

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

UNITED STATES OF AMERICA :
 :
 v. : SUPERSEDING
 : 1:08CR384-1
 :
 DEMARIO JAMES ATWATER :

GOVERNMENT'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY

NOW COMES the United States of America, by and through Anna Mills Wagoner, United States Attorney for the Middle District of North Carolina, pursuant to 18 U.S.C. § 3593(a), and notifies the Court and the Defendant, DEMARIO JAMES ATWATER, that the Government believes the circumstances of the offenses charged in Counts One, Two, and Three of the Superseding Indictment are such that, in the event of a conviction, sentences of death are justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the Government will seek sentences of death for the offenses that are charged in Counts One, Two, and Three of the Superseding Indictment, that is, kidnapping, in violation of 18 U.S.C. § 1201(a)(1), carjacking, in violation of 18 U.S.C. § 2119(3), and murder as a result of carrying and using a firearm during and in relation to kidnapping and carjacking, in violation of 18 U.S.C. §§ 924(c)(1)(B)(1) and 924(j), all of which carry possible sentences of death.

The Government proposes to prove the following factors as justifying one or more sentences of death.

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

The following statutory proportionality factors apply to Counts One, Two, and Three:

1. Intentional killing.

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

2. Intentional infliction of serious bodily injury.

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).

3. Intentional acts to take life or use lethal force.

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 offenses, and the victim, Eve Marie Carson, died as a direct result such act or acts. 18 U.S.C. § 3591(a)(2)(C).

4. Intentionally and specifically engaged in an act of violence creating a grave risk of death.

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 offenses, 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)

B. Aggravating Factors Enumerated under 18 U.S.C. § 3592(c) for which notice is required under 18 U.S.C. § 3593(a)(2)

The following aggravating factors enumerated under 18 U.S.C. § 3592(c) apply to Counts One, Two, and Three:

1. 18 U.S.C. § 3592(c)(1) - Death during commission of another crime.

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).

2. 18 U.S.C. § 3592(c)(6) - Heinous, cruel, or depraved manner of committing offense.

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

3. 18 U.S.C. § 3592(c)(8) - Pecuniary gain.

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

4. 18 U.S.C. § 3592(c)(9) - Substantial planning and premeditation.

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

C. Other Aggravating Factors as Provided for by 18 U.S.C. § 3592(c) for which notice is required under 18 U.S.C. § 3593(a)(2)

The following other aggravating factors apply to Counts One, Two, and Three:

1. Witness elimination.

The defendant, DEMARIO JAMES ATWATER, killed the victim, Eve Marie Carson, in order to eliminate her as a possible witness to other offenses, including, at least, kidnapping, carjacking, and robbery.

2. Post-homicide obstruction of justice.

The defendant, DEMARIO JAMES ATWATER, willfully obstructed and impeded and attempted to obstruct and impede the investigation and prosecution of the murder of Eve Marie Carson by destroying evidence, including by dismantling weapons used during the commission of the homicide offenses and disposing of them.

3. Multiple shootings culminating in the victim's killing by a close-range shotgun blast.

The victim, Eve Marie Carson, was particularly vulnerable at the time the defendant, DEMARIO JAMES ATWATER, killed her,

because she had already been wounded by four small caliber gunshots when the defendant, DEMARIO JAMES ATWATER, fired a single shotgun round from close range through the victim's hand and into her brain.

4. Prior criminal history.

The defendant, DEMARIO JAMES ATWATER, had a very significant criminal history, including having two prior felony convictions and engaging in unlawful conduct as his primary source of income, and committed the homicide offenses while under a criminal justice sentence, that is, supervised probation.

5. Involvement of a minor to commit the offenses.

The defendant, DEMARIO JAMES ATWATER, involved a minor in the commission of the homicide offenses.

6. Victim impact evidence.

The defendant, DEMARIO JAMES ATWATER, caused injury, harm and loss to the victim, Eve Marie Carson, and the victim's family as evidenced by the victim's personal characteristics as an individual human being and the impact of the death upon the victim and the victim's family.

D. Notice of intent to rely on trial testimony under 18 U.S.C. § 3593(c)

The Government further gives notice that in support of imposition of the death penalty, it intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial

and the offenses of conviction as described in the Superseding Indictment as they relate to the background and character of the defendant and the nature and circumstances of the offenses charged in the Superseding Indictment.

This the 13th day of February, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Kimberly C. Stevens and Gregory Davis.

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