

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

UNITED STATES OF AMERICA)
)
 v.) No. 3:98-00038
) JUDGE NIXON
JAMAL SHAKIR)
 a/k/a "DONUT")
 a/k/a "NUT")
 a/k/a "BIG SCREWLOOSE")
)
)

**UNITED STATES' NOTICE OF INTENT
TO SEEK A SENTENCE OF DEATH AGAINST DEFENDANT JAMAL SHAKIR**

Pursuant to 18 U.S.C. §3593 and 21 U.S.C. §848(h), the United States of America hereby notifies the court, defendant **JAMAL SHAKIR**, 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 **JAMAL SHAKIR** in the event of his conviction on any of the following counts in the Fifth Superseding Indictment relating to the killings of **Solomon Harris, Anthony Rogers, Kenard Murry, Regina Suetopka, Barney Moten, or Woody Pilcher**:

Counts Seven, Ten, Eighteen, Nineteen, Twenty-Seven and Thirty-seven, 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 Eight, Eleven, Twenty-two, Twenty-three, Twenty-nine and Thirty-nine,

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)];

Counts Twenty, Twenty-one, Twenty-eight and Thirty-eight, each charging killing to obstruct justice, in violation of Title 18, United States Code, Sections 2 and 1512(a)(1); 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 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 establish beyond a reasonable doubt the following threshold factors which render defendant JAMAL SHAKIR eligible for a sentence of death:

1. With respect to **Counts Eight, Eleven, Twenty, Twenty-one, Twenty-two, Twenty-three, Twenty-four, Twenty-five, Twenty-eight, Twenty-nine, Thirty-eight and Thirty-nine**, defendant JAMAL SHAKIR, 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).

2. With respect to **Counts Twenty-eight and Twenty-nine**, defendant JAMAL SHAKIR, intentionally killed the victim. 18 U.S.C. 3591(a)(2)(A).

3. With respect to **Counts Twenty-eight and Twenty-nine**, defendant JAMAL SHAKIR, intentionally inflicted serious bodily injury that resulted in the death of the victim. 18

U.S.C. 3591(a)(2)(B).

4. With respect to **Counts Twenty-eight and Twenty-nine**, defendant JAMAL SHAKIR, 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 8: Use/Carry Firearm in Drug Felony - Killing Of Solomon Harris

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 8 (Use/Carry Firearm in Drug Felony - Killing Of Solomon Harris)** of the Fifth Superseding Indictment:

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

a. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person. 18 U.S.C. 3592(c)(4).

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

c. Substantial planning and premeditation. 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. Continuing criminal enterprise involving drug sales to minors. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. 859. 18 U.S.C. 3592(c)(13)

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 has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

d. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

e. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

Count 11: Use/Carry Firearm in Drug Felony - Killing Of Anthony Rogers

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 11 (Use/Carry Firearm in Drug Felony - Killing Of Anthony Rogers)** of the Fifth Superseding Indictment:

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

a. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person. 18 U.S.C. 3592(c)(4).

b. Procurement of offense by payment. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 18 U.S.C.

3592(c)(7).

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

d. Substantial planning and premeditation. The defendant committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C.

3592(c)(9).

e. Continuing criminal enterprise involving drug sales to minors. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. 859. 18 U.S.C. 3592(c)(13)

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 has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

d. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

e. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

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. Previous conviction of violent felony involving firearm. The defendant has

previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use or attempted or threatened use of a firearm (as defined in 18 U.S.C. 921) against another person. 18 U.S.C. 3592(c)(2).

b. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person. 18 U.S.C. 3592(c)(4).

c. Grave risk of death to additional persons. 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).

d. Procurement of offense by payment. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 18 U.S.C. 3592(c)(7).

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

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

g. Continuing criminal enterprise involving drug sales to minors. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation

of 21 U.S.C. 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. 859. 18 U.S.C. 3592(c)(13).

