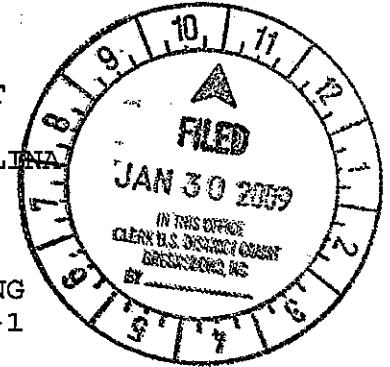


IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA

v.

DEMARIO JAMES ATWATER

SUPERSEDING
1:08CR384-1

The Grand Jury charges:

COUNT ONE

On or about March 5, 2008, in the County of Orange, in the Middle District of North Carolina, DEMARIO JAMES ATWATER did knowingly, willfully and unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and carry away Eve Marie Carson, and hold her otherwise, to wit: in order to obtain property from her by threats and violence, and did use means, facilities, and instrumentalities of interstate and foreign commerce, to wit: automobiles, interstate and other public highways and roads, automated teller machines, banking networks, cellular telephones, and telephone systems in committing and in furtherance of the commission of the offense, resulting in the death of Eve Marie Carson, in violation of Title 18, United States Code, Sections 1201(a)(1) and 2.

COUNT TWO

On or about March 5, 2008, in the County of Orange, in the Middle District of North Carolina, DEMARIO JAMES ATWATER, with the intent to cause death and serious bodily harm, did knowingly, willfully, and unlawfully take a motor vehicle, that is, a 2005

Toyota Highlander, VIN JTEDP21A250047971, which had been transported, shipped and received in interstate and foreign commerce, from the person and presence of another, by force and violence and by intimidation, resulting in the death of Eve Marie Carson; in violation of Title 18, United States Code, Sections 2119(3) and 2.

COUNT THREE

On or about March 5, 2008, in the County of Orange, in the Middle District of North Carolina, DEMARIO JAMES ATWATER, during and in relation to crimes of violence for which he could be prosecuted in a court of the United States, that is, kidnapping, in violation of Title 18, United States Code, Section 1201, and carjacking, in violation of Title 18, United States Code, Section 2119, did knowingly carry and use, by discharging, firearms, that is, a Harrington and Richardson 12 gauge short-barreled shotgun, model Topper 158, serial number AL246386, and an Excam .25 caliber semiautomatic pistol, serial number M11062, and in the course of said violation caused the death of a person, Eve Marie Carson, through the use of said firearms, which killing is a murder as defined in Title 18, United States Code, Section 1111, in that the defendant, DEMARIO JAMES ATWATER, with malice aforethought, unlawfully killed Eve Marie Carson by shooting her with a firearm willfully, deliberately, maliciously, and with premeditation, and in the perpetration of, and attempted perpetration of, a kidnapping

and robbery; all in violation of Title 18, United States Code, Sections 924(c)(1)(A)(iii), 924(c)(1)(B)(i), 924(j)(1) and 2.

COUNT FOUR

On or about March 5, 2008, in the County of Orange, in the Middle District of North Carolina, DEMARIO JAMES ATWATER, having been convicted on June 28, 2007, in the Superior Court of Granville County, Oxford, North Carolina, of a crime punishable by imprisonment for a term exceeding one year, that is, felon in possession of a firearm, and having been convicted on February 16, 2005, in the Superior Court of Wake County, Raleigh, North Carolina, of crimes punishable by imprisonment for a term exceeding one year, that is, breaking and entering, larceny, and possession of stolen property, knowingly did possess in commerce and affecting commerce, firearms, that is, a Harrington and Richardson 12 gauge short-barreled shotgun, model Topper 158, serial number AL246386, and an Excam .25 caliber semiautomatic pistol, serial number M11062; in violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2) and 2.

COUNT FIVE

On or about March 5, 2008, in the County of Orange, in the Middle District of North Carolina, DEMARIO JAMES ATWATER did knowingly possess a firearm, that is, a weapon made from a shotgun, to wit: a Harrington and Richardson 12 gauge short-barreled shotgun, model Topper 158, serial number AL246386, having a barrel length of less than 18 inches and an overall length of less than 26

inches, which had not been registered to him in the National Firearms Registration and Transfer Record as required by Title 26, United States Code, Section 5841; in violation of Title 26, United States Code, Sections 5861(d) and 5871, and Title 18, United States Code, Section 2.

NOTICE OF SPECIAL FINDINGS

The Grand Jury repeats and realleges the accusations of Counts One, Two, and Three of this Indictment and makes the following findings of fact:

a. The defendant, DEMARIO JAMES ATWATER, was 18 years of age or older at the time of the offenses;

b. The defendant, DEMARIO JAMES ATWATER, intentionally killed the victim, Eve Marie Carson (18 U.S.C. § 3591(a)(2)(A));

c. The defendant, DEMARIO JAMES ATWATER, intentionally inflicted serious bodily injury that resulted in the death of the victim, Eve Marie Carson (18 U.S.C. § 3591(a)(2)(B));

d. The defendant, DEMARIO JAMES ATWATER, intentionally participated in one or more acts, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim, Eve Marie Carson, died as a direct result of such act or acts (18 U.S.C. § 3591(a)(2)(C));

e. The defendant, DEMARIO JAMES ATWATER, intentionally and specifically engaged in one or more acts of violence, knowing that

the act or acts created a grave risk of death to a person, other than one of the participants in the offense, such that participation in such act or acts constituted a reckless disregard for human life and the victim, Eve Marie Carson, died as a direct result of such act or acts (18 U.S.C. § 3591(a)(2)(D));

f. The death, and injury resulting in death, occurred during the commission, and attempted commission of, and during the immediate flight from the commission of, an offense under Title 18, United States Code, Section 1201 (kidnapping) (18 U.S.C. § 3592(c)(1));


g. The defendant, DEMARIO JAMES ATWATER, committed the homicide offense in an especially heinous, cruel, and depraved manner in that it involved torture and serious physical abuse to the victim, Eve Marie Carson (18 U.S.C. § 3592(c)(6));

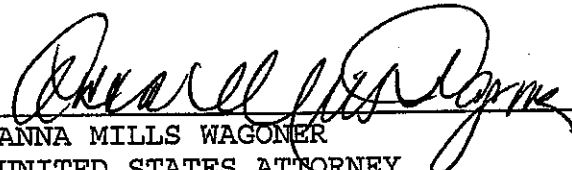
h. The defendant, DEMARIO JAMES ATWATER, committed the homicide offense as consideration for the receipt, and in the expectation of the receipt, of anything of pecuniary value (18 U.S.C. § 3592(c)(8)); and

i. the defendant, DEMARIO JAMES ATWATER, committed the homicide offense after substantial planning and premeditation to cause the death of a person (18 U.S.C. § 3592(c)(9)).

A TRUE BILL:

FOREPERSON


CLIFTON T. BARRETT
ASSISTANT UNITED STATES ATTORNEY
CHIEF, CRIMINAL DIVISION


ANNA MILLS WAGONER
UNITED STATES ATTORNEY