

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 24-CR-167-RAW

**JASON JAVON FRANKLIN,
MARIELLE TRAMANIE SMITH,
SHERL DEAN BATISE, and
NICHOLAS ANDREW KERR,**

Defendants.

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, by and through its attorney, Christopher J. Wilson, United States Attorney, and hereby gives notice pursuant to 18 U.S.C. § 3593(a) that it believes that the circumstances of the offenses charged in Counts Two, Three, and Five through Eight of the Superseding Indictment are such that, in the event that defendant **MARIELLE TRAMANIE SMITH** is convicted, 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 a sentence of death. Specifically, the United States will seek a sentence of death for these offenses: Count Two, which charges Conspiracy to Tamper with a Witness and Informant by Killing in violation of 18 U.S.C. §§ 1512(a)(1)(A), 1512(k), and 1512(j); Count Three, which charges Use of Interstate Commerce Facilities in the Commission of Murder for Hire in violation of 18 U.S.C. § 1958 and 2; Count Five, which charges Murder in Indian Country in violation of 18 U.S.C. §§ 1111(a), 1151, 1152, and 2; Count Six, which charges Murder in Perpetration of Burglary in Indian Country in violation of 18 U.S.C. §§ 1111(a), 1151, 1152, 2, and 13 and 21 O.S.A § 1431; Count Seven, which charges Obstructing Justice by Retaliating Against a Witness

or Informant in violation of 18 U.S.C. §§ 1513(a)(1)(B) and 2; and Count Eight, which charges Tampering with a Witness or Informant by Killing in violation of 18 U.S.C §§ 1512(a)(1)(A) and 2, all of which carry a possible sentence of death.

The United States proposes to prove the following factors as justifying a sentence of death with regards to Counts Two, Three, and Five through Eight of the Superseding Indictment:

- A. **MARIELLE TRAMANIE SMITH** was 18 years of age or older at the time of the offense. 18 U.S.C. § 3591(a).
- B. Statutory Threshold Intent Factors Enumerated Under 18 U.S.C. § 3591(a)(2)(A)-(D).

1. **Intentional Participation in an Act Resulting in Death. MARIELLE**

TRAMANIE SMITH 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 the Victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

2. **Intentional Engagement in an Act of Violence, Knowing that the Act Created a**

Grave Risk of Death to a Person. MARIELLE TRAMANIE SMITH

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 the reckless disregard for human life and the Victim 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. **Previous Conviction of Violent Felony Involving Firearm. MARIELLE**

TRAMANIE SMITH has previously been convicted of a State offense punishable by a term of imprisonment of more than 1 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).

2. Previous Conviction of Offense for which a Sentence of Death or Life

Imprisonment was Authorized: MARIELLE TRAMANIE SMITH has previously been convicted of another state offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

3. Procurement of Offense by Payment: MARIELLE TRAMANIE SMITH procured the commission of the offenses charged in Counts Two, Three, and Five through Eight by payment, and promise of payment, of anything of pecuniary value. 18 U.S.C. § 3592(c)(7).

4. Substantial Planning and Premeditation: MARIELLE TRAMANIE SMITH committed the offenses charged in Counts Two, Three, and Five through Eight after substantial planning and premeditation to cause the death of a person. 18 U.S.C. § 3592(c)(9).

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

1. Obstruction of Justice: MARIELLE TRAMANIE SMITH paid for the Victim to be killed in an effort to prevent the Victim's testimony in an official proceeding and to prevent the Victim's communication to a law enforcement officer of information relating to the commission of a federal or state offense.

2. Status of the Victim: MARIELLE TRAMANIE SMITH paid for the Victim, a crime witness, to be killed with the intent to retaliate against the Victim for providing to a law enforcement officer information relating to the commission of a federal or state offense.

3. Future Dangerousness of the Defendant: MARIELLE TRAMANIE SMITH

represents a continuing danger to the lives and safety of other persons. **MARIELLE TRAMANIE SMITH** is likely to commit criminal acts of violence in the future that would constitute a continuing a serious threat to the lives and safety of others, as evidenced by, at least, one or more of the following:

- a. Continuing Pattern of Violence: **MARIELLE TRAMANIE SMITH** has engaged in a continuing pattern of violence, attempted violence, and threatened violence, including, at least, the crimes charged against him in the Superseding Indictment and the crimes of which he was previously convicted, to wit: 1) Kidnapping, in CF-2012-379, in the District Court of Comanche County, OK; and 2) First Degree Felony Murder While in the Commission of a Robbery with a Dangerous Weapon, in CF-2017-184, in the District Court of Jackson County, OK.
- b. Lack of Remorse: **MARIELLE TRAMANIE SMITH** has demonstrated a lack of remorse for the capital offenses committed in the case, as indicated by his statements and actions during and following the offenses alleged in the Superseding Indictment.
- c. Low Rehabilitative Potential: **MARIELLE TRAMANIE SMITH** has demonstrated a low potential for rehabilitation as evidenced by his longstanding involvement in criminal activities leading up to the capital offenses charged in the Superseding Indictment and while he has been incarcerated. Through his words and recidivism, he has demonstrated that the threat of incarceration does not deter his misconduct.

d. Membership in a Criminal Street Gang: **MARIELLE TRAMANIE SMITH** has demonstrated an allegiance to and active membership in the Hoover Crips, an organization falling within the definition of a criminal street gang as set forth in 18 U.S.C. § 521(a).

4. **Victim Impact.** **MARIELLE TRAMANIE SMITH** caused injury, harm, and loss to the family, friends, and associates of the Victim. The injury, harm, and loss caused by **MARIELLE TRAMANIE SMITH** with respect to the Victim is evidenced by the Victim's personal characteristics and by the impact of the Victim's death upon the Victim's family, friends, and co-workers.

Respectfully Submitted,



CHRISTOPHER J. WILSON
United States Attorney



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Assistant United States Attorney