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 has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The method the defendant selected to carry out the offense preyed on the victims' trust and hospitality by planning to have the victims killed in their own home while they were defenseless after they allowed Eben Payne to stay the night in their home with them and Regina Suetopka's three year old daughter. Eben Payne then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless, and terminated Regina Suetopka's pregnancy when he killed her. Eben Payne 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. The defendant did not summon any assistance for the child although he knew that child personally.

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

e. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

f. The defendant committed the offense while a state felony charge was already pending against him.

g. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

3592(c)(7).

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

f. Substantial planning and premeditation. The defendant committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C.

3592(c)(9).

g. Continuing criminal enterprise involving drug sales to minors. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. 859. 18 U.S.C. 3592(c)(13).

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 has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The method the defendant selected to carry out the offense preyed on the

victims' trust and hospitality by planning to have the victims killed in their own home while they were defenseless after they allowed Eben Payne to stay the night in their home with them and Regina Suetopka's three year old daughter. Eben Payne then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless, and terminated Regina Suetopka's pregnancy when he killed her. Eben Payne 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. The defendant did not summon any assistance for the child although he knew that child personally.

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

e. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

f. The victim was pregnant when she was killed.

g. The defendant committed the offense while a state felony charge was already pending against him.

h. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

i. Multiple killings or attempted killings. The defendant arranged for Eben Payne to commit multiple killings in a single criminal episode.

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. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person. 18 U.S.C. 3592(c)(4).

b. Grave risk of death to additional persons. 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).

c. Procurement of offense by payment. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 18 U.S.C. 3592(c)(7).

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

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

f. Continuing criminal enterprise involving drug sales to minors. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. 859. 18 U.S.C. 3592(c)(13).

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 has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The method the defendant selected to carry out the offense preyed on the victims' trust and hospitality by planning to have the victims killed in their own home while they were defenseless after they allowed Eben Payne to stay the night in their home with them and Regina Suetopka's three year old daughter. Eben Payne then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless, and terminated Regina Suetopka's pregnancy when he killed her. Eben Payne 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. The defendant did not summon any assistance for the child although he knew that child personally.

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

e. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

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

g. The defendant committed the offense while a state felony charge was already pending against him.

h. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

i. Multiple killings or attempted killings. The defendant arranged for Eben Payne to commit multiple killings in a single criminal episode.

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. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person. 18 U.S.C. 3592(c)(4).

b. Grave risk of death to additional persons. 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).

c. Procurement of offense by payment. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 18 U.S.C. 3592(c)(7).

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

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

f. Continuing criminal enterprise involving drug sales to minors. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. 859. 18 U.S.C. 3592(c)(13).

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 has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The method the defendant selected to carry out the offense preyed on the victims' trust and hospitality by planning to have the victims killed in their own home while they were defenseless after they allowed Eben Payne to stay the night in their home with them and Regina Suetopka's three year old daughter. Eben Payne then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless, and terminated Regina Suetopka's pregnancy when he killed her. Eben Payne 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. The defendant did not summon any assistance for the child although he knew that child personally.

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

impact of the killing on them.

e. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

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

g. The victim was pregnant when she was killed.

h. The defendant committed the offense while a state felony charge was already pending against him.

i. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

j. Multiple killings or attempted killings. The defendant arranged for Eben Payne to commit multiple killings in a single criminal episode.

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. Previous conviction of violent felony involving firearm. The defendant has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use or attempted or threatened use of a firearm (as defined in 18 U.S.C. 921) against another person. 18 U.S.C. 3592(c)(2).

b. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person. 18 U.S.C. 3592(c)(4).

c. Grave risk of death to additional persons. 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).

d. Procurement of offense by payment. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 18 U.S.C.

3592(c)(7).

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

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

g. Continuing criminal enterprise involving drug sales to minors. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. 859. 18 U.S.C. 3592(c)(13).

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 has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The method the defendant selected to carry out the offense preyed on the

victims' trust and hospitality by planning to have the victims killed in their own home while they were defenseless after they allowed Eben Payne to stay the night in their home with them and Regina Suetopka's three year old daughter. Eben Payne then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless, and terminated Regina Suetopka's pregnancy when he killed her. Eben Payne 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. The defendant did not summon any assistance for the child although he knew that child personally.

