD MAYHEW, JR., was convicted in the Franklin County Court of Common Pleas, State of Ohio, of Kidnaping with Gun Specification (18 U.S.C. §§3592(c)(2) and 921).

3. **Grave Risk of Death to Additional Persons.** The defendant, during the commission of the offense, or 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)).

4. **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)).

5. **Multiple Killings or Attempted Killings.** The defendant intentionally killed or attempted to kill more than one person in a single criminal episode (18 U.S.C. §3592(c)(16)).

C. Other Non-Statutory Aggravating Factors Identified Under 18 U.S.C. §§ 3593(a)(2) & 3592(c).

1. **Future Dangerousness to Lives and Safety of Others.** The defendant represents a continued danger to the lives and safety of others. The defendant has committed the acts alleged in the capital offenses charged in the Indictment and in the statutory aggravating factors contained in this Notice and, in addition, has committed and exhibited acts and characteristics, including but not limited to one or more of the following:

(a) Low rehabilitative potential - The defendant has demonstrated a low potential for rehabilitation as evidenced by the following:

(i) The defendant has committed a similar crime in the past. The defendant kidnaped Rachelle Mayhew, on or about April 8, 1992;

(ii) The defendant committed the instant offence approximately three years after serving eight years in prison for the kidnaping of Rachelle Mayhew;

(b) Violence against others - The defendant intentionally killed Franklin Rigsby and Tamera McKibben on or about August 7, 2003;

(c) Threats of violence against others - The defendant threatened to kill Andrew Aspell Jr. on or about August 7, 2003.

2. **Victim Impact Evidence.** - Victim impact, as evidenced by the impact of Christina McKibben's murder of upon her family due to Christina McKibben's personal characteristics. The surviving members of the family have been deprived of their loved one and the benefit of having Christina McKibben in their lives.

COUNT SEVEN

The Government believes that the evidence will support submission of the following factors to the jury as justifying a sentence of death as these factors relate to Using Carrying and Discharging a Firearm/Unregistered Destructive Device, resulting in death, in Count Seven of the Indictment:

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

1. **Intentional Killing.** The defendant intentionally killed Christina Mckibben. (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 Christina Mckibben. (18 U.S.C. §3591(a)(2)(B)).

B. Statutory Aggravating Factors Enumerated under 18 U.S.C. §3592(c).

1. **Grave Risk of Death to Additional Persons.** The defendant, in the commission the offense, or 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.** The defendant committed the offense after substantial planning and premeditation to cause the death of a person (18 U.S.C. §3592(c)(9)).

3. **Multiple Killings or Attempted Killings.** The defendant intentionally killed or attempted to kill more than one person in a single criminal episode (18 U.S.C. §3592(c)(16)).

C. Other Non-Statutory Aggravating Factors Identified Under 18 U.S.C. §§ 3593(a)(2) & 3592(c).

1. **Future Dangerousness to Lives and Safety of Others.** The defendant represents a continued danger to the lives and safety of others. The defendant has committed the acts alleged in the capital offenses charged in the Indictment and in the statutory aggravating factors contained in this Notice and, in addition, has committed and exhibited acts and characteristics, including but not limited to one or more of the following:

(a) Low rehabilitative potential - The defendant has demonstrated a low potential for rehabilitation as evidenced by the following:

(i) The defendant has committed a similar crime in the past. The defendant kidnaped Rachelle Mayhew, on or about April 8, 1992;

- (ii) The defendant committed the instant offence approximately three years after serving eight years in prison for the kidnaping of Rachelle Mayhew;
- (b) Violence against others - The defendant intentionally killed Franklin Rigsby and Tamera McKibben on or about August 7, 2003;
- (c) Threats of violence against others - The defendant threatened to kill Andrew Aspell Jr. on or about August 7, 2003.

2. **Victim Impact Evidence.** - Victim impact, as evidenced by the impact of Christina Mckibben's murder of upon her family due to Christina Mckibben's personal characteristics. The surviving members of the family have been deprived of their loved one and the benefit of having Christina Mckibben in their lives.

Respectfully submitted,

GREGORY G. LOCKHART
United States Attorney

s/David M. DeVillers
DAVID M. DEVILLERS (0059456)
Assistant United States Attorney
Attorney for Plaintiff
303 Marconi Boulevard
Suite 200
Columbus, Ohio 43215
(614) 469-5715
Fax: (614) 469-5653
Dave.Devillers@usdoj.gov

s/Salvador A. Dominguez
SALVADOR A. DOMINGUEZ (0056232)
Assistant United States Attorney
Attorney for Plaintiff
Sal.Dominguez@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Intention to Seek the Death Penalty was served this 5th day of October, electronically on: Frederick D. Benton, Jr., Steven S. Nolder and Isaiah "Skip" Grant; and by regular U.S. Mail on: Frederick D. Benton, Jr., 786 South Front Street, Suite 204, Columbus, Ohio 43206, Steven S. Nolder, 10 West Broad Street, Suite 1020, Columbus, Ohio 43215 and Isaiah "Skip" Grant, 810 Broadway, Suite 200, Nashville, Tennessee 37203.

s/David M. DeVillers
DAVID M. DEVILLERS (0059456)
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA :
 :
 vs. : NO. CR-2-03-165
 : JUDGE MARBLEY
 JOHN RICHARD MAYHEW, JR. :

**MOTION TO AMEND INDICTMENT AND NOTICE
OF INTENT TO SEEK THE DEATH PENALTY**

Now comes the United States by counsel, Assistant United States Attorneys Salvador A. Dominguez and David M. DeVillers, and based on the following memorandum, we hereby move this Court to amend the Indictment and the notice of intent to seek the death penalty in the above-captioned case.

