

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
) v.) CRIMINAL NO.: 01-10384-MLW
)
GARY LEE SAMPSON)

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

The United States of America, by and through its undersigned attorneys hereby notifies the Court and the defendant Gary Lee Sampson, that the Government believes that the circumstances of the offenses charged in Counts One and Two of the Second Superseding Indictment are such that, in the event of defendant's conviction on one or both of these offenses, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the Government will seek the sentence of death for these offenses: Count One: carjacking resulting in the death of Philip A. McCloskey, in violation of 18 U.S.C. § 2119(3); and, Count Two: carjacking resulting in the death of Jonathan M. Rizzo, in violation of 18 U.S.C. § 2119(3).

The Government proposes to prove the following statutory factors pursuant to 18 U.S.C. §§ 3591(a)(2) and 3592(c) as charged in the Second Superseding Indictment Notice of Special Findings, hereby incorporated by reference, and additional non-

statutory factors pursuant to 18 U.S.C. § 3593(a)(2) as justifying a sentence of death.

COUNT ONE

CARJACKING RESULTING IN THE DEATH OF PHILIP A. MCCLOSKEY

A. Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)(A)-(D).

1. **Intentional Killing.** The defendant, Gary Lee Sampson, intentionally killed Philip A. McCloskey (18 U.S.C. § 3591(a)(2)(A)).
2. **Intentional Infliction of Serious Bodily Injury.** The defendant, Gary Lee Sampson, intentionally inflicted serious bodily injury that resulted in the death of Philip A. McCloskey (18 U.S.C. § 3591(a)(2)(B)).
3. **Intentional Act Contemplating the Taking of the Life of Another or Intending Lethal Force.** The defendant, Gary Lee Sampson, intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than a participant in the offense, and Philip A. McCloskey died as a direct result of the act (18 U.S.C. § 3591(a)(2)(C)).
4. **Intentional Act of Violence in Reckless Disregard for Human Life.** The defendant, Gary Lee Sampson, 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 act, such that participation in the act constituted a reckless disregard for human life, and Philip A. McCloskey died as a direct result of the act (18 U.S.C. § 3591 (a) (2) (D)).

B. Statutory Aggravating Factors Enumerated under 18 U.S.C. § 3592(c).

1. **Heinous, Cruel, and Depraved Manner of Committing the Offense.** The defendant, Gary Lee Sampson, committed the offense in an especially heinous, cruel, and depraved manner in that it involved torture and serious physical abuse to Philip A. McCloskey (18 U.S.C. § 3592(c) (6)).

2. **Substantial Planning and Premeditation.** The defendant, Gary Lee Sampson, committed the offense after substantial planning and premeditation to cause the death of Philip A. McCloskey (18 U.S.C. § 3592(c) (9)).

3. **Vulnerability of Victim.** The victim, Philip A. McCloskey was particularly vulnerable due to old age and infirmity (18 U.S.C. § 3592(c) (11)).

C. Other, Non-Statutory, Aggravating Factors Identified Under 18 U.S.C. § 3593(a) (2).

1. **Other Serious Acts of Violence: Murder of Robert Whitney.** The defendant, Gary Lee Sampson, committed the murder of Robert Whitney on or about July 30, 2001 in Meredith, New Hampshire.

2. **Other Serious Acts of Violence: Carjacking of William Gregory.** The defendant, Gary Lee Sampson, committed the carjacking of a 1989 Chrysler LeBaron, Vermont registration CSM916 from William Gregory on or about July 31, 2001.

3. **Other Serious Acts of Violence: Bank Robberies.** The defendant, Gary Lee Sampson, committed the following acts of violence:

- a. armed robbery of Lexington State Bank, Lexington, North Carolina, on or about May 17, 2001;
- b. armed robbery of First National Bank, Archdale, North Carolina, on or about May 24, 2001;
- c. armed robbery of Lexington State Bank, Lexington, North Carolina, on or about May 31, 2001;
- d. armed robbery of Branch Banking and Trust Company, Denton, North Carolina, on or about June 15, 2001;
- e. armed robbery of First Bank, Archdale, North Carolina, on July 10, 2001.

4. **Contemporaneous Convictions for More Than One Murder.** The defendant, Gary Lee Sampson, intentionally killed Phillip A. McCloskey and Jonathar M. Rizzo, over the course of a series of criminal episodes.

5. **Murder to Obstruct Justice.** The defendant, Gary Lee Sampson, murdered Phillip A. McCloskey to seize control of

his motor vehicle and to prevent him from reporting the carjacking to authorities.

5. **Victim Impact Evidence.** The defendant, Gary Lee Sampson, caused injury, harm, and loss to the family of Philip A. McCloskey because of the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family. Payne v. Tennessee, 501 U.S. 808, 825-27 (1991). The carjacking and murder of Philip A. McCloskey has caused the McCloskey family extreme emotional suffering, and the victim's family has suffered severe and irreparable harm.

