

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

FILED
JAN 15 2002
CLERK

UNITED STATES OF AMERICA,)
)
)
v.)
)
JAMES ERNEST FRYE, JR.)
Defendant.)

Criminal No. 4:01cr8BN

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 that the Government believes the circumstances of the offense(s) charged in Count Two of the Indictment are such that, in the event of the defendant's conviction, 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 this offense: Count Two, carjacking resulting in the death of Lottie Anderson Marshall, in violation of 18 U.S.C. 2119(3).

The Government proposes to prove the following factors as justifying a sentence of death.

COUNT TWO

CARJACKING RESULTING IN DEATH OF LOTTIE ANDERSON MARSHALL

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

1. **Intentional Killing.** The defendant intentionally killed Lottie Anderson Marshall. Section 3591(a)(2)(A).

2. **Intentional Acts to Take Life or Use Lethal Force.** The defendant

intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and Lottie Anderson Marshall died as a direct result of the act. Section 3591(a)(2)(C).

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

1. **Heinous, Cruel, or Depraved Manner of Committing Offense.** The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim. Section 3592(c)(6).

2. **Pecuniary Gain.** The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value. Section 3592(c)(8).

3. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation to cause the death of a person.

4. **Multiple Killings or Attempted Killings.** The defendant intentionally killed more than one person in a single criminal episode. Section 3592(c)(16).

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

1. **Future Dangerousness of the Defendant.** The defendant Fryc 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 Indictment and in the statutory and non-statutory aggravating factors contained in this Notice and, in addition, has committed and exhibited acts and characteristics including but not limited to the following:

- a. **Continuing Pattern of Violence** - The defendant Frye planned and participated in violent acts including but not limited to the armed robbery of the Taylor Real Value on August 13, 1999.
- b. **Low Rehabilitation Potential** - The defendant Frye has demonstrated a low potential for rehabilitation as evidenced by: (1) his conviction for bank robbery in 1994, the revocation of Supervised Release from the sentence for that conviction and his re-incarceration as a result of Frye's violations of conditions of release; (2) defendant Frye's escape from custody in January of 2000 while charged with Capital Murder.


2. **Victim Impact Evidence.** The defendant caused injury, harm, and loss to the victim's family 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, 111 S.Ct. 2597, 2608-09 (1991). The victim's characteristics as an individual included but was not limited to one or more of the following: Lottie Anderson Marshall was a loving daughter and granddaughter. The family of the victim has suffered injury harm, and loss, as a result of the victim's death, including but not limited to one or more of the following: Extreme anguish upon the disappearance of the victim, grief upon discovery of her death and continued anguish until the perpetrators are brought to justice.

3. **Obstruction of Justice.** The defendant committed the offense with the intent to prevent the victim, Lottie Anderson Marshall, from providing information and assistance to law enforcement authorities in regard to the investigation or prosecution of the

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of Jan., 2002, a true and correct copy of the foregoing notice of intent to seek the death penalty was mailed via first class mail, postage prepaid thereon, to the following attorney of record:

Cynthia A. Stewart
120 N. Congress Street, Suite 600
Jackson, MS 39201

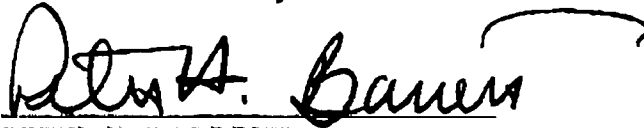


PETER H. BARRETT
Assistant United States Attorney
808 Vieux Marche, 2nd Floor
Biloxi, MS 39530
(228) 432-5521
MS Bar No. 2069

commission or possible commission of another offense, that is, the murder of Willie Hatten III.

Respectfully submitted,

DUNN LAMPTON
United States Attorney

By: 
PETER H. BARRETT
Assistant United States Attorney

Dated: JAN. 12, 2002