

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

FILED

Jeffrey A. Apperson

JUL 16 2001

U.S. DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

UNITED STATES OF AMERICA

vs.

Case No. 4:99CR-11-M

CHARLES LOUIS STEWART

DEFENDANT

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

Comes now the United States of America, pursuant to 18 U.S.C. § 3593(a), by and through its undersigned counsel, and notifies the Court and the defendant in the above-captioned case that the United States believes the circumstances of the offenses charged in Counts 1 and 3 of the Superseding Indictment are such that, in the event of a conviction of any of those counts, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the United States will seek the sentence of death for convictions for any of those offenses listed in Counts 1 and 3: Count 1, conspiracy to travel in interstate commerce with the intent to commit murder, in violation of 18 U.S.C. § 1958; and Count 3, traveling in interstate commerce with intent to commit murder, in violation of 18 U.S.C. § 1958, which resulted in the murder of James Nichols, both offenses which carry a possible sentence of death.

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The United States proposes to prove the following factors as justifying a sentence of death.

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

Murder of James Nichols

1. Intentional Acts to Take Life or Use Lethal Force. The defendant intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and a victim died as a direct result of the act. Section 3591(a)(2)(C).

2. Intentional Acts to Create Grave Risk of Death. The defendant intentionally and specifically engaged in acts of violence knowing that the acts 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. Section 3591 (a)(2)(D).

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

Murder of James Nichols

1. Pecuniary Gain. The defendant committed the offense in expectation of the receipt of something of pecuniary value. Section 3592(c)(8).

premeditation to cause the death of James Nichols. Section 3592 (c) (9).

3. Multiple Killings or Attempted Killings. The defendant intentionally killed and attempted to kill more than one person in a single criminal episode.

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

1. Participation in Additional Uncharged Murders and Attempted Murders or other Serious Acts of Violence. On or about March 10, 1999, the defendant attempted to have Richard Dorman killed.

2. Contemporaneous Convictions for More than One Killing. Applies if defendant is convicted of Counts 2 and 3.

3. Future Dangerousness to the Lives and Safety of Other Persons, including but not limited to the following:

A. The defendant was arrested on 1/25/75 on an unlawful flight warrant from western Kentucky.

B. In 1980, he was arrested in Tallahassee, Florida, on an escape charge.

C. The defendant also successfully escaped from the Henderson County Jail in 1983.

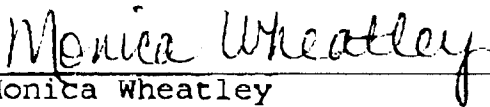
D. In addition, on or about and between June 1 - 13, 2000, the defendant attempted to escape from the Calhoun County Jail, in Anniston, Alabama, by using a metal light fixture to chisel away mortar from the walls within his cell block.

As such the defendant 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 others. Simmons v. South Carolina, 512 U.S. 154, 162 (1994).

4. Victim Impact Evidence. The defendant caused injury, harm, and loss to James Nichols and Florence Nichols because of the effect of the crimes committed against them and because of the personal characteristics of James Nichols and Florence Nichols as individual human beings. Payne v. Tennessee, 501 U.S. 808, 826-27 (1991), and 18 U.S.C. 3593(a). See also Jones v. United States, 527 U.S. 373 (1999).

5. Leadership Role. The defendant committed the crimes listed in Counts 1 and 3 of the Indictment in a leadership role by recruiting and persuading others to commit crimes including but not limited to murder and the fencing of stolen property.

Respectfully submitted,




Monica Wheatley
United States Attorney

Dated: July 16, 2001

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 2001, a true and correct copy of the foregoing amended notice of intent to seek the death penalty was mailed via first class mail, postage prepaid thereon, and sent via facsimile to Kevin McNally, McNally & O'Donnell, 513 Capitol Avenue, Frankfort, Kentucky 40602.


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