7. **Future Dangerousness of the Defendant While Incarcerated.** The defendant, Gary Lee Sampson, is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of prison officials and inmates as demonstrated by his history of prison misconduct including, but not limited to, escapes, attempted escapes, verbal threats to harm prison officials and inmates, and possession of dangerous weapons.

COUNT TWO

CARJACKING RESULTING IN THE DEATH OF JONATHAN M. RIZZO

A. Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)(A)-(D).

1. **Intentional Killing.** The defendant, Gary Lee Sampson, intentionally killed Jonathan M. Rizzo (18 U.S.C. § 3591(a)(2)(A)).

2. Intentional Infliction of Serious Bodily Injury.

The defendant, Gary Lee Sampson, intentionally inflicted serious bodily injury that resulted in the death of Jonathan M. Rizzo (18 U.S.C. § 3591(a)(2)(B)).

3. Intentional Act Contemplating the Taking of the

Life of Another or Intending Lethal Force. The defendant, Gary Lee Sampson, intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than a participant in the offense, and Jonathan M. Rizzo died as a direct result of the act (18 U.S.C. § 3591(a)(2)(C)).

4. Intentional Act of Violence in Reckless Disregard

for Human Life. The defendant, Gary Lee Sampson, 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 Jonathan M. Rizzo died as a direct result of the act (18 U.S.C. § 3591(a)(2)(D)).

B. Statutory Aggravating Factors Enumerated under 18 U.S.C. § 3592(c).

1. Heinous, Cruel, and Depraved Manner of Committing

Offense. The defendant, Gary Lee Sampson, committed the offense in an especially heinous, cruel, and depraved manner in that it involved torture and serious physical abuse to Jonathan M. Rizzo (18 U.S.C. § 3592(c)(6)).

2. **Substantial Planning and Premeditation.** The defendant, Gary Lee Sampson, committed the offense after substantial planning and premeditation to cause the death of Jonathan M. Rizzo (18 U.S.C. § 3592(c)(9)).

C. **Other, Non-Statutory, Aggravating Factors Identified Under 18 U.S.C. § 3593(a)(2).**

1. **Other Serious Acts of Violence: Murder of Robert Whitney.** The defendant, Gary Lee Sampson, committed the murder of Robert Whitney on or about July 30, 2001 in Meredith, New Hampshire.

2. **Other Serious Acts of Violence: Carjacking of William Gregory.** The defendant, Gary Lee Sampson, committed the carjacking of a 1989 Chrysler LeBaron, Vermont registration CSM916 from William Gregory on or about July 31, 2001.

3. **Other Serious Acts of Violence: Bank Robberies.** The defendant, Gary Lee Sampson, committed the following acts of violence:

- a. armed robbery of Lexington State Bank, Lexington, North Carolina, on or about May 17, 2001;
- b. armed robbery of First National Bank, Archdale, North Carolina, on or about May 24, 2001;
- c. armed robbery of Lexington State Bank, Lexington, North Carolina, on or about May 31, 2001;

- d. armed robbery of Branch Banking and Trust Company, Denton, North Carolina, on or about June 15, 2001;
- e. armed robbery of First Bank, Archdale, North Carolina, on or about July 10, 2001.

4. Contemporaneous Convictions for More Than One

Murder. The defendant, Gary Lee Sampson, intentionally killed Phillip A. McCloskey and Jonathan M. Rizzo, over the course of a series of criminal episodes.

5. Murder to Obstruct Justice. The defendant, Gary Lee Sampson, murdered Jonathan M. Rizzo to seize control of his motor vehicle and to prevent him from reporting the carjacking to authorities.


6. Victim Impact Evidence. The defendant, Gary Lee Sampson, caused injury, harm, and loss to the family of Jonathan M. Rizzo because of the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family. Payne v. Tennessee, 501 U.S. 808, 825-27 (1991). The carjacking and murder of Jonathan M. Rizzo has caused the Rizzo family extreme emotional suffering, and the victim's family has suffered severe and irreparable harm.

7. Future Dangerousness of the Defendant While Incarcerated. The defendant, Gary Lee Sampson, is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of prison

officials and inmates as demonstrated by his history of prison misconduct including, but not limited to, escapes, attempted escapes, verbal threats to harm prison officials and inmates, and possession of dangerous weapons.

Respectfully submitted,

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Dated:

CERTIFICATE OF SERVICE

I hereby certify that, on this day, I served a true and accurate copy of the foregoing notice of intent to seek the death penalty on attorney of record David A. Ruhnke, Esq., Ruhnke & Barrett, 47 Park Street, Montclair, New Jersey, 07042; Robert Sheketoff, Esq., One McKinley Square, Boston, MA, 02109; Stephanie Page, Committee for Public Counsel Services, Commonwealth of Massachusetts, 44 Bromfield Street, Boston, MA 02109, by mail.


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