

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	NO. 3:98-00038
)	JUDGE NIXON
EBEN PAYNE)	
a/k/a "BONE")	
a/k/a "Q-BONE")	

**UNITED STATES' NOTICE OF INTENT
TO SEEK A SENTENCE OF DEATH AGAINST DEFENDANT EBEN PAYNE**

Pursuant to 18 U.S.C. 3593 and 21 U.S.C. 848(h), the United States of America hereby notifies the court, defendant **EBEN PAYNE**, and the defendant's counsel that the government believes that the circumstances of the offenses addressed herein are such that a sentence of death is justified and that the government will seek the sentence of death for defendant **EBEN PAYNE** in the event of his conviction on any of the following counts in the Fifth Superseding Indictment relating to the **killings of Kenard Murry or Regina Suetopka**:

Counts Eighteen and Nineteen, each charging the killing in furtherance of a continuing criminal enterprise and a conspiracy to distribute controlled substances, in violation of Title 21, United States Code, Section 848(e)(1)(A) and Title 18, United States Code, Section 2;

Counts Twenty and Twenty-one, each charging killing to obstruct justice, in violation of Title 18, United States Code, Sections 2 and 1512(a)(1);

Counts Twenty-two and Twenty-three, each charging causing death by the use and carrying of a firearm during and in relation to a crime of violence or a drug trafficking crime, in

violation of Title 18, United States Code, Sections 2, 924(c)(1) and 924(j) [formerly enumerated as 924(i)]; and

Counts Twenty-four and Twenty-five, each charging killing by firing a weapon into a group of two or more persons in furtherance of or to escape detection of a major drug offense, in violation of Title 18, United States Code, Sections 2 and 36.

I. CAPITAL OFFENSES UNDER TITLE 18 OF THE UNITED STATES CODE

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

The Government will seek to prove the following threshold factors which render defendant EBEN PAYNE eligible for a sentence of death:

1. With respect to **Counts Twenty, Twenty-one, Twenty-two, Twenty-three, Twenty-four and Twenty-five**, defendant EBEN PAYNE intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).

2. With respect to **Counts Twenty, Twenty-one, Twenty-two, Twenty-three, Twenty-four and Twenty-five**, defendant EBEN PAYNE intentionally inflicted serious bodily injury that resulted in the death of the victim. 18 U.S.C. § 3591(a)(2)(B).

3. With respect to **Counts Twenty, Twenty-one, Twenty-two, Twenty-three, Twenty-four and Twenty-five**, defendant EBEN PAYNE, 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 the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

4. With respect to **Counts Twenty, Twenty-one, Twenty-two, Twenty-three, Twenty-four and Twenty-five**, defendant EBEN PAYNE 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 the victim died as a direct result of the act. 18 U.S.C.

§ 3591(a)(2)(D).

B. Aggravating Factors For Title 18 Offenses

Count 20: Murder Of Kenard Murry To Obstruct Justice

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 20 (Murder of Kenard Murry to Obstruct Justice)** of the Fifth Superseding Indictment:

1. Statutory Aggravating Factors Enumerated under 18 U.S.C. 3592(c)(1) through (16):

a. The defendant, in the commission of the offense or 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)

b. The defendant committed the offense in the expectation of the receipt of anything of pecuniary value. 18 U.S.C. 3592 (c)(8).

c. The defendant committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C. 3592(c)(9).

d. The defendant intentionally killed or attempted to kill more than one person in a single criminal episode. 18 U.S.C. 3592(c)(15).

2. Other Non-Statutory Aggravating Factors Identified under 18 U.S.C. 3593(a) and (c)

a. The defendant participated in, directed, approved, or solicited other acts of violence including acts described in the Fifth Superseding Indictment.

b. Additional punishment for killing. The defendant's other offenses are such that he should be imprisoned for the rest of his life without the possibility of parole even if he had not committed this offense, so the death penalty provides an increased penalty for the defendant's participation in this offense.

c. Continuing Danger. The defendant represents a continuing danger to the lives and safety of other persons. The defendant has committed the acts alleged in the capital offenses charged in the Fifth Superseding Indictment and in the statutory and non-statutory aggravating factors contained in this Notice, and in addition, has committed and exhibited acts and characteristics including but not limited to the following:

(1) The defendant committed and threatened other assaults while in pretrial detention, including a serious, premeditated assault on Corporal Victoria Reeves, who was then acting in her official capacity as a guard at the Metropolitan Nashville Criminal Justice Center. The defendant inflicted serious injury on Corporal Reeves and threatened to kill her during this assault.

