

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
 )  
 v. ) Crim. No. 01-10384-MLW  
 )  
 GARY LEE SAMPSON, )  
 )  
 Defendant. )

AMENDED NOTICE OF INTENT TO SEEK THE DEATH PENALTY

Pursuant to 18 U.S.C. § 3593(a) and this Court's March 19, 2014 Order, ECF Dkt. No. 1319 at ¶ 2, the United States of America hereby notifies the Court and defendant that the government believes that the circumstances of the offenses for which defendant was convicted in Counts One and Two of the Second Superseding Indictment (ECF Dkt. No. 74) are such that a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the government will seek the sentence of death for these offenses: (i) Count One - carjacking resulting in the death of Philip A. McCloskey, in violation of 18 U.S.C. § 2119(3); and, (ii) Count Two - carjacking resulting in the death of Jonathan M. Rizzo, in violation of 18 U.S.C. § 2119(3).

The government proposes to prove the following statutory factors pursuant to 18 U.S.C. §§ 3591(a)(2) and 3592(c) as charged in the Second Superseding Indictment Notice of Special

Findings, hereby incorporated by reference,<sup>1</sup> and additional non-statutory factors pursuant to 18 U.S.C. § 3593(a)(2), as justifying a sentence of death.

**COUNT ONE - CARJACKING RESULTING IN THE DEATH OF PHILIP A. MCCLOSKEY**

A. Defendant Gary Lee Sampson was more than 18 years of age at the time of the offense. (18 U.S.C. § 3591(a)(2)).

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

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

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<sup>1</sup> As the Court is aware, the Notice of Special Findings in the Second Superseding Indictment alleged that defendant intentionally killed more than one person in a "single criminal episode." See ECF Dkt. No. 74 at 4, 6. The government, however, later acknowledged in, among other places, its 2002 Notice of Intent to Seek the Death Penalty, that the murders of Philip A. McCloskey and Jonathan M. Rizzo occurred over the course of a series of criminal episodes. See ECF Dkt. No. 274 at 124. Accordingly, the Notice of Special Findings in the Second Superseding Indictment is incorporated herein with that modification.

4. Intentional Act of Violence in Reckless Disregard for Human Life: The defendant, Gary Lee Sampson, intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life, and Philip A. McCloskey died as a direct result of the act (18 U.S.C. § 3591 (a) (2) (D)).

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

1. Heinous, Cruel, and Depraved Manner of Committing the Offense: The defendant, Gary Lee Sampson, committed the offense in an especially heinous, cruel, and depraved manner in that it involved torture and serious physical abuse to Philip A. McCloskey (18 U.S.C. § 3592(c) (6)).
2. Substantial Planning and Premeditation: The defendant, Gary Lee Sampson, committed the offense after substantial planning and premeditation to cause the death of Philip A. McCloskey (18 U.S.C. § 3592(c) (9)).
3. Vulnerability of Victim: The victim, Philip A. McCloskey, was particularly vulnerable due to old age and infirmity (18 U.S.C. § 3592(c) (11)).

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

1. Other Serious Acts of Violence - Murder of Robert "Eli" Whitney: The defendant, Gary Lee Sampson, on or about July 30, 2001, in Meredith, New Hampshire, committed the murder of Robert "Eli" Whitney.
2. Other Serious Acts of Violence - Carjacking of William Gregory: The defendant, Gary Lee Sampson, on or about July 31, 2001, committed the carjacking of William Gregory in a 1989 Chrysler LeBaron, Vermont registration CSM916.
3. Other Serious Acts of Violence - Bank Robberies: The defendant, Gary Lee Sampson, committed the following acts of violence:

- a. armed robbery of Lexington State Bank, Lexington, North Carolina, on or about May 17, 2001;
  - b. armed robbery of First National Bank, Archdale, North Carolina, on or about May 24, 2001;
  - c. armed robbery of Lexington State Bank, Lexington, North Carolina, on or about May 31, 2001;
  - d. armed robbery of Branch Banking and Trust Company, Denton, North Carolina, on or about June 15, 2001; and
  - e. armed robbery of First Bank, Archdale, North Carolina, on or about July 10, 2001.
4. Contemporaneous Convictions for More Than One Murder: The defendant, Gary Lee Sampson, intentionally killed Philip A. McCloskey and Jonathan M. Rizzo over the course of a series of criminal episodes.
5. Murder to Obstruct Justice: The defendant, Gary Lee Sampson, murdered Philip A. McCloskey to seize control of his motor vehicle and to prevent him from reporting the carjacking to authorities.
6. Victim Impact Evidence: The defendant, Gary Lee Sampson, caused injury, harm, and loss to the family of Philip A. McCloskey because of the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family. *Payne v. Tennessee*, 501 U.S. 808, 825-27 (1991). The carjacking and murder of Philip A. McCloskey has caused the McCloskey family extreme emotional suffering, and the victim's family has suffered severe and irreparable harm.
7. Future Dangerousness of the Defendant While Incarcerated: The defendant, Gary Lee Sampson, is likely to commit criminal acts of violence in the future that would be a continuing and serious threat to the lives and safety of prison officials and inmates, as demonstrated by his history of prison misconduct including, but not limited to, escapes,

attempted escapes, verbal threats to harm prison officials and inmates, possession, fashioning, and use of dangerous weapons while incarcerated, and multiple violent assaults of prison officials. Evidence in support of this aggravating factor will include evidence of Sampson's prison misconduct at USP Terre Haute from 2004 to the present.

8. Lack of Remorse: The defendant, Gary Lee Sampson, has not expressed genuine remorse for killing Philip A. McCloskey, as demonstrated by, but not limited to, Sampson's subsequent killings of Jonathan M. Rizzo and Robert "Eli" Whitney and the carjacking of William Gregory following the killing of Philip A. McCloskey, Sampson's statements to law enforcement agents, prison officials, and others following the offenses alleged in the Second Superseding Indictment, and Sampson's pattern of violent, disruptive, and non-remorseful behavior, both in prison and in court, since his arrest and incarceration for the offenses alleged in the Second Superseding Indictment.

**COUNT TWO - CARJACKING RESULTING IN THE DEATH OF JONATHAN M. RIZZO**

A. Defendant Gary Lee Sampson was more than 18 years of age at the time of the offense. (18 U.S.C. § 3591(a)(2)).

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

1. Intentional Killing: The defendant, Gary Lee Sampson, intentionally killed Jonathan M. Rizzo (18 U.S.C. § 3591(a)(2)(A)).
2. Intentional Infliction of Serious Bodily Injury: The defendant, Gary Lee Sampson, intentionally inflicted serious bodily injury that resulted in the death of Jonathan M. Rizzo (18 U.S.C. § 3591(a)(2)(B)).
3. Intentional Act Contemplating the Taking of the Life of Another or Intending Lethal Force: The defendant, Gary Lee Sampson, intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal

force would be used in connection with a person, other than one of the participants in the offense, and Jonathan M. Rizzo died as a direct result of the act (18 U.S.C. § 3591(a)(2)(C)).

4. Intentional Act of Violence in Reckless Disregard for Human Life: The defendant, Gary Lee Sampson, intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life, and Jonathan M. Rizzo died as a direct result of the act (18 U.S.C. § 3591 (a)(2)(D)).

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

1. Heinous, Cruel, and Depraved Manner of Committing Offense: The defendant, Gary Lee Sampson, committed the offense in an especially heinous, cruel, and depraved manner in that it involved torture and serious physical abuse to Jonathan M. Rizzo (18 U.S.C. § 3592(c)(6)).
2. Substantial Planning and Premeditation: The defendant, Gary Lee Sampson, committed the offense after substantial planning and premeditation to cause the death of Jonathan M. Rizzo (18 U.S.C. § 3592(c)(9)).

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

1. Other Serious Acts of Violence - Murder of Robert "Eli" Whitney: The defendant, Gary Lee Sampson, on or about July 30, 2001, in Meredith, New Hampshire, committed the murder of Robert "Eli" Whitney.
2. Other Serious Acts of Violence - Carjacking of William Gregory: The defendant, Gary Lee Sampson, on or about July 31, 2001, committed the carjacking of William Gregory in a 1989 Chrysler LeBaron, Vermont registration CSM916.
3. Other Serious Acts of Violence - Bank Robberies: The defendant, Gary Lee Sampson, committed the following

acts of violence:

- a. armed robbery of Lexington State Bank, Lexington, North Carolina, on or about May 17, 2001;
  - b. armed robbery of First National Bank, Archdale, North Carolina, on or about May 24, 2001;
  - c. armed robbery of Lexington State Bank, Lexington, North Carolina, on or about May 31, 2001;
  - d. armed robbery of Branch Banking and Trust Company, Denton, North Carolina, on or about June 15, 2001; and
  - e. armed robbery of First Bank, Archdale, North Carolina, on or about July 10, 2001.
4. Contemporaneous Convictions for More Than One Murder: The defendant, Gary Lee Sampson, intentionally killed Philip A. McCloskey and Jonathan M. Rizzo over the course of a series of criminal episodes.
  5. Murder to Obstruct Justice: The defendant, Gary Lee Sampson, murdered Jonathan M. Rizzo to seize control of his motor vehicle and to prevent him from reporting the carjacking to authorities.
  6. Victim Impact Evidence: The defendant, Gary Lee Sampson, caused injury, harm, and loss to the family of Jonathan M. Rizzo because of the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family. *Payne v. Tennessee*, 501 U.S. 808, 825-27 (1991). The carjacking and murder of Jonathan M. Rizzo has caused the Rizzo family extreme emotional suffering, and the victim's family has suffered severe and irreparable harm.
  7. Future Dangerousness of the Defendant While Incarcerated: The defendant, Gary Lee Sampson, is likely to commit criminal acts of violence in the future that would be a continuing and serious threat to the lives and safety of prison officials and inmates, as demonstrated by his history of prison

misconduct including, but not limited to, escapes, attempted escapes, verbal threats to harm prison officials and inmates, possession, fashioning, and use of dangerous weapons while incarcerated, and multiple violent assaults of prison officials. Evidence in support of this aggravating factor will include evidence of Sampson's prison misconduct at USP Terre Haute from 2004 to the present.

8. Lack of Remorse: The defendant, Gary Lee Sampson, has not expressed genuine remorse for killing Jonathan M. Rizzo, as demonstrated by, but not limited to, Sampson's subsequent killing of Robert "Eli" Whitney and the carjacking of William Gregory following the killing of Jonathan M. Rizzo, Sampson's statements to law enforcement agents, prison officials, and others following the offenses alleged in the Second Superseding Indictment, and Sampson's pattern of violent, disruptive, and non-remorseful behavior, both in prison and in court, since his arrest and incarceration for the offenses alleged in the Second Superseding Indictment.

Respectfully submitted,

CARMEN M. ORTIZ  
United States Attorney

By: /s/ Zachary R. Hafer  
ZACHARY R. HAFER  
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Assistant U.S. Attorneys

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing.

/s/ Zachary R. Hafer  
Zachary R. Hafer  
Assistant U.S. Attorney

Date: March 31, 2014