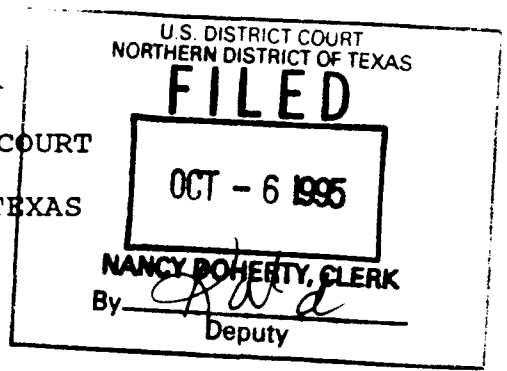


9:50 am

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION



UNITED STATES OF AMERICA

§
§
§
§
§

v.

Criminal No. 5:95-CR-017-1-C

ELI MUNGIA (1)

9:50 am

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW, the United States of America, by and through the United States Attorney for the Northern District of Texas, and files, pursuant to Title 18, United States Code, Sections 3591 through 3593, this notice of its intent to seek the death penalty against the defendant, **ELI TREVINO MUNGIA**, in the event the defendant is convicted of Count Four and/or Count Five of the Indictment, which charges Wilful injury by force of victim because of race and enjoyment of facilities provided and administered by the State with death resulting, in violation of Title 18, United States Code, Section 245(b)(2)(B), and Using and carrying a firearm during and in relation to a crime of violence with death resulting and would show the Court and the jury as follows:

I.

The United States of America believes that the circumstances of the instant offense resulting in death are such that, if the defendant, **ELI TREVINO MUNGIA**, is convicted, a sentence of death is justified under Chapter 228 of Title 18, United States Code, Sections 3591(a), 3592(a), and 3592(c).

II.

The United States of America will prove, at a hearing held pursuant to Title 18, United States Code, Section 3593, that:

a. the defendant, **ELI TREVINO MUNGIA**, on or about October 16, 1994, did intentionally kill Melvin Johnson by shooting him, and causing him to be shot, in the neck and chest area with a sawed-off shotgun;

b. the defendant, **ELI TREVINO MUNGIA**, on or about October 16, 1994, did intentionally inflict serious bodily injury, that resulted in the death of the victim, Melvin Johnson, by shooting him, and causing him to be shot, in the neck and chest area with a sawed-off shotgun;

c. the defendant, **ELI TREVINO MUNGIA**, on or about October 16, 1994, did intentionally participate in an act, namely shooting Melvin Johnson, and causing him to be shot, in the neck and chest area with a sawed-off shotgun, contemplating that the life of Melvin Johnson would be taken and intending that lethal force would be used in connection with Melvin Johnson, and the victim, Melvin Johnson, a person other than one of the participants in the offense, died as a direct result of the act;

d. the defendant, **ELI TREVINO MUNGIA**, on or about October 16, 1994, did intentionally and specifically engage in an act of violence, namely shooting Melvin Johnson, and causing him to be shot, in the neck and chest area with a sawed-off shotgun, 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 the victim, Melvin Johnson, died as a direct result of the act.

III.

The United States of America will prove the following statutory aggravating factors to justify a sentence of death:

a. the defendant, **ELI TREVINO MUNGIA**, in the commission of this offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense, Melvin Johnson (Title 18, United States Code, Section 3592(c)(5));

b. the defendant, **ELI TREVINO MUNGIA**, committed the offense after substantial planning and premeditation to cause the death of Melvin Johnson (Title 18, United States Code, Section 3592(c)(9));

IV.

The United States of America will prove the following non-statutory aggravating factors to justify a sentence of death:

a. The defendant, **ELI TREVINO MUNGIA**, participated in additional attempted murders and serious acts of violence in that prior to the fatal shooting of Melvin Johnson, **ELI TREVINO MUNGIA** and his co-defendants travelled to a racially mixed neighborhood near Texas Tech University and shot Autry Morgan Vaughn, a black man, in the face with the sawed-off shotgun. While seriously wounded, Vaughn survived his injuries.

Immediately after the fatal shooting of Melvin Johnson, the defendants saw Triellis Lee Stewart walking with Terrace Brown on Martin Luther King Boulevard and shot Stewart in the hand with the sawed-off shotgun. While seriously wounding Stewart and causing the amputation of part of his hand, Stewart survived the attack.

b. The defendant, **ELI TREVINO MUNGIA**, poses a future danger to the lives and safety of other persons, as evidenced by specific threats and acts of violence. See Jurek v. Texas, 428 U.S. 262, 272-273, 96 S. Ct. 2950, 2956-2957 (1976) ("probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society").

c. The defendant, **ELI TREVINO MUNGIA**, poses a future danger to the lives and safety of other persons as evidenced by his lack of remorse.

d. The impact of this offense upon family members of the victims. See Title 18, United States Code, Section 3593(a) and Payne v. Tennessee, 501 U.S. 808, 111 S.Ct. 2597 (1991).

e. Melvin Johnson was a particularly vulnerable victim in that he had been treated in the past for mental illness.

WHEREFORE, the United States of America, by and through the United States Attorney for the Northern District of Texas, hereby gives notice of its intent to seek the death penalty as to **ELI TREVINO MUNGIA** and to introduce evidence to the jury in support of such punishment.

Respectfully submitted,

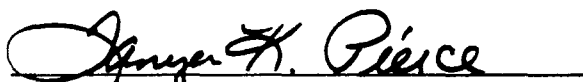
PAUL E. COGGINS
UNITED STATES ATTORNEY



TANYA K. PIERCE
ASSISTANT UNITED STATES ATTORNEY
State Bar No. 15103300
1205 Texas Avenue, Room 207
Lubbock, Texas 79401
806/743-7351

CERTIFICATE OF SERVICE

I, Tanya K. Pierce, Assistant United States Attorney for the Northern District of Texas, do hereby certify that a true and correct copy of the foregoing was served on Phil Wischkaemper by placing same in the United State mail this the 6th day of October, 1995.



TANYA K. PIERCE
Assistant United States Attorney