(2) The defendant has expressed his desire to kill or injure law enforcement officers and witnesses, to obstruct the investigation and prosecution of the charges against him and his co-defendants, and to retaliate against cooperating witnesses.

(3) The defendant has demonstrated a low potential for rehabilitation as evidenced by factors such as his misconduct while in pretrial detention and his desire that people he believes to be cooperating with the prosecution be harmed or killed.

d. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

e. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The defendant abused the hospitality of the victims who had trusted the defendant to stay the night in their home with them and Regina Suetopka's three year old daughter. The defendant then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless. The defendant also seriously wounded the three year old daughter of Regina Suetopka and left that child with the dead bodies of her mother and Kenard Murry. The three year old girl suffered for days before she was found in bed with the bloated, decomposing bodies of her mother and Kenard Murry.

f. The defendant lacks remorse for having committed the offense.

g. The defendant was a fugitive from state felony drug and firearm charges when he committed the offense.

Count 21: Murder Of Regina Suetopka To Obstruct Justice

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 21 (Murder of Regina Suetopka to Obstruct Justice)** of the Fifth Superseding Indictment:

1. Statutory Aggravating Factors Enumerated under 18 U.S.C. 3592(c)(1) through (16):

a. The defendant, in the commission of the offense or 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)

b. The defendant committed the offense in the expectation of the receipt of anything of pecuniary value. 18 U.S.C.3592 (c)(8).

c. The defendant committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C. 3592(c)(9).

d. The defendant intentionally killed or attempted to kill more than one person in a single criminal episode. 18 U.S.C. 3592(c)(16).

2. Other Non-Statutory Aggravating Factors Identified under 18 U.S.C. 3593(a) and (c)

a. The defendant participated in, directed, approved, or solicited other acts of violence including acts described in the Fifth Superseding Indictment.

b. Additional punishment for killing. The defendant's other offenses are such that he should be imprisoned for the rest of his life without the possibility of parole even if he had not committed this offense, so the death penalty provides an increased penalty for the defendant's participation in this offense.

c. Continuing Danger. The defendant represents a continuing danger to the lives and safety of other persons. The defendant has committed the acts alleged in the capital offenses charged in the Fifth Superseding Indictment and in the statutory and non-statutory aggravating factors contained in this Notice, and in addition, has committed and exhibited acts and characteristics including but not limited to the following:

(1) The defendant committed and threatened other assaults while in pretrial detention, including a serious, premeditated assault on Corporal Victoria Reeves, who was then acting in her official capacity as a guard at the Metropolitan Nashville Criminal Justice Center. The defendant inflicted serious injury on Corporal Reeves and threatened to kill her during this assault.

(2) The defendant has expressed his desire to kill or injure law enforcement officers and witnesses, to obstruct the investigation and prosecution of the charges against him and his co-defendants, and to retaliate against cooperating witnesses.

(3) The defendant has demonstrated a low potential for rehabilitation as evidenced by factors such as his misconduct while in pretrial detention and his desire that people he believes to be cooperating with the prosecution be harmed or killed.

d. The defendant terminated the victim's pregnancy.

e. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

f. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The defendant abused the hospitality of the victims who had trusted the defendant to stay the night in their home with them and Regina Suetopka's three year old daughter. The defendant then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless. The defendant also seriously wounded the three year old daughter of Regina Suetopka and left that child with the dead bodies of her mother and Kenard Murry. The three year old girl suffered for days before she was found in bed with the bloated, decomposing bodies of her mother and Kenard Murry.

g. The defendant lacks remorse for having committed the offense.

h. The defendant was a fugitive from state felony drug and firearm charges when he committed the offense.

