

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>vs.</b>	)	<b>Criminal No. 4:04CR70083</b>
	)	
<b>LANNY BENJAMIN BODKINS</b>	)	

**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, LANNY BENJAMIN BODKINS, that the Government believes the circumstances of the offenses charged in Counts One, Two and Five of the Superseding Indictment are such that, in the event of a conviction on any one or more of the offenses charged therein, a sentence of death is justified, and that the Government will seek the sentence of death for these offenses: Title 18, United States Code, Sections 1958(a)(Counts One and Two) and 924(c)(1) and 924(j)(Count Five), each of which carries a possible sentence of death.

The Government proposes to prove the following factors as justifying a sentence of death under each of Counts One, Two and Five of the Superseding Indictment, the allegations of which are fully realleged and incorporated by reference herein:

- A. Statutory Intent Factors Enumerated Under Title 18, United States Code, Section 3591(a)(2).
  - i. Intentional Killing: Section 3591(a)(2)(A).  
LANNY BENJAMIN BODKINS intentionally killed Tyree Wimbush.
  - ii. Intentional Infliction of Serious Bodily Injury: Section 3591(a)(2)(B)  
LANNY BENJAMIN BODKINS intentionally inflicted serious bodily injury that resulted in the death of Tyree Wimbush.

- iii. Intentional Participation in a Lethal Act: Section 3591(a)(2)(C).  
LANNY BENJAMIN BODKINS intentionally participated in an act, contemplating that the life of Tyree Wimbush be taken and intending that lethal force be used in connection with a person, other than one of the participants in the offense, namely, Tyree Wimbush, and which directly resulted in the death of Tyree Wimbush.
- iv. Intentionally Creating a Grave Risk of Death: Section 3591(a)(2)(D).  
LANNY BENJAMIN BODKINS 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 said act directly resulted in the death of Tyree Wimbush.

C. Aggravating Factors Enumerated under Title 18, United States Code, Section 3592(c).

- i. LANNY BENJAMIN BODKINS was previously convicted of a State offense punishable by a term of imprisonment of more than one year, involving the use and attempted and threatened use and of a firearm against another person. Title 18, United States Code, Section 3592(c)(2).
- ii. LANNY BENJAMIN BODKINS committed the offense as consideration for the receipt, and in the expectation of the receipt, of anything of pecuniary value. Title 18, United States Code, Section 3592(c)(8).
- iii. LANNY BENJAMIN BODKINS committed the offense after substantial planning and premeditation to cause the death of a person. Title 18, United States Code, Section 3592(c)(9).

D. Non-Statutory Aggravating Factors under 18 U.S.C. 3593(a)

The non-statutory aggravating factors which the Government will seek to prove as the basis for the death penalty which are applicable to the homicide and to the defendant under each of Counts One, Two, and Five are as follows.

1. Victim impact: The defendant caused injury, harm, and loss to the family and friends of the victim, as evidenced by his personal characteristics as a human being and the impact of his death on his family and friends. *Payne v. Tennessee*, 501 U.S. 808 (1991). Specifically, the surviving members of the Wimbush family have been deprived of their loved one and the benefits of having him in their lives. As a result, their lives have changed and they have experienced significant emotional trauma.

2. Obstruction of Justice: Wimbush killed in an effort by BODKINS to obstruct justice by preventing him from providing information about the commission of a drug trafficking crime to law enforcement officials and in retaliation for cooperating with authorities.

3. Future Dangerousness: The defendant represents a continuing danger to the lives and safety of other persons. The defendant has committed the acts alleged in the capital offense charged in the Superseding Indictment and in the statutory and non-statutory aggravating factors contained in this Notice, and, in addition, has engaged in the following, at least:

a. He has exhibited a continuing pattern of violence. In February, 1999, BODKINS assaulted a police officer and was found in possession of cocaine. In August, 1999, BODKINS committed a robbery using firearms. In January, 2001, he was convicted of felony possession of narcotics.

b. He has low rehabilitative potential, as evidenced by his criminal record and continuing recidivism.

c. Prior to the murder of Wimbush, BODKINS was a significant trafficker of narcotics. Further, BODKINS has never expressed any remorse for the murder, his only stated concern being that Plunkett failed to pay him for carrying out the homicide.

The government gives further 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, his moral culpability and the nature and circumstances of the offense of conviction.

Respectfully submitted,

JOHN L. BROWNLEE  
United States Attorney

s/Craig J. Jacobsen  
Assistant United States Attorney  
CA Bar #138346  
Western District of Virginia  
United States Attorney's Office  
P.O. Box 1709  
Roanoke, VA 24008  
TEL (540) 857-2252  
FAX (540) 857-2614  
craig.jacobsen@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this 17<sup>th</sup> day of February, 2005, electronically filed the Notice of Intent to Seek the Death Penalty with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: William H. Cleaveland, Esq.; James C. Turk, Jr., Esq., counsel of record for Lanny Benjamin Bodkins.

s/ Craig J. Jacobsen \_\_\_\_\_  
Assistant United States Attorney  
CA Bar #138346