

RECEIVED
9/18/98

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 94-00194-01-CR-W-9
)	
DENNIS B. MOORE, SR.,)	
)	
Defendant.)	

SECOND AMENDED NOTICE OF INTENT TO SEEK THE DEATH PENALTY

The United States of America, by its attorneys, Stephen L. Hill, Jr., United States Attorney, and Mark A. Miller, Assistant United States Attorney, both for the Western District of Missouri, pursuant to Title 21, United States Code, Sections 848(h)(1)(A), (B), and 848(h)(2), notifies the Court and the defendant, Dennis B. Moore, Sr., that in the event the defendant is convicted of intentionally killing Elmont Kerns, as alleged in Counts Three and Four of the superseding indictment, the government will seek a sentence of death.

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

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

1. Dennis B. Moore, Sr., intentionally killed Elmont Kerns and counseled, commanded, induced, procured and caused the intentional killing Elmont Kerns. [21 U.S.C. § 848(n)(1)(A)].

2. Dennis B. Moore, Sr., intentionally inflicted serious bodily injury which resulted in the death of Elmont Kerns and

counseled, commanded, induced, procured and caused the intentional infliction of serious bodily injury which resulted in the death of Elmont Kerns. [21 U.S.C. § 848(n)(1)(B)].

3. Dennis B. Moore, Sr., intentionally engaged in conduct intending that Elmont Kerns be killed and that lethal force be employed against Elmont Kerns, which resulted in Elmont Kern's death and counseled, commanded, induced, procured and caused another to intentionally engage in conduct intending that Elmont Kerns be killed and that lethal force be employed against Elmont Kerns which resulted in Elmont Kerns' death. [21 U.S.C. § 848(n)(1)(C)].

4. Dennis B. Moore, Sr., intentionally engaged in conduct and counseled, commanded, induced, procured and caused another to intentionally engage in conduct which:

(i) Dennis B. Moore, Sr., 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 Elmont Kerns. [21 U.S.C. § 848(n)(1)(D)].

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

1. Dennis B. Moore, Sr., committed the offenses described in Counts Three and Four of the superseding indictment as consideration for the receipt and in the expectation of the receipt of something of pecuniary value, that is, drugs, the retirement of a drug debt and the assumption of the drug business of the victim, Elmont Kerns. [21 U.S.C. § 848(n)(7)].

2. Dennis B. Moore, Sr., committed the offenses described in Counts Three and Four of the superseding indictment after substantial planning and premeditation. [21 U.S.C. § 848(n)(8)].

3. The defendant procured the commission of the murder described in Counts Three and Four of the superseding indictment by payment or promise of payment of \$10,000 and an automobile. [21 U.S.C. § 848(n)(6)].

4. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. § 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. § 859. [21 U.S.C. § 848(n)(1)].

C. Other, Non-Statutory Aggravating Factors Enumerated Pursuant to Title 21, United States Code, Sections 848(b)(1)(B) and 848(K)

1. Future dangerousness based upon the probability that Dennis B. Moore, Sr., would commit criminal acts of violence that would constitute a continuing threat to society, as evidenced for example, by one or more of the following, among others:

a. On or about August 1, 1992, defendant Dennis M. Moore, Sr., arranged and caused an armed robbery to be committed at Patricio's Restaurant in South Kansas City, Missouri.

b. In or about 1992, defendant, Dennis B. Moore, Sr., arranged and caused a robbery by force of a drug dealer at the Ranada Inn in South Kansas City.

c. In or about 1992, defendant Dennis B. Moore, Sr., arranged and caused an armed robbery of a drug dealer in Kansas City, Missouri.

d. In or about 1992, defendant Dennis B. Moore, Sr., arranged and caused an armed robbery of a drug dealer in North Kansas City, Missouri.

e. On or about July 24, 1992, Dennis B. Moore, Sr., arranged and caused an armed robbery of the payroll of Jenny's Tree Service in Kansas City, Missouri.

f. Dennis B. Moore, Sr., has displayed a complete lack of remorse for the killing of Elmont Kerns.

g. In or about June 1989, defendant molested K.A., then a minor child in Cass County, Missouri.

h. In or about June 1991, defendant Dennis B. Moore, Sr., attempted to rape SM in Cass County, Missouri, by physically assaulting SM and forcibly removing articles of her clothing.

i. In or about 1969 through 1970, defendant Dennis B. Moore, Sr., sodomized Jane Doe, then a minor child eight years of age, in Cass County, Missouri, by placing his fingers in her vagina.

j. Dennis B. Moore, Sr., has previously been convicted of a State felony offense punishable by a term of imprisonment of more than one year, involving the use of threat or use of violence, in that, on January 2, 1974, in the Circuit Court of Jackson County, Missouri, Dennis B. Moore, Sr., was convicted of assault

with intent to rob without malice, a felony under the laws of the State of Missouri.

k. In or about summer 1992, defendant Dennis B. Moore, Sr., procured James Clark to kill Danny Peach, a state's witness in State of Missouri v. Orville Childress, et al., and Stanley Thompson, the Assistant Prosecuting Attorney assigned the prosecution.

