



U.S. Department of Justice

United States Attorney
Eastern District of New York

MJF
F.#2005R00513

271 Cadman Plaza East
Brooklyn, New York 11201

February 5, 2008

By Hand Delivery and E.C.F.

The Honorable I. Leo Glasser
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. James McTier
Criminal Docket No. 05-401 (ILG)

Dear Judge Glasser:

Enclosed please find a courtesy copy of the government's amended notice of its intent to seek the death penalty ("NOI") filed earlier today. There are no substantive changes from the previously filed NOI. However, to avoid any confusion, we have corrected references to specific capital counts to correspond to the count numbering in superseding indictment S-7. We have discussed these changes with defense counsel and they have no objection.

Respectfully submitted,

BENTON J. CAMPBELL
United States Attorney

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MJF:JHK/JAJ
F. #2005R00513

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

Cr. No. 05-401 (S-7) (ILG)

- against -

JAMES McTIER,
also known as "JD,"

Defendant.

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AMENDED NOTICE OF INTENT TO SEEK THE DEATH PENALTY

The defendant JAMES McTIER, also known as "JD" (the "defendant"), has been convicted of three capital offenses relating to the deaths of victims Ricky Tubens, Shamel Ayatolla and Tabetha Buckman. 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 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 the following offenses: (1) commission of a violent crime in aid of racketeering activity, to wit, the murder of Ricky Tubens, in violation of Title 18, United States Code, Section 1959(a)(1) (Count Ten of the Seventh Superseding Indictment (the "Indictment")); (2) commission of a violent crime in aid of racketeering activity, to wit, the murder of Shamel

Ayatolla, in violation of Title 18, United States Code, Section 1959(a)(1) (Count Fourteen); and (3) commission of a violent crime in aid of racketeering activity, to wit, the murder of Tabetha Buckman, in violation of Title 18, United States Code, Section 1959(a)(1) (Count Eighteen), each of which carries a possible sentence of death.

The Government proposes to prove the following factors as justifying a sentence of death.

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

The following statutory proportionality factor applies to both Counts Ten and Fourteen.

1. Intentional Killing

The defendant intentionally killed Ricky Tubens (Count Ten) and Shamel Ayatolla (Count Fourteen). 18 U.S.C. § 3591(a)(2)(A).

The following statutory proportionality factors apply to each of Counts Ten, Fourteen and Eighteen.

2. Intentional Acts to Take Life or Use Lethal Force

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 Ricky Tubens (Count Ten), Shamel Ayatolla (Count Fourteen) and Tabetha Buckman (Count Eighteen) died as a direct result of the

act. 18 U.S.C. § 3591(a)(2)(C).

3. Intentional Acts of Violence Creating 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 Ricky Tubens (Count Ten), Shamel Ayatolla (Count Fourteen) and Tabettha Buckman (Count Eighteen) 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)

The following statutory aggravating factor applies to each of Counts Ten, Fourteen and Eighteen.

1. Previous Conviction of Violent Felony Involving Firearm

The defendant has 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, robbery in the first degree, a class B felony, in New York State Supreme Court, Kings County. 18 U.S.C. § 3592(c)(2).

The following statutory aggravating factors apply to Count Eighteen.

2. Grave Risk of Death to Additional Persons

The defendant, in the commission of the offense, and 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).

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. Non-Statutory Aggravating Factors
Under 18 U.S.C. § 3593(a)(2)

The following non-statutory aggravating factors apply to each of Counts Ten, Fourteen and Eighteen.

1. Future Dangerousness of the Defendant

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, and threatened violence, including, at least, the crimes alleged against the defendant in the Indictment, and the crime of which the defendant was previously convicted, as described in ¶ B.1. of this Notice.

in the Indictment, the defendant, through his actions and statements, demonstrated a lack of remorse over his participation in the offenses.

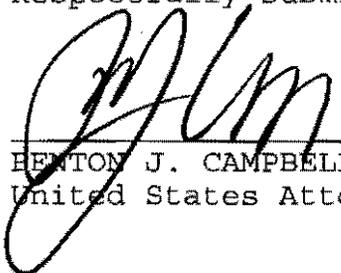
4. Victim Impact Evidence

As reflected by the personal characteristics of the victims, Ricky Tubens, Shamel Ayatolla and Tabetha Buckman, as individual human beings and the impact of the offenses on the victims and the victims' families, the defendant caused loss, injury, and harm to the victims and the victims' families, see Payne v. Tennessee, 501 U.S. 808, 825-827 (1991).

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 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: February 5, 2008
Brooklyn, New York

Respectfully submitted,



BENTON J. CAMPBELL
United States Attorney

TH:JK
F. #2005R00513

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

Cr. No. 05-401 (S-1) (ILG)

- against -

JAMES McTIER,
also known as "JD,"

Defendant.

- - - - - X

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

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 JAMES McTIER, also known as "JD" (the "defendant"), is convicted of one or more of the capital offenses relating to the deaths of victims Ricky Tubens, Shamel Ayatolla and Tabetha Buckman, 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 the following offenses: (1) commission of a violent crime in aid of racketeering activity, to wit, the murder of Ricky Tubens, in violation of Title 18, United States Code, Section 1959(a)(1) (Count Thirteen of the Superseding Indictment (the "Indictment")); (2) commission of a violent crime in aid of racketeering activity, to wit, the

murder of Shamel Ayatolla, in violation of Title 18, United States Code, Section 1959(a)(1) (Count Nineteen); and (3) commission of a violent crime in aid of racketeering activity, to wit, the murder of Tabetha Buckman, in violation of Title 18, United States Code, Section 1959(a)(1) (Count Twenty-three), each of which carries a possible sentence of death.

The Government proposes to prove the following factors as justifying a sentence of death.

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

The following statutory proportionality factor applies to both Counts Thirteen and Nineteen.

1. Intentional Killing

The defendant intentionally killed Ricky Tubens (Count Thirteen) and Shamel Ayatollah (Count Nineteen). 18 U.S.C. § 3591(a)(2)(A).

The following statutory proportionality factors apply to each of Counts Thirteen, Nineteen and Twenty-three.

2. Intentional Acts to Take Life or Use Lethal Force

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 Ricky Tubens (Count Thirteen), Shamel Ayatolla (Count Nineteen) and Tabetha Buckman (Count Twenty-three) died as a direct result

of the act. 18 U.S.C. § 3591(a)(2)(C).

3. Intentional Acts of Violence Creating 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 Ricky Tubens (Count Thirteen), Shamel Ayatolla (Count Nineteen) and Tabetha Buckman (Count Twenty-three) 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)

The following statutory aggravating factor applies to each of Counts Thirteen, Nineteen and Twenty-three.

1. Previous Conviction of Violent Felony Involving Firearm

The defendant has 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, robbery in the first degree, a class B felony, in New York State Supreme Court, Kings County. 18 U.S.C. § 3592(c)(2).

The following statutory aggravating factors apply to Count Twenty-three.

2. Grave Risk of Death to Additional Persons

The defendant, in the commission of the offense, and 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).

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. Non-Statutory Aggravating Factors
Under 18 U.S.C. § 3593(a)(2)

The following non-statutory aggravating factors apply to each of Counts Thirteen, Nineteen and Twenty-three.

1. Future Dangerousness of the Defendant

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, and threatened violence, including, at least, the crimes alleged against the defendant in the Indictment, and the crime of which the defendant was previously convicted, as described in ¶ B.1. of this Notice.

b. 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, United States Marshals Service, or other law enforcement agencies.

c. 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, threats of violence and acts of violence both inside and outside of institutional correctional settings, threats of violence and acts of violence in which the defendant took part and promoted through his association with organizations that engaged in violence, obstruction of justice, and also including but not limited to all of the offenses, including the capital offenses, charged in the Indictment.

2. Contemporaneous Convictions

The defendant faces contemporaneous convictions for multiple murders, attempted murders, and other serious acts of violence.

3. Lack of Remorse

During and after the commission of the offenses charged

in the Indictment, the defendant, through his actions and statements, demonstrated a lack of remorse over his participation in the offenses.

4. Victim Impact Evidence

As reflected by the personal characteristics of the victims, Ricky Tubens, Shamel Ayatolla and Tabetha Buckman, as individual human beings and the impact of the offenses on the victims and the victims' families, the defendant caused loss, injury, and harm to the victims and the victims' families, see Payne v. Tennessee, 501 U.S. 808, 825-827 (1991).

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 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: January 9, 2007
Brooklyn, New York

Respectfully submitted,



ROSLYNN R. MAUSKOPF
United States Attorney