Count 22: Use/Carry Firearm in Drug/Violent Felony - Killing Of Kenard**Murry**

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 22 (Use/Carry Firearm in Drug/Violent Felony - Killing of Kenard Murry)** of the Fifth Superseding Indictment:

1. Statutory Aggravating Factors Enumerated under 18 U.S.C. 3592(c)(1) through (16):

- a. The defendant, in the commission of the offense or 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)
- b. The defendant committed the offense in the expectation of the receipt of anything of pecuniary value. 18 U.S.C.3592 (c)(8).
- c. The defendant committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C. 3592(c)(9).
- d. The defendant intentionally killed or attempted to kill more than one person in a single criminal episode. 18 U.S.C. 3592(c)(16).

2. Other Non-Statutory Aggravating Factors Identified under 18 U.S.C. 3593(a) and (c)

- a. The defendant participated in, directed, approved, or solicited other acts of violence including acts described in the Fifth Superseding Indictment.
- b. Additional punishment for killing. The defendant's other offenses are such that he should be imprisoned for the rest of his life without the possibility of parole even if he had not committed this offense, so the death penalty provides an increased penalty for the defendant's participation in this offense.

c. **Continuing Danger.** The defendant represents a continuing danger to the lives and safety of other persons. The defendant has committed the acts alleged in the capital offenses charged in the Fifth Superseding Indictment and in the statutory and non-statutory aggravating factors contained in this Notice, and in addition, has committed and exhibited acts and characteristics including but not limited to the following:

(1) The defendant committed and threatened other assaults while in pretrial detention, including a serious, premeditated assault on Corporal Victoria Reeves, who was then acting in her official capacity as a guard at the Metropolitan Nashville Criminal Justice Center. The defendant inflicted serious injury on Corporal Reeves and threatened to kill her during this assault.

(2) The defendant has expressed his desire to kill or injure law enforcement officers and witnesses, to obstruct the investigation and prosecution of the charges against him and his co-defendants, and to retaliate against cooperating witnesses.

(3) The defendant has demonstrated a low potential for rehabilitation as evidenced by factors such as his misconduct while in pretrial detention and his desire that people he believes to be cooperating with the prosecution be harmed or killed.

d. The victim was killed in an effort by the defendant to prevent the victim from cooperating with law enforcement authorities.

e. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

f. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The defendant abused the hospitality of the victims who had trusted the

defendant to stay the night in their home with them and Regina Suetopka's three year old daughter. The defendant then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless. The defendant also seriously wounded the three year old daughter of Regina Suetopka and left that child with the dead bodies of her mother and Kenard Murry. The three year old girl suffered for days before she was found in bed with the bloated, decomposing bodies of her mother and Kenard Murry.

g. The defendant lacks remorse for having committed the offense.

h. The defendant was a fugitive from state felony drug and firearm charges when he committed the offense.

Count 23: Use/Carry Firearm in Drug/Violent Felony - Killing Of Regina Suetopka

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 23 (Use/Carry Firearm in Drug/Violent Felony - Killing of Regina Suetopka)** of the Fifth Superseding Indictment:

1. Statutory Aggravating Factors Enumerated under 18 U.S.C. 3592(c)(1) through (16):

a. The defendant, in the commission of the offense or 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)

b. The defendant committed the offense in the expectation of the receipt of anything of pecuniary value. 18 U.S.C. 3592 (c)(8).

c. The defendant committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C. 3592(c)(9).

d. The defendant intentionally killed or attempted to kill more than one person in a single criminal episode. 18 U.S.C. 3592(c)(16).

2. Other Non-Statutory Aggravating Factors Identified under 18 U.S.C. 3593(a) and (c)

a. The defendant participated in, directed, approved, or solicited other acts of violence including acts described in the Fifth Superseding Indictment.

b. Additional punishment for killing. The defendant's other offenses are such that he should be imprisoned for the rest of his life without the possibility of parole even if he had not committed this offense, so the death penalty provides an increased penalty for the defendant's participation in this offense.

c. Continuing Danger. The defendant represents a continuing danger to the lives and safety of other persons. The defendant has committed the acts alleged in the capital offenses charged in the Fifth Superseding Indictment and in the statutory and non-statutory aggravating factors contained in this Notice, and in addition, has committed and exhibited acts and characteristics including but not limited to the following:

(1) The defendant committed and threatened other assaults while in pretrial detention, including a serious, premeditated assault on Corporal Victoria Reeves, who was then acting in her official capacity as a guard at the Metropolitan Nashville Criminal Justice Center. The defendant inflicted serious injury on Corporal Reeves and threatened to kill her during this assault.

