

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

UNITED STATES OF AMERICA)
)
 v.)
)
 FELIX ORTIZ-VELEZ)
 a/k/a "BORI")

CRIMINAL NO. 3:CR-96-005
(Chief Judge Rambo) AUG 8 1997

MARY E. D'AMICO, CLERK
Per [Signature]
Deputy Clerk

**NOTICE OF INTENT
TO SEEK THE DEATH PENALTY**

I. TITLE 21 HOMICIDE

AND NOW this 8th day of August 1997, comes David M. Barasch, United States Attorney for the Middle District of Pennsylvania, by William A. Behe, Assistant United States Attorney, on behalf of the United States of America who, pursuant to 21 U.S.C. § 848(h)(1)(A) and (B), notifies the Court and the Defendant in the above-captioned case that in the event of conviction for intentionally killing Larry Antonio "Tony" Haines, as alleged in Count XV of the Fifth Superseding Indictment, the United States will seek the sentence of death.

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

A. Alternative Statutory Aggravating Factors Enumerated Under 21 U.S.C. § 848(n)(1)(A) through (D):

1. The defendant intentionally killed Larry Antonio "Tony" Haines. Section 848(n)(1)(A).

2. The Defendant intentionally inflicted serious bodily injury which resulted in the death of Larry Antonio “Tony” Haines. Section 848(n)(1)(B).

3. The Defendant intentionally engaged in conduct intending that Larry Antonio “Tony” Haines be killed and intending that lethal force be employed against Larry Antonio “Tony” Haines, which resulted in Larry Antonio “Tony” Haines’ death. Section 848(n)(1)(C).

4. The Defendant intentionally engaged in conduct which the defendant knew would create a grave risk of death to Larry Antonio “Tony” Haines which resulted in the death of Larry Antonio “Tony” Haines. Section 848(n)(1)(D).

B. Statutory Aggravating Factors Enumerated Under 21 U.S.C. § 848(n)(2)-(12):

1. The Defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value. Section 848(n)(7).

2. The Defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

C. Other, Non-Statutory, Aggravating Factors Identified Under 21 U.S.C. § 848(h)(1)(B) and § 848(k):

1. Future dangerousness: the probability that the Defendant would commit criminal acts of violence in the future that would constitute a continuing and serious threat to society, based upon evidence including but not limited to one or more of the following:

a. The Defendant killed Larry Antonio “Tony” Haines in an effort by the Defendant to obstruct justice, tamper with a witness, and to retaliate for Haines’ cooperation with law enforcement authorities, and to avoid the Defendant’s own apprehension and prosecution.

b. The Defendant committed the offense in a heinous manner in that it involved serious physical abuse to Larry Antonio “Tony” Haines.

c. On December 13, 1995, the Defendant participated in a home invasion in order to steal cocaine and money, and participated in the infliction of physical and psychological abuse upon Jose “Junior” Burgos resulting in Burgos being beaten, bound hand and foot with duct tape, and repeatedly stabbed over a period of time and then killed.

d. The Defendant pistol-whipped Emilio Robles in Harrisburg, PA who was selling heroin for Otero because Robles owed money to the drug organization.

e. The Defendant, in Harrisburg, PA, shot Stephen Green in the chest with a pellet gun after Green had just purchased heroin from the drug organization.

II. TITLE 18 HOMICIDES

Pursuant to 18 U.S.C. § 3593(a), the United States hereby notifies the court and the Defendant that the United States believes that circumstances of certain capital offenses charged against the Defendant are such that, in the event of a conviction, a sentence of death is justified.

The government will seek the sentence of death under Title 18, United States Code, Sections 3591-3598 for each of the following offenses, which carries a possible sentence of death, as charged in the Fifth Superseding Indictment: the murder of Larry Antonio “Tony” Haines alleged in Counts VIII, X, and XI, as violations of 18 U.S.C. §§ 1512(a)(1)(A), 1512(a)(1)(C), and 18 U.S.C. § 924(j), respectively.

The government proposes to prove the following factors as justifying a sentence of death:

A. Statutory Proportionality Factors, 18 U.S.C. § 3591(a):

1. The Defendant intentionally killed Larry Antonio “Tony” Haines; 18 U.S.C. § 3591(a)(2)(A).
2. The Defendant intentionally inflicted serious bodily injury that resulted in the death of Larry Antonio “Tony” Haines; 18 U.S.C. § 3591(a)(2)(B).
3. The Defendant intentionally participated in an act, contemplating that the life of Larry Antonio “Tony” Haines would be taken and intending that lethal force would be used in connection with Haines, and Haines died as a direct result of the act; 18 U.S.C. § 3591(a)(2)(C).
4. The Defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to Larry Antonio “Tony” Haines such that participation in the act constituted a reckless disregard for human life and Larry Antonio “Tony” Haines died as a direct result of the act; 18 U.S.C. § 3591(a)(2)(D).

B. Statutory Aggravating Factors, 18 U.S.C. § 3592(c):

1. The Defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value; 18 U.S.C. § 3592(c)(8).
2. The Defendant committed the offense after substantial planning and pre-meditation to cause the death of Larry Antonio “Tony” Haines; 18 U.S.C. § 3592(c)(9).

C. Non-Statutory Aggravating Factors, 18 U.S.C. § 3593(a):

1. Future dangerousness: the probability that the Defendant would commit criminal acts of violence in the future that would constitute a continuing and serious threat to society, based upon evidence including but not limited to one or more of the following:

a. The Defendant had Larry Antonio "Tony" Haines killed in an effort by the Defendant to obstruct justice, tamper with a witness, and in retaliation for Haines' cooperating with law enforcement authorities, and to avoid the Defendant's own apprehension and prosecution.

b. The Defendant committed the offense in a heinous manner in that it involved serious physical abuse to the victim.

c. On December 13, 1995, the Defendant participated in a home invasion in order to steal cocaine and money, and participated in the infliction of physical and psychological abuse upon Jose "Junior" Burgos resulting in Burgos being beaten, bound hand and foot with duct tape, and repeatedly stabbed over a period of time and then killed.

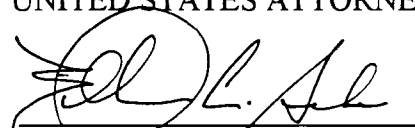
d. The Defendant pistol-whipped Emilio Robles in Harrisburg, PA who was selling heroin for Otero because Robles owed money to the drug organization.

e. The Defendant, in Harrisburg, PA, shot Steven Green in the chest with a pellet gun after Green had just purchased heroin from the drug organization.

2. Victim impact evidence: the family of the victim has suffered injury and loss as a result of the victim's death. Payne v. Tennessee, 111 S.Ct. 2597, 2608-09 (1991).

Respectfully submitted,

DAVID M. BARASCH
UNITED STATES ATTORNEY



WILLIAM A. BEHE
ASSISTANT U.S. ATTORNEY

Dated: August 8, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
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JULIO ORTERO and)
FELIX ORTIZ-VELEZ)

CRIMINAL NO. 3:CR-96-005
(CHIEF JUDGE RAMBO)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

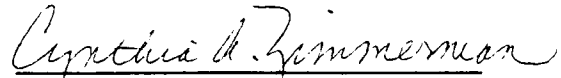
That this 8th day of August 1997, she served a copy of the attached

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by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

ADDRESSEE(S)
Frank W. Nocito, Esquire
63 Pierce Street
Kingston, PA 18704

Allen C. Welch, Esquire
831 Market Street
Lemoyne, PA 17043


CYNTHIA A. ZIMMERMAN
Paralegal Assistant