

BR:CP:sd
F.# 2002R02474/OCDETF # NYNYE-399H

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 -

Cr. No. 04-966 (S-4)(FB)

KENNETH MCGRIFF,

Defendant.

- - - - - X

Murder of Eric Smith

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 KENNETH MCGRIFF is convicted of the capital offenses relating to the death of victim Eric Smith, 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 Four of the Fourth Superseding Indictment, which charges murder in aid of racketeering in violation of 18 U.S.C. §§ 1959(a)(1) and 2, and Count Six of the Fourth Superseding Indictment, which charges murder-for-hire in violation of 18 U.S.C. § 1958.

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

1. The defendant intentionally participated in one or more acts, 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 Eric Smith died as a direct result of the act or acts. 18 U.S.C. § 3591(a)(2)(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. Grave risk of death to additional persons. The defendant, in the commission 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. 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).

4. Conviction for a serious Federal drug offense. The defendant has previously been convicted of engaging in a continuing criminal enterprise. 18 U.S.C. § 3592(c)(12).

In addition to the statutory aggravating factors set forth above, the United States will rely on the following non-statutory aggravating factors to justify a sentence of death pursuant to 18 U.S.C. § 3593(a)(2):

1. Victim Impact Evidence. The defendant caused injury, harm, and loss to the victim, the victim's family, and the victim's friends as demonstrated by the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family and friends. Payne v. Tennessee, 501 U.S. 808, 824-27 (1991). The United States will present information concerning the effect of the offense on the victim and his family and friends, which may include oral testimony, victim impact statements, and the extent and scope of the injury and loss suffered by the victim, his family and friends, and any other relevant information.

2. The defendant poses a risk of future dangerousness as manifested by (a) a continued pattern of violence; (b) lack of remorse; and (c) contemporaneous convictions for multiple murders.

3. The United States further gives notice that, in support of the 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 Fourth Superseding Indictment, as they relate to the

background and character of the defendant KENNETH MCGRIFF, his moral culpability, and the nature and circumstances of the offenses charged in the Fourth Superseding Indictment.

Murder of Troy Singleton

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 KENNETH MCGRIFF is convicted of the capital offenses relating to the death of victim Troy Singleton, 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 Sixteen of the Fourth Superseding Indictment, which charges murder in aid of racketeering in violation of 18 U.S.C. §§ 1959(a)(1) and 2, and Count Eighteen of the Fourth Superseding Indictment, which charges murder-for-hire in violation of 18 U.S.C. § 1958.

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

1. The defendant intentionally participated in one or more acts, 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

Troy Singleton died as a direct result of the act or acts. 18 U.S.C. § 3591(a)(2)(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. 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).

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. Conviction for a serious Federal drug offense. The defendant has previously been convicted of engaging in a continuing criminal enterprise. 18 U.S.C. § 3592(c)(12).

In addition to the statutory aggravating factors set forth above, the United States will rely on the following non-statutory aggravating factors to justify a sentence of death pursuant to 18 U.S.C. § 3593(a)(2):

1. Victim Impact Evidence. The defendant caused injury, harm, and loss to the victim, the victim's family, and the victim's friends as demonstrated by the victim's personal characteristics as an individual human being and the impact of

the death upon the victim's family and friends. Payne v. Tennessee, 501 U.S. 808, 824-27 (1991). The United States will present information concerning the effect of the offense on the victim and his family and friends, which may include oral testimony, victim impact statements, and the extent and scope of the injury and loss suffered by the victim, his family and friends, and any other relevant information.

2. The defendant poses a risk of future dangerousness as manifested by (a) a continued pattern of violence; (b) lack of remorse; and (c) contemporaneous convictions for multiple murders.

3. The United States further gives notice that, in support of the 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 Fourth Superseding Indictment, as they relate to the background and character of the defendant KENNETH MCGRIFF, his

moral culpability, and the nature and circumstances of the offenses charged in the Fourth Superseding Indictment.

Dated: March __, 2006
Brooklyn, New York

Respectfully submitted,

ROSLYNN R. MAUSKOPF
UNITED STATES ATTORNEY

cc: David Ruhnke, Esq.
Jean Barrett, Esq.