(2) The defendant has expressed his desire to kill or injure law enforcement officers and witnesses, to obstruct the investigation and prosecution of the charges against him and his co-defendants, and to retaliate against cooperating witnesses.

(3) The defendant has demonstrated a low potential for rehabilitation as evidenced by factors such as his misconduct while in pretrial detention and his desire that people he believes to be cooperating with the prosecution be harmed or killed.

d.. The victim was killed in an effort by the defendant to prevent the victim from cooperating with law enforcement authorities.

e. The defendant terminated the victim's pregnancy.

f. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

g. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The defendant abused the hospitality of the victims who had trusted the defendant to stay the night in their home with them and Regina Suetopka's three year old daughter. The defendant then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless. The defendant also seriously wounded the three year old daughter of Regina Suetopka and left that child with the dead bodies of her mother and Kenard Murry. The three year old girl suffered for days before she was found in bed with the bloated, decomposing bodies of her mother and Kenard Murry.

h. The defendant lacks remorse for having committed the offense.

i. The defendant was a fugitive from state felony drug and firearm charges when he committed the offense.

Count 24: Shooting Into Group - Killing Of Kenard Murry

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 24 (Shooting Into Group - Killing of Kenard Murry)** of the Fifth Superseding Indictment:

1. Statutory Aggravating Factors Enumerated under 18 U.S.C. 3592(c)(1) through (16):

a. The defendant, in the commission of the offense or 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)

b. The defendant committed the offense in the expectation of the receipt of anything of pecuniary value. 18 U.S.C. 3592 (c)(8).

c. The defendant committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C. 3592(c)(9).

d. The defendant intentionally killed or attempted to kill more than one person in a single criminal episode. 18 U.S.C. 3592(c)(16).

2. Other Non-Statutory Aggravating Factors Identified under 18 U.S.C. 3593(a) and (c)

a. The defendant participated in, directed, approved, or solicited other acts of violence including acts described in the Fifth Superseding Indictment.

b. Additional punishment for killing. The defendant's other offenses are such that he should be imprisoned for the rest of his life without the possibility of parole even if he had not committed this offense, so the death penalty provides an increased penalty for the defendant's participation in this offense.

c. Continuing Danger. The defendant represents a continuing danger to the lives and safety of other persons. The defendant has committed the acts alleged in the capital offenses charged in the Fifth Superseding Indictment and in the statutory and non-statutory aggravating factors contained in this Notice, and in addition, has committed and exhibited acts and characteristics including but not limited to the following:

(1) The defendant committed and threatened other assaults while in pretrial detention, including a serious, premeditated assault on Corporal Victoria Reeves, who was then acting in her official capacity as a guard at the Metropolitan Nashville Criminal Justice Center. The defendant inflicted serious injury on Corporal Reeves and threatened to kill her during this assault.

(2) The defendant has expressed his desire to kill or injure law enforcement officers and witnesses, to obstruct the investigation and prosecution of the charges against him and his co-defendants, and to retaliate against cooperating witnesses.

(3) The defendant has demonstrated a low potential for rehabilitation as evidenced by factors such as his misconduct while in pretrial detention and his desire that people he believes to be cooperating with the prosecution be harmed or killed.

d. The victim was killed in an effort by the defendant to prevent the victim from cooperating with law enforcement authorities.

e. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

f. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The defendant abused the hospitality of the victims who had trusted the

defendant to stay the night in their home with them and Regina Suetopka's three year old daughter. The defendant then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless. The defendant also seriously wounded the three year old daughter of Regina Suetopka and left that child with the dead bodies of her mother and Kenard Murry. The three year old girl suffered for days before she was found in bed with the bloated, decomposing bodies of her mother and Kenard Murry.

g. The defendant lacks remorse for having committed the offense.

h. The defendant was a fugitive from state felony drug and firearm charges when he committed the offense.