Respectfully submitted,

GREGORY G. LOCKHART
United States Attorney

s/Salvador A. Dominguez
SALVADOR A. DOMINGUEZ (0056232)
Assistant United States Attorney
303 Marconi Boulevard
Suite 200
Columbus, Ohio 43215
(614) 469-5715
Fax: (614) 469-5653
Sal.Dominguez@usdoj.gov

s/David M. DeVillers
DAVID M. DEVILLERS (0059456)
Assistant United States Attorney

MEMORANDUM

Upon consideration of the contents of the government's statutory aggravating factors relative to Counts One and Seven of the Indictment and the non-statutory aggravating factors alleged in the government's Notice of Intent to Seek the Death Penalty, the government hereby moves the Court to strike non-aggravating factors (C) (1) (b) of the said notice pertaining to Counts One and Seven, that is, "Violence against others - the defendant intentionally killed Franklin Rigsby and Tamera McKibben on or about August 7, 2003."

With respect to Count Seven of the indictment, the government further moves this Court to strike the following language from that Count: "and did knowingly carry an unregistered destructive device".

Judicial amendments to indictments are permissible "if they do not change an essential or material element of the indictment so as to cause prejudice to defendant; permissible amendment includes the correction of obvious clerical or typographical errors". United States v. Field, 875 F.2d 130 (7th Cir. 1989). Neither amendment is prejudicial to defendant Mayhew.

WHEREFORE, the United States respectfully requests this Honorable Court to amend the Indictment and the Notice of Intent to Seek the Death Penalty as reflected above.

Respectfully submitted,

GREGORY G. LOCKHART
United States Attorney

s/Salvador A. Dominguez
SALVADOR A. DOMINGUEZ (0056232)
Assistant United States Attorney

s/David M. DeVillers
DAVID M. DEVILLERS (0059456)
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served electronically on this 25th day of July, 2005, to Steven S. Nolder, Esquire, Assistant Federal Public Defender, 10 W. Broad Street, Suite 1020, Columbus, Ohio 43215; Frederick D. Benton, Esquire, 786 S. Front Street, Columbus, Ohio 43206; and was mailed this same date to Isiah Gant, 810 Broadway, Suite 200, Nashville, Tennessee 37203; all counsel for defendant John Richard Mayhew.

s/Salvador A. Dominguez
SALVADOR A. DOMINGUEZ (0056232)
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

VS.

: No. 2:03-CR-165
JUDGE MARBLEY

JOHN RICHARD MAYHEW

FIRST SUPPLEMENT TO GOVERNMENT'S NOTICE
OF INTENT TO SEEK THE DEATH PENALTY

Now comes the United States, by Assistant United States Attorneys Salvador A. Dominguez and David M. Devillers, and we hereby inform the Court and the defendant, per our notice of intent to seek the death penalty, specifically, paragraphs (B)(3) and (B)(5) under Count 1, of the identities of the following individuals whose lives were subject to a grave risk of death, and who defendant killed or attempted to kill, during and in furtherance of the kidnaping offense alleged in Count 1:

(B)(3). Grave Risk of Death to Additional Persons.

1. Andrew Aspell;
2. Samantha Jo Aspell;
3. Robert Hanson, Jr.;
4. Kristi Messer;
5. Sgt. Vincent Deeds;
6. Sgt. Jan Cahill;
7. Deputy Sheriff Mike Baker; and
8. Deputy Sheriff Ronald Bart Baker.

(B)(5). Multiple Killings or Attempted Killings.

1. Kristina McKibben;
2. Tamera McKibben;

3. Franklin Rigby;
4. Nathan Hersman; and
5. Bernard Messer.

Respectfully submitted,

GREGORY G. LOCKHART
United States Attorney

s/Salvador A. Dominguez
SALVADOR A. DOMINGUEZ (0056232)
Assistant United States Attorney
303 Marconi Boulevard
Suite 200
Columbus, Ohio 43215
(614) 469-5715
Fax: (614) 469-5653
Sal.Dominguez @usdoj.gov

s/David M. DeVillers
DAVID M. DEVILLERS (0059456)
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was hand-delivered on this 24th day of August, 2005, to Steven S. Nolder, Esquire, Assistant Federal Public Defender, 10 W. Broad Street, Suite 1020, Columbus, Ohio 43215; Frederick D. Benton, Esquire, 786 S. Front Street, Columbus, Ohio 43206; and Isiah Gant, Assistant Federal Public Defender, Nashville, Tennessee, counsel for defendant John Richard Mayhew.

s/Salvador A. Dominguez
SALVADOR A. DOMINGUEZ (0056232)
Assistant United States Attorney