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

e. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

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

g. The defendant committed the offense while a state felony charge was already pending against him.

h. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

i. Multiple killings or attempted killings. The defendant arranged for Eben Payne to commit multiple killings in a single criminal episode.

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. Previous conviction of violent felony involving firearm. The defendant has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use or attempted or threatened use of a firearm (as defined in 18 U.S.C. 921) against another person. 18 U.S.C. 3592(c)(2).

b. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of

imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person. 18 U.S.C. 3592(c)(4).

e. Grave risk of death to additional persons. 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).

d. Procurement of offense by payment. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 18 U.S.C. 3592(c)(7).

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

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

g. Continuing criminal enterprise involving drug sales to minors. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. 859. 18 U.S.C. 3592(c)(13).

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 has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The method the defendant selected to carry out the offense preyed on the victims' trust and hospitality by planning to have the victims killed in their own home while they were defenseless after they allowed Eben Payne to stay the night in their home with them and Regina Suetopka's three year old daughter. Eben Payne then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless, and terminated Regina Suetopka's pregnancy when he killed her. Eben Payne 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. The defendant did not summon any assistance for the child although he knew that child personally.

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

e. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

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

g. The victim was pregnant when she was killed.

h. The defendant committed the offense while a state felony charge was already pending against him.

i. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

j. Multiple killings or attempted killings. The defendant arranged for Eben Payne to commit multiple killings in a single criminal episode.

Count 28: Killing of Barney Moten 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 28 (Killing of Barney Moten to Obstruct Justice)** of the Fifth Superseding Indictment:

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

a. Previous conviction of violent felony involving firearm. The defendant has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use or attempted or threatened use of a firearm (as defined in 18 U.S.C. 921) against another person. 18 U.S.C. 3592(c)(2).

b. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person. 18 U.S.C. 3592(c)(4).

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

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

e. Continuing criminal enterprise involving drug sales to minors. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. 848(c) and that violation involved the distribution of drugs to persons under the age

of 21 in violation of 21 U.S.C. 859. 18 U.S.C. 3592(c)(13).

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 has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

d. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

e. The defendant committed the offense while a state felony charge was already pending against him.

f. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

g. The victim was killed in order to prevent knowledge of the defendant's homosexual conduct from weakening the defendant's control over criminal activity and co-conspirators.

Count 29: Use/Carry Firearm in Drug/Violent Felony - Killing Of Barney

Moten

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 29 (Use/Carry Firearm in Drug/Violent Felony - Killing of Barney Moten)** of the Fifth Superseding Indictment:

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

a.. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person. 18 U.S.C.

3592(c)(4).

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

c. Substantial planning and premeditation. 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. Continuing criminal enterprise involving drug sales to minors. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. 859. 18 U.S.C. 3592(c)(13).

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 has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

d. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

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

f. The defendant committed the offense while a state felony charge was already pending against him.

g. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

h. The victim was killed in order to prevent knowledge of the defendant's homosexual conduct from weakening the defendant's control over criminal activity and co-

conspirators.

Count 38: Killing Of Woody Pilcher 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 38 (Killing of Woody Pilcher to Obstruct Justice)** of the Fifth Superseding Indictment:

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

a. Previous conviction of violent felony involving firearm. The defendant has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use or attempted or threatened use of a firearm (as defined in 18 U.S.C. 921) against another person. 18 U.S.C. 3592(c)(2).

b. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person. 18 U.S.C. 3592(c)(4).

c. Procurement of offense by payment. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 18 U.S.C. 3592(c)(7).

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

e. Substantial planning and premeditation. The defendant committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C.

3592(c)(9).

f. Continuing criminal enterprise involving drug sales to minors. The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of 21 U.S.C. 848(c) and that violation involved the distribution of drugs to persons under the age of 21 in violation of 21 U.S.C. 859. 18 U.S.C. 3592(c)(13).