Count 25: Shooting Into Group - Killing Of Regina Suetopka

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 25 (Shooting Into Group - Killing of Regina Suetopka)** of the Fifth Superseding Indictment:

1. Statutory Aggravating Factors Enumerated under 18 U.S.C. 3592(c)(1) through (16):

a. The defendant, in the commission of the offense or 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)

b. The defendant committed the offense in the expectation of the receipt of anything of pecuniary value. 18 U.S.C. 3592 (c)(8).

c. The defendant committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C. 3592(c)(9).

d. The defendant intentionally killed or attempted to kill more than one person in a single criminal episode. 18 U.S.C. 3592(c)(16).

2. Other Non-Statutory Aggravating Factors Identified under 18 U.S.C. 3593(a) and (c)

a. The defendant participated in, directed, approved, or solicited other acts of violence including acts described in the Fifth Superseding Indictment.

b. Additional punishment for killing. The defendant's other offenses are such that he should be imprisoned for the rest of his life without the possibility of parole even if he had not committed this offense, so the death penalty provides an increased penalty for the defendant's participation in this offense.

c. Continuing Danger. The defendant represents a continuing danger to the lives and safety of other persons. The defendant has committed the acts alleged in the capital offenses charged in the Fifth Superseding Indictment and in the statutory and non-statutory aggravating factors contained in this Notice, and in addition, has committed and exhibited acts and characteristics including but not limited to the following:

(1) The defendant committed and threatened other assaults while in pretrial detention, including a serious, premeditated assault on Corporal Victoria Reeves, who was then acting in her official capacity as a guard at the Metropolitan Nashville Criminal Justice Center. The defendant inflicted serious injury on Corporal Reeves and threatened to kill her during this assault.

(2) The defendant has expressed his desire to kill or injure law enforcement officers and witnesses, to obstruct the investigation and prosecution of the charges against him and his co-defendants, and to retaliate against cooperating witnesses.

(3) The defendant has demonstrated a low potential for rehabilitation as evidenced by factors such as his misconduct while in pretrial detention and his desire that people he believes to be cooperating with the prosecution be harmed or killed.

d. The victim was killed in an effort by the defendant to prevent the victim from cooperating with law enforcement authorities

e. The defendant terminated the victim's pregnancy.

f. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

g. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The defendant abused the hospitality of the victims who had trusted the defendant to stay the night in their home with them and Regina Suetopka's three year old daughter. The defendant then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless. The defendant also seriously wounded the three year old daughter of Regina Suetopka and left that child with the dead bodies of her mother and Kenard Murry. The three year old girl suffered for days before she was found in bed with the bloated, decomposing bodies of her mother and Kenard Murry.

h. The defendant lacks remorse for having committed the offense.

i. The defendant was a fugitive from state felony drug and firearm charges when he committed the offense.

II. CAPITAL OFFENSES UNDER TITLE 21 OF THE UNITED STATES CODE

A. Statutory Aggravating Factors Enumerated in 21 U.S.C. § 848(n)(1)

The United States will seek to prove the following threshold factors as the basis for imposition of the death penalty as to defendant EBEN PAYNE:

1. With respect to **Counts Eighteen and Nineteen**, defendant EBEN PAYNE intentionally killed the victim. 21 U.S.C. §848(n)(1)(A).

2. With respect to **Counts Eighteen and Nineteen**, defendant EBEN PAYNE intentionally inflicted serious bodily injury which resulted in the death of the victim. 21 U.S.C. §848(n)(1)(B).

3. With respect to **Counts Eighteen and Nineteen**, defendant EBEN PAYNE intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim. 21 U.S.C. §848(n)(1)(C).

4. With respect to **Eighteen and Nineteen**, EBEN PAYNE intentionally engaged in conduct which he knew would create a grave risk of death to a person, other than one of the participants in the offense, and which resulted in the death of the victim. 21 U.S.C. §848(n)(1)(D)

B. Aggravating Factors for Title 21 Offenses

Count 18: CCE/Drug Conspiracy - Killing of Kenard Murry

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 18 (CCE/Drug Conspiracy - Killing of Kenard Murry)** of the Fifth Superseding Indictment:

1. Statutory Aggravating Factors Enumerated Pursuant to Title 21, United States Code.

Sections 848(n)(2) through (12):

a. Grave risk of death to additional persons. In the commission of the offense, or in escaping apprehension for a violation of 21 U.S.C. 848(e), the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. 21 U.S.C. 848(n)(5).

b. Pecuniary gain. The defendant committed the offense in the expectation of the receipt of anything of pecuniary value. 21 U.S.C. 848(n)(7).

c. Substantial planning and premeditation. The defendant committed the offense after substantial planning and premeditation. 21 U.S.C. 848(n)(8).

d. Drug distribution to minors. The violation of subchapter I of Title 21, United States Code, in relation to which the defendant committed the conduct described in 21 U.S.C. 848(e) was a violation of 21 U.S.C. 859. 21 U.S.C. 848(n)(11).¹

2. Other Non-Statutory Aggravating Factors Enumerated Pursuant to Title 21, United States Code, Sections 848(h)(1)(B) and 848(k):

a. The defendant participated in, directed, approved, or solicited other acts of violence including acts described in the Fifth Superseding Indictment.

¹In other words, the defendant committed the charged offense while working in furtherance of a continuing criminal enterprise or while engaging in a drug trafficking conspiracy involving 5 kilograms or more of a mixture or substance containing a detectable amount of cocaine or involving 50 grams or more of a mixture or substance containing cocaine base, and the continuing criminal enterprise or drug conspiracy involved the distribution of a controlled substance to a person under 21 years of age by a person who was at least 18 years of age.

b. Additional punishment for killing. The defendant's other offenses are such that he should be imprisoned for the rest of his life without the possibility of parole even if he had not committed this offense, so the death penalty provides an increased penalty for the defendant's participation in this offense.

c. Continuing Danger. The defendant represents a continuing danger to the lives and safety of other persons. The defendant has committed the acts alleged in the capital offenses charged in the Fifth Superseding Indictment and in the statutory and non-statutory aggravating factors contained in this Notice, and in addition, has committed and exhibited acts and characteristics including but not limited to the following:

(1) The defendant committed and threatened other assaults while in pretrial detention, including a serious, premeditated assault on Corporal Victoria Reeves, who was then acting in her official capacity as a guard at the Metropolitan Nashville Criminal Justice Center. The defendant inflicted serious injury on Corporal Reeves and threatened to kill her during this assault.

(2) The defendant has expressed his desire to kill or injure law enforcement officers and witnesses, to obstruct the investigation and prosecution of the charges against him and his co-defendants, and to retaliate against cooperating witnesses.

(3) The defendant has demonstrated a low potential for rehabilitation as evidenced by factors such as his misconduct while in pretrial detention and his desire that people he believes to be cooperating with the prosecution be harmed or killed.

d. The victim was killed in an effort by the defendant to prevent the victim from cooperating with law enforcement authorities.

e. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

f. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The defendant abused the hospitality of the victims who had trusted the defendant to stay the night in their home with them and Regina Suetopka's three year old daughter. The defendant then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless. The defendant also seriously wounded the three year old daughter of Regina Suetopka and left that child with the dead bodies of her mother and Kenard Murry. The three year old girl suffered for days before she was found in bed with the bloated, decomposing bodies of her mother and Kenard Murry.

g. The defendant lacks remorse for having committed the offense.

h. The defendant was a fugitive from state felony drug and firearm charges when he committed the offense.

Count 19: CCE/Drug Conspiracy - Killing of Regina Suetopka

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 19 (CCE/Drug Conspiracy - Killing of Regina Suetopka)** of the Fifth Superseding Indictment:

1. Statutory Aggravating Factors Enumerated Pursuant to Title 21, United States Code, Sections 848(n)(2) through (12):

a. In the commission of the offense, or in escaping apprehension for a violation of 21 U.S.C. 848(e), the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. 21 U.S.C. 848(n)(5).

b. The defendant committed the offense in the expectation of the receipt of anything of pecuniary value. 21 U.S.C. 848(n)(7).

c. The defendant committed the offense after substantial planning and premeditation. 21 U.S.C. 848(n)(8).

d. The violation of subchapter I of Title 21, United States Code, in relation to which the defendant committed the conduct described in 21 U.S.C. 848(e) was a violation of 21 U.S.C. 859. 21 U.S.C. 848(n)(11).²

2. Other Non-Statutory Aggravating Factors Enumerated Pursuant to Title 21, United States Code, Sections 848(h)(1)(B) and 848(k):

a. Participation in other serious crimes. The defendant participated in, directed, approved, or solicited other acts of violence including acts described in the Fifth Superseding Indictment.

b. Additional punishment for killing. The defendant's other offenses are such that he should be imprisoned for the rest of his life without the possibility of parole even if he had not committed this offense, so the death penalty provides an increased penalty for the defendant's participation in this offense.

c. Continuing Danger. The defendant represents a continuing danger to the lives and safety of other persons. The defendant has committed the acts alleged in the capital offenses charged in the Fifth Superseding Indictment and in the statutory and non-statutory aggravating factors contained in this Notice, and in addition, has committed and exhibited acts and characteristics including but not limited to the following:

² See footnote 1.

(1) The defendant committed and threatened other assaults while in pretrial detention, including a serious, premeditated assault on Corporal Victoria Reeves, who was then acting in her official capacity as a guard at the Metropolitan Nashville Criminal Justice Center. The defendant inflicted serious injury on Corporal Reeves and threatened to kill her during this assault.

(2) The defendant has expressed his desire to kill or injure law enforcement officers and witnesses, to obstruct the investigation and prosecution of the charges against him and his co-defendants, and to retaliate against cooperating witnesses.

(3) The defendant has demonstrated a low potential for rehabilitation as evidenced by factors such as his misconduct while in pretrial detention and his desire that people he believes to be cooperating with the prosecution be harmed or killed.

d. The victim was killed in an effort by the defendant to prevent the victim from cooperating with law enforcement authorities.

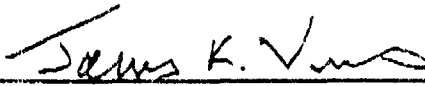
e. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

f. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The defendant abused the hospitality of the victims who had trusted the defendant to stay the night in their home with them and Regina Suetopka's three year old daughter. The defendant then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless. The defendant also seriously wounded the three year old daughter of Regina Suetopka and left that child with the dead bodies of her mother and Kenard Murry.

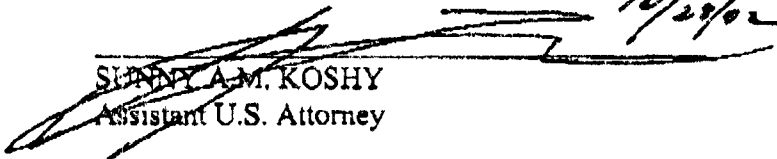
The three year old girl suffered for days before she was found in bed with the bloated, decomposing bodies of her mother and Kenard Murry.

- g. The defendant lacks remorse for having committed the offense.
- h. The defendant was a fugitive from state felony drug and firearm charges when he committed the offense.
- i. The defendant terminated the victim's pregnancy.

Respectfully submitted,



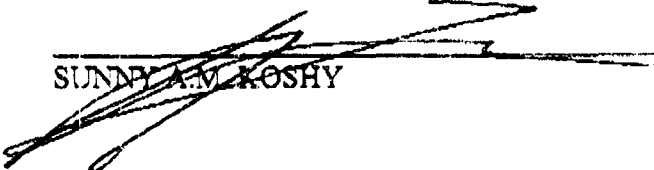
JAMES K. VINES
United States Attorney


SUNNY A.M. KOSHY
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been forwarded by United States Mail with sufficient postage to carry same to counsel for defendant Young, Tom Bloom, St. Cloud Corner, Ste. 500, 500 Church St., Nashville, TN 37219; Richard Kammen, Gilroy, Kammen & Hill, One Indiana Square, Ste. 150, Indianapolis, IN 46204; counsel for defendant Payne, Craig P. Fickling, Jr., 9-C S. Jefferson Avenue, Cookeville, TN 38501; and Richard Mazer, 99 Divisadero St., San Francisco, CA; counsel for defendant Jamal Shakir, Michael Passino, 213 Fifth Avenue, North, Nashville, TN 37219-1900; and Natman Schaye, Schaye & Associates, 69 North Lazy Place, Tucson, AZ 85742; counsel for defendant Pacia Shakir, James A. Simmons, Edwards & Simmons, 1501 16th Ave., South, Nashville, TN 37212-2905; counsel for defendant Eatmon, Joseph L. Lackey, Jr., 200 Fourth Avenue North, Noel Place, Ste. 125, Nashville, TN 37219.

This the 28th day of October, 2002.


SUNNY A.M. KOSHY