1. In or about Winter 1994, defendant Dennis B. Moore, Sr., procured Terry Wright to kill Jeff Johnson, a potential government witness in United States v. Dennis B. Moore, Sr., et al.

2. Victim impact, as evidenced by the impact of the murder upon Elmont Kerns' family.

3. Dennis B. Moore, Sr., while committing the offenses described in Counts One and Two of the superseding indictment, and being at least eighteen years of age, did employ persons under twenty-one years of age in the distribution of controlled substances.

D. Amendment

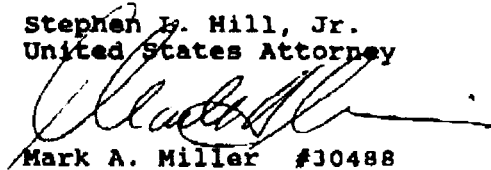
This amendment is made pursuant to 21 U.S.C. § 848(h)(2) and leave of court is sought to file this second amended notice. No new matters are alleged. Instead, the date set forth in (C)(1)(g) is changed from November, 1989 to June, 1989. Counsel for defendants have been previously provided discovery concerning this matter in the form of a statement by K.A. As such, good cause exists because the amendment will allow the averment to conform to

the anticipated proof at trial. Additionally, no prejudice will be suffered by defendant by this amendment because they were previously made aware of the allegation.

Respectfully submitted,

Stephen L. Hill, Jr.
United States Attorney

By


Mark A. Miller #30488
Assistant United States Attorney

1201 Walnut, Suite 2300
Kansas City, Missouri 64106-2149
Telephone: (816) 426-3122

CERTIFICATE OF SERVICE

17/2 I hereby certify that a copy of the foregoing was mailed this day of September, 1996 to the following:

Cenobio Lozano, Esquire
3001 North 291 Highway
P.O. Box 452
Harrisonville, Missouri 64701


Mark A. Miller
Assistant United States Attorney

MAN:tas

8-23-95

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UNITED STATES OF AMERICA,)
Plaintiff,)
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Defendant.)

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

- 1. Dennis B. Moore, Sr. intentionally killed Elmont Kerns [21 U.S.C. § 848(n)(1)(A)].
2. Dennis B. Moore, Sr. intentionally inflicted serious bodily injury which resulted in the death of Elmont Kerns [21 U.S.C. § 848(n)(1)(B)].

3. Dennis B. Moore, Sr. intentionally engaged in conduct intending that Elmont Kerns be killed and that lethal force be employed against Dennis B. Moore, Sr., which resulted in Elmont Kern's death [21 U.S.C. § 848(n)(1)(C)].

4. Dennis B. Moore, Sr. intentionally engaged in conduct which:

(i) Dennis B. Moore, Sr. knew would create a grave risk of death to a person, other than one of the participants in the offense; and

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Enumerated Pursuant To Title 21,
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3. The defendant procured the commission of the murder described in Counts Three and Four of the superseding indictment by payment or promise of payment of \$10,000 and an automobile [21 U.S.C. § 848(n)(6)].

4. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. § 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. § 859 [21 U.S.C. § 848(n)(1)].

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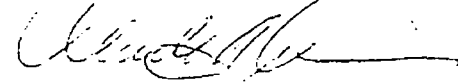
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Respectfully submitted,

Stephen L. Hill, Jr.
United States Attorney

By



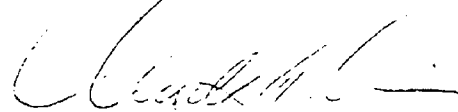
Mark A. Miller #30488
Assistant United States Attorney

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Telephone: (816) 426-3122

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed this 22nd day of August, 1995 to the following:

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P.O. Box 452
Harrisonville, Missouri 64701



Mark A. Miller
Assistant United States Attorney

MAM:tas