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 has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

d. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

e. The defendant authorized Donnell Young to kill Woody Pilcher, and it was foreseeable that Donnell Young would kill Woody Pilcher in an especially heinous, cruel, or depraved manner which involved torture or serious physical abuse to the victim, and Donnell Young did in fact kill the victim in such a manner.

f. The defendant committed the offense while a state felony charge was already pending against him.

g. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

Count 39: Use/Carry Firearm in Drug/Violent Felony - Killing Of Woody Pilcher

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 39 (Use/Carry Firearm in Drug/Violent Felony - Killing of Woody Pilcher)** of the Fifth Superseding Indictment:

to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

d. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

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

f. The defendant authorized Donnell Young to kill Woody Pilcher, and it was foreseeable that Donnell Young would kill Woody Pilcher in an especially heinous, cruel, or depraved manner which involved torture or serious physical abuse to the victim, and Donnell Young did in fact kill the victim in such a manner.

g. The defendant committed the offense while a state felony charge was already pending against him.

h. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

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

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

1. With respect to **Counts Seven, Ten, Eighteen, Nineteen, Twenty-Seven and Thirty-seven**, defendant JAMAL SHAKIR 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).

2. With respect to **Counts Seven, Ten, Eighteen, Nineteen, Twenty-Seven and Thirty-seven**, defendant JAMAL SHAKIR 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).

3. With respect to **Count Twenty-Seven**, defendant JAMAL SHAKIR intentionally killed the victim. 21 U.S.C. §848(n)(1)(A).

4. With respect to **Count Twenty-Seven**, defendant **JAMAL SHAKIR** intentionally inflicted serious bodily injury which resulted in the death of the victim. 21 U.S.C. §848(n)(1)(B).

B. Aggravating Factors for Title 21 Offenses

Count 7: CCE/Drug Conspiracy - Killing of Solomon Harris

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 7 (CCE/Drug Conspiracy - Killing of Solomon Harris)** of the Fifth Superseding Indictment:

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

a. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person. 21 U.S.C. 848(n)(3).

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).³

³ See footnote 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.

b. Additional punishment for killing. The defendant has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

d. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

e. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

Count 10: CCE/Drug Conspiracy - Killing Of Anthony Rogers

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 10 (CCE/Drug Conspiracy - Killing of Anthony Rogers)** of the Fifth Superseding Indictment:

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

a. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person. 21 U.S.C. 848(n)(3).

b. Procurement of offense by payment. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 21 U.S.C. 848(n)(6).

c. 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).

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

e. 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).⁴

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.

b. Additional punishment for killing. The defendant has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

d. 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

⁴ See footnote 1.

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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

e. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense

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 843(n)(2) through (12):

a. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted

infliction of, serious bodily injury upon another person. 21 U.S.C. 848(n)(3).

b. 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).

c. Procurement of offense by payment. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 21 U.S.C. 848(n)(6).

d. 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).

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

f. 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).⁵

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

⁵In 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.

violence including acts described in the Fifth Superseding Indictment.

b. Additional punishment for killing. The defendant has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The method the defendant selected to carry out the offense preyed on the victims' trust and hospitality by planning to have the victims killed in their own home while they were defenseless after they allowed Eben Payne to stay the night in their home with them and Regina Suetopka's three year old daughter. Eben Payne then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless, and terminated Regina Suetopka's pregnancy when he killed her. Eben Payne 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. The defendant did not summon any assistance for the child although he knew that child personally.

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

e. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

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

g. The defendant committed the offense while a state felony charge was already pending against him.

h. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

i. Multiple killings or attempted killings. The defendant arranged for Eben Payne to commit multiple killings in a single criminal episode.

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.. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person. 21 U.S.C. 848(n)(3).

b. 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).

c. Procurement of offense by payment. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 21 U.S.C. 848(n)(6).

d. 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).

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

f. 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).⁶

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.

b. Additional punishment for killing. The defendant has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The circumstances and methods surrounding the offense warrant imposition of the death penalty. The method the defendant selected to carry out the offense preyed on the victims' trust and hospitality by planning to have the victims killed in their own home while they were defenseless after they allowed Eben Payne to stay the night in their home with them and Regina Suetopka's three year old daughter. Eben Payne then executed Regina Suetopka and Kenard Murry in their bedroom while they were defenseless, and terminated Regina Suetopka's pregnancy when he killed her. Eben Payne 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.

⁶ See footnote 1.

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. The defendant did not summon any assistance for the child although he knew that child personally.

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

e. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

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

g. The victim was pregnant when she was killed.

h. The defendant committed the offense while a state felony charge was already pending against him.

i. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

j. Multiple killings or attempted killings. The defendant arranged for Eben Payne to commit multiple killings in a single criminal episode.

Count 27: CCE/Drug Conspiracy - Killing Of Barney Moten

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 27 (CCE/Drug Conspiracy - Killing of Barney Moten)** of the Fifth Superseding Indictment:

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

a. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person. 21 U.S.C. 848(n)(3).

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).⁷

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.

b. Additional punishment for killing. The defendant has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result of committing other offenses charged in the Fifth Superseding Indictment. 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. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them.

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

e. 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:

⁷ See footnote 1.

(1) The defendant hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

f. The victim was killed in order to prevent knowledge of the defendant's homosexual conduct from weakening the defendant's control over criminal activity and co-conspirators.

g. The defendant committed the offense while a state felony charge was already pending against him.

h. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

Count 37: CCE/Drug Conspiracy - Killing Of Woody Pilcher

The United States will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to **Count 37 (CCE/Drug Conspiracy - Killing of Woody Pilcher)** of the Fifth Superseding Indictment:

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

a. Previous conviction of other serious offenses. The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person. 21 U.S.C. 848(n)(3).

b. Procurement of offense by payment. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. 21 U.S.C. 848(n)(5).

c. 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).

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

e. 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).⁸

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.

b. Additional punishment for killing. The defendant has already been sentenced to life imprisonment with the possibility of parole as a result of convictions in the State of California and faces a sentence of life imprisonment without the possibility of parole as a result

⁸ See footnote 1.

of committing other offenses charged in the Fifth Superseding Indictment. 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. The defendant caused the victim's family and friends to suffer as a result of the impact of the killing on them

d. 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 hid a handcuff key in his rectum while in detention.

(2) The defendant sought to have cellular telephones smuggled into prison and used his own defense counsel in this plan.

(3) 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.

(4) 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.

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

f. The defendant authorized Donnell Young to kill Woody Pilcher, and it was foreseeable that Donnell Young would kill Woody Pilcher in an especially heinous, cruel, or depraved manner which involved torture or serious physical abuse to the victim, and Donnell Young did in fact kill the victim in such a manner.

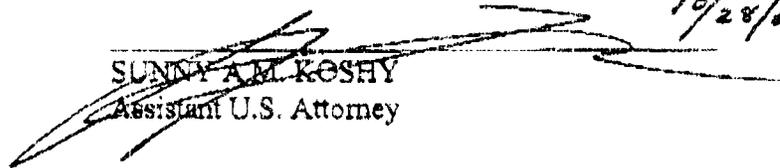
g. The defendant committed the offense while a state felony charge was already pending against him.

h. The defendant, through his actions and statements after this offense, has demonstrated that he lacks remorse for having committed the offense.

Respectfully submitted,



JAMES K. VINES
United States Attorney



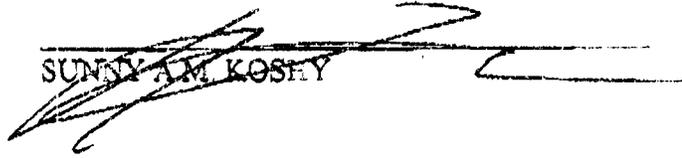
SUNNY A.M. KOSHY
Assistant U.S. Attorney

10/28/02

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 28 day of October, 2002.



SUNNY A.M. KOSHY