

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

v.

SUPERSEDING INDICTMENT (S4)

00-CR-269

[TJM]

**CHRISTOPHER MCMILLIAN
AKA LLOYD**

Defendant.

NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH

The United States of America, by its attorney, Joseph A. Pavone, the United States Attorney for the Northern District of New York, by Assistant United States Attorney Miroslav Lovric, pursuant to Title 21, United States Code, Sections 848(h)(1)(A) & (B) and Title 18, United States Code, Sections 3593(a)(1) & (2), notifies the Court and defendant Christopher McMillian that in the event of the defendant's conviction on Count Two or Count Four or Count Five for intentionally killing Carlton Rose, as alleged in Counts Two, Four and Five of the superseding indictment, the government will seek the sentence of death, in that the circumstances of the offenses are such that a sentence of death is justified.

The government will seek to prove the following aggravating factors as the basis for imposition of the death penalty.

AS TO COUNT TWO:

A. Statutory Aggravating Factors Enumerated Pursuant To Title 21, United States Code, Sections 848(n)(1)(A) Through (D):

1. Christopher McMillian intentionally killed Carlton Rose [Section 848(n)(1)(A)].
2. Christopher McMillian intentionally inflicted serious bodily injury which resulted in the death of Carlton Rose [Section 848(n)(1)(B)].
3. Christopher McMillian intentionally engaged in conduct intending that Carlton Rose be killed and that lethal force be employed against Carlton Rose, which resulted in Carlton Rose's death [Section 848(n)(1)(C)].
4. Christopher McMillian intentionally engaged in conduct which:
 - (i) Christopher McMillian knew would create a grave risk of death to a person, other than one of the participants in the offense, **AND**
 - (ii) resulted in the death of Carlton Rose [Section 848(n)(1)(D)].

B. Statutory Aggravating Factors Enumerated Pursuant To Title 21, United States Code, Sections 848(n)(2) Through (n)(12):

1. Christopher McMillian committed the offense described in Count Two of the superseding indictment as consideration for the receipt and in the expectation of the receipt of something of pecuniary value, that is, narcotics, money and personal property [Section 848(n)(7)].
2. Christopher McMillian committed the offense described in Count Two of the superseding indictment after substantial planning and premeditation [Section 848(n)(8)].
3. Christopher McMillian committed the offense described in Count Two of the superseding indictment in an especially heinous, cruel and depraved manner in that it involved torture and serious physical abuse to Carlton Rose. Carlton Rose's hands were bound behind his back and his feet were tied together. Carlton Rose was brutally beaten and cut about the face and head. After a black

garbage bag was tied over Carlton Rose's head, Carlton Rose was strangled with a scarf-like instrument. Carlton Rose died from strangulation and asphyxiation [Section 848(n)(12)].

AS TO COUNT FOUR AND COUNT FIVE:

A. Gateway Culpability Factors Enumerated Pursuant To Title 18, United States Code, Sections 3591(a)(2)(A) Through (D):

1. Christopher McMillian intentionally killed Carlton Rose [Section 3591(a)(2)(A)].
2. Christopher McMillian intentionally inflicted serious bodily injury that resulted in the death of Carlton Rose [Section 3591(a)(2)(B)].
3. Christopher McMillian intentionally participated in an act, contemplating that the life of Carlton Rose would be taken and intending that lethal force would be used in connection with Carlton Rose, that Carlton Rose was not a participant in the offense, and Carlton Rose died as a direct result of the act [Section 3591(a)(2)(C)].
4. Christopher McMillian intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to Carlton Rose, that Carlton Rose was not a participant in the offense, such that participation in the act constituted a reckless disregard for human life and Carlton Rose died as a direct result of the act [Section 3591(a)(2)(D)].

B. Statutory Aggravating Factors Enumerated Pursuant To Title 18, United States Code, Sections 3592(c)(1) Through (c)(16):

1. Christopher McMillian committed the offenses described in Counts Four and Five of the superseding indictment after having previously been 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 against another person. Christopher McMillian pleaded guilty and was convicted on or about February 10, 1994 in New York County, New York for Attempted Burglary In The Second Degree. The conviction resulted from an event that occurred on or about August 12, 1992 inside an apartment

located at 2 West 129th Street, New York, New York. Christopher McMillian, Lavin Matthews and several others, while armed with pistols, forced their way into Shamar Pratt's apartment and fired gunshots at Shamar Pratt. The conviction was a felony offense punishable by imprisonment for a term exceeding one year [Section 3592(c)(2)].

2. Christopher McMillian committed the offenses described in Counts Four and Five of the superseding indictment in an especially heinous, cruel and depraved manner in that it involved torture and serious physical abuse to Carlton Rose. Carlton Rose's hands were bound behind his back and his feet were tied together. Carlton Rose was brutally beaten and cut about the face and head. After a black garbage bag was tied over Carlton Rose's head, Carlton Rose was strangled with a scarf-like instrument. Carlton Rose died from strangulation and asphyxiation [Section 3592(c)(6)].

3. Christopher McMillian committed the offenses described in Counts Four and Five of the superseding indictment as consideration for the receipt and in the expectation of the receipt of something of pecuniary value, that is, narcotics, money and personal property [Section 3592(c)(8)].

4. Christopher McMillian committed the offenses described in Counts Four and Five of the superseding indictment after substantial planning and premeditation to cause the death of Carlton Rose [Section 3592(c)(9)].

AS TO COUNTS TWO, FOUR AND FIVE:

A. Other, Non-Statutory Aggravating Factors Enumerated Pursuant To Title 21, United States Code, Sections 848(h)(1)(B) & 848(k), AND Pursuant to Title 18, United States Code, Section 3593(a), (c), & (d), and Section 3592:

1. On or about March 24, 1998, in Cumberland County, Fayetteville, North Carolina, Christopher McMillian and others, while armed with firearms including a sawed-off shotgun, did forcibly rob Rochell Graham in her residence and in the presence of Graham's young daughter of U.S. Currency and personal property. During the course of this armed robbery, defendant and the others bound and tied Rochell Graham's hands and feet while they blindfolded her. At gunpoint,

defendant and the others then ordered Rochell Graham and her child to lay on the floor.

2. On or about January 7, 2000, in Binghamton, New York, Christopher McMillian and others, while armed with a pistol, planned and committed the armed robbery of Tiffany Ward, Willis Bicham and Tiawanna Willard in a residential Binghamton apartment. Defendant and the others robbed the victims of narcotics, U.S. Currency, and personal property. During the course of the robbery, Willis Bicham was hit in the head with the pistol and required medical attention at a hospital.

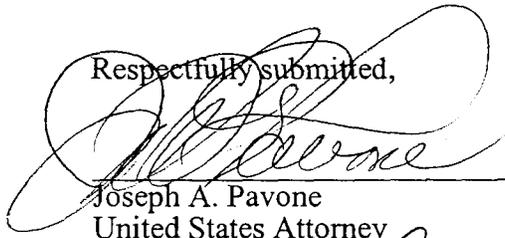
3. Christopher McMillian has previously been convicted of a State felony offense punishable by a term of imprisonment of more than one year, involving the possession and distribution of controlled substances, in that, on or about November 8, 1989, in the Supreme Court of Kings County, New York, Christopher McMillian pleaded guilty and was convicted of Attempted Criminal Sale of a Controlled Substance in the Third Degree, a felony under the laws of the State of New York. Christopher McMillian's conviction resulted from the November 3, 1988 event whereby he possessed and distributed controlled substances.

4. On or about August 12, 1992 inside an apartment located at 2 West 129th Street, New York, New York, Christopher McMillian, Lavin Matthews and several others, while armed with pistols, forced their way into Shamar Pratt's apartment and fired gunshots at Shamar Pratt. This factor applies to Count Two only.

5. Victim impact, as evidenced by the impact of the murder of Carlton Rose upon Carlton Rose's family and the injury, harm and loss suffered by the Rose family.

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, character and moral culpability of defendant Christopher McMillian, and the nature and circumstances of the offenses charged in the superseding indictment.

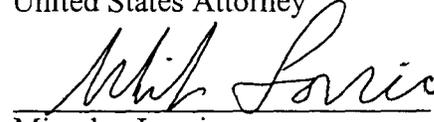
Respectfully submitted,



Handwritten signature of Joseph A. Pavone in cursive script, written over a horizontal line.

Joseph A. Pavone
United States Attorney

Dated: September 25, 2002



Handwritten signature of Miroslav Lovric in cursive script, written over a horizontal line.

Miroslav Lovric
Assistant U.S. Attorney