

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE**

CRIMINAL ACTION NO. 13-CR-00015-ART

UNITED STATES OF AMERICA

PLAINTIFF

v. **NOTICE OF INTENTION TO SEEK PENALTY OF DEATH**

**JOHN TRAVIS MILLNER,
aka "JT"**

DEFENDANT

* * * * *

The United States of America ("United States" or "Government"), pursuant to 18 U.S.C. § 3593(a), hereby notifies the Court and defendant JOHN TRAVIS MILLNER, aka "JT," that the Government believes, and therefore avers, that the circumstances of the offenses charged in the Indictment are such that, in the event of a conviction, a sentence of death is justified pursuant to, and in accordance with, Chapter 228 (Sections 3591 through 3599) of Title 18 of the United States Code. Accordingly, the Government intends to seek a sentence of death upon the conviction of defendant JOHN TRAVIS MILLNER for any of the offenses charged in the Indictment, to wit: 18 U.S.C. § 1118 (Murder by Federal Prisoner Serving Life Sentence) and/or 18 U.S.C. § 1111(a) and (b) (Murder in the First Degree).

A. The Government will prove the following intent factors to support a sentence of death:

With respect to Counts One and Two of the Indictment, defendant JOHN TRAVIS MILLNER:

(1) intentionally killed the victim, Vincent E. Smith, Jr. (18 U.S.C. § 3591(a)(2)(A));

(2) intentionally inflicted serious bodily injury that resulted in the death of the victim, Vincent E. Smith, Jr. (18 U.S.C. § 3591(a) (2) (B));

(3) 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 the victim, Vincent E. Smith, Jr., died as a direct result of the act (18 U.S.C. § 3591(a) (2) (C));

(4) 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 Vincent E. Smith, Jr., died as a direct result of the act (18 U.S.C. § 3591(a) (2) (D)).

B. The Government will prove the following statutory aggravating factors that justify a sentence of death:

With respect to Counts One and Two of the Indictment:

(1) the death, or injury resulting in death, of Vincent E. Smith, Jr., occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under 18 U.S.C. § 1118 (Murder by Federal Prisoner Serving Life Sentence) (18 U.S.C. § 3592(c)(1));

(2) Defendant JOHN TRAVIS MILLNER has previously been convicted of a Federal or 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));

(3) Defendant JOHN TRAVIS MILLNER has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute (18 U.S.C. § 3592(c) (3));

(4) Defendant JOHN TRAVIS MILLNER has previously been convicted of 2 or more Federal or State offenses, punishable by a term of imprisonment of more than 1 year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person (18 U.S.C. § 3592(c) (4)); and

(5) Defendant JOHN TRAVIS MILLNER committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Vincent E. Smith, Jr. (18 U.S.C. § 3592(c)(6)).

C. Pursuant to 18 U.S.C. Section 3593(a), the Government will prove the following additional aggravating factors that justify a sentence of death:

Defendant JOHN TRAVIS MILLNER:

(1) Engaged in a continuing pattern of violent and dangerous criminal conduct, including, but not limited to, the following:

- (a) On or about October 15, 2001, in Washington, D.C., JOHN TRAVIS MILLNER assaulted Vincent Brown with a dangerous and deadly weapon, to wit, a machete-type cutting instrument, and struck Vincent Brown, among other places, in his head with said machete, causing serious injuries to Vincent Brown;

- (b) On or about December 31, 2001, at various locations in Washington, D.C., and in Maryland, JOHN TRAVIS MILLNER conspired to, obtain a firearm for, and embarked upon the completion of, the premeditated murder of Lawrence Proctor;
- (c) On or about December 31, 2001, in Washington, D.C., JOHN TRAVIS MILLNER committed the random murder of Walter Louis Coates, by shooting and killing Walter Louis Coates with a firearm. Among other things, JOHN TRAVIS MILLNER was convicted of the random First Degree (Premeditated) Murder of Walter Louis Coates and was sentenced in Criminal No. F-31-02, *United States v. John Travis Millner*, Superior Court of the District of Columbia, among other things, to life imprisonment without the possibility of release;
- (d) On or about January 1, 2002, in Washington, D.C., JOHN TRAVIS MILLNER did obstruct justice when, armed with a firearm, he attempted to locate, intimidate, shoot, and kill Sherwayne Gilyard, who was an eyewitness to JOHN TRAVIS MILLNER's murder of Walter Louis Coates, and whom JOHN TRAVIS MILLNER believed might communicate with the police about such murder;
- (e) On or about December 5, 2003, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, Lee, Virginia, did assault four inmates, among other things, stabbing one inmate with a "shank" or knife-type instrument;
- (f) On or about August 4, 2004, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, Lee, Virginia, did intentionally possess a dangerous and deadly weapon, to wit, a metal "shank" or knife-type instrument;
- (g) Between on or about February 16, 2005, and on or about March 15, 2005, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, Lee, Virginia, did engage in a series of assaults on Corrections Officers in the Special Housing Unit (SHU);
- (h) On August 4, 2005, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, Lee, Virginia, did intentionally possess a dangerous and deadly weapon, to wit, a metal "shank" or knife-type instrument while inside of the Special Housing Unit (SHU);

- (i) On or about August 19, 2006, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, Lee, Virginia, did without justification assault and attempt to kill a fellow inmate (Larry Beale), by stabbing inmate Beale approximately twenty-seven (27) times with a dangerous and deadly weapon, to wit, a metal “shank” or ice pick-type instrument in among other places, inmate Beale’s head, face, neck, and torso. In Case No. 07-14, *United States v. John Travis Millner*, United States District Court for the Western District of Virginia, JOHN TRAVIS MILLNER pled guilty to, and was convicted of, Assault With Intent to Murder (18 U.S.C. § 113(a)(1)) and Assault With a Dangerous Weapon (18 U.S.C. § 1113(a)(3)). Among other things, JOHN TRAVIS MILLNER was sentenced to twenty-five (25) years in prison;
- (j) Between on or about January 16, 2007, and on or about May 13, 2007, on more than one occasion, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, Lee, Virginia, did intentionally and unlawfully barricade himself inside his cell in the Special Housing Unit (SHU);
- (k) On or about April 7, 2007, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, Lee, Virginia, did threaten to kill a staff member of and at United States Penitentiary, Lee, Virginia;
- (l) On or about November 21, 2007, JOHN TRAVIS MILLNER, while incarcerated as a federal prisoner at the Southwest Virginia Regional Jail, did intentionally possess a dangerous and deadly weapon, to wit, a metal “shank” or ice pick-type instrument;
- (m) On or about December 3, 2007, JOHN TRAVIS MILLNER, while incarcerated as a federal prisoner at the Southwest Virginia Regional Jail, did, without justification, assault a fellow inmate;
- (n) On or about December 4, 2007, JOHN TRAVIS MILLNER, while incarcerated as a federal prisoner at the Southwest Virginia Regional Jail, did intentionally possess a dangerous and deadly weapon, to wit, a metal “shank;”
- (o) On or about June 23, 2009, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, Big Sandy, Kentucