

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

01 JUL 18 AM 10:49

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL NO. 3:01CR-35-R

TIFFANY DOMINIQUE PENNINGTON

DEFENDANT

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

Comes now the United States of America, by and through its undersigned counsel, and hereby notifies the Court and the defendant in the above-entitled case that the United States believes the circumstances of the offense charged in Count 3 of the Indictment are such that, in the event of a conviction, a sentence of death is justified under Title 18, United States Code, Sections 3591 through 3598, and that the United States will seek the death penalty for Count 3 of the Indictment, which charges that the defendant killed a bank employee during the course of committing an armed bank robbery, in violation of Title 18, United States Code, Section 2113(e).

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Pursuant to 18 U.S.C. § 3591(a)(2), the United States will rely on the following preliminary factors to establish the defendant's eligibility for the death penalty

1. **Intentional Infliction of Serious Bodily Injury that Resulted in Death.**

The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim. 18 U.S.C. § 3591(a)(2)(B).

2. **Intentional Participation in an Act Resulting in Death, While Contemplating that Life Would Be Taken or that Lethal Force Would Be Used.**

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 the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

3. **Intentional Engagement in an Act of Violence, with Knowledge that the Act Created a Grave Risk of Death, and with Reckless Disregard for Human Life, which Directly Caused the Death of another Person.**

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 the victim died as a result of the act. 18 U.S.C. § 3591(a)(2)(D).

Pursuant to 18 U.S.C. § 3592(c), the United States will rely on the following statutory aggravating factors as justifying a sentence of death.

1. Grave Risk of Death to Additional Persons.

The defendant, in the commission of the offense described above, knowingly created a grave risk of death to other persons in addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).

2. Pecuniary Gain.

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).

In addition to the statutory aggravating factors set forth above, the United States will rely on the following non-statutory aggravating factors to justify a sentence of death pursuant to 18 U.S.C. § 3593(a)(2).

1. Future Dangerousness of the Defendant.

The defendant represents a continuing danger to the lives and safety of other persons. The defendant has committed the acts alleged in the capital offense charged in the Indictment and in the statutory and non-statutory aggravating factors contained in this Notice, and, in addition, has engaged in other intimidating, violent, and illegal conduct, including but not limited to the following:

(a) The defendant has been convicted in Jefferson Circuit

Court of two prior violent felonies, both constituting robbery in the first degree under state law, and both involving threats to kill or injure another person.

(b) The defendant has been involved in the commission of other armed robberies since his release from prison on parole in November, 2000, not including the bank robbery charged in the instant Indictment.

(c) The defendant has engaged in illicit trafficking in crack cocaine since his release from prison on parole in November, 2000.

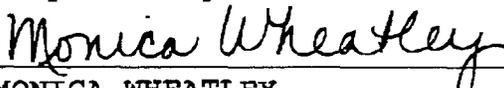
2. Victim Impact Evidence.

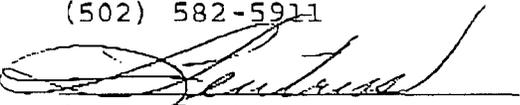
As reflected by the victim's personal characteristics as an individual human being and the impact of the offense on the victim and the victim's family, the defendant caused loss, injury, and harm to the victim and the victim's family, see Payne v. Tennessee, 501 U.S. 808, 825-827 (1991), including, but not limited to , the following:

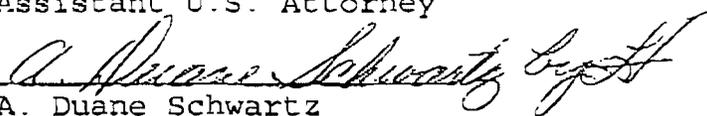
(a) Characteristics of victim. The defendant caused the death of Mary Dell Kaelin-Brandenburg, a woman with a large family and an active business, civic, and charitable life, beloved by her family and friends. As an employee of the bank, she had been the victim of two previous robberies, and had expressed fear that she would be killed if the bank were to be robbed again, but she continued to work to assist in the support of her family.

(b) Impact of the offense on the family of the victim. The victim's family has suffered severe and irreparable harm. She left behind a husband, four daughters, a younger sister, and several grandchildren with whom she visited regularly and for whom she provided spiritual guidance and emotional and financial support. All are suffering greatly from the trauma and brutality of her murder.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that the foregoing Notice of Intent to Seek the Death Penalty was served this 18 Day of July, 2001, by deposit in the U.S. Mail, postage prepaid, to Scott T. Wendelsdorf, Federal Defender, 629 South Fourth Avenue, Suite 200, Louisville, Kentucky 40202.

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Larry Fentress
Assistant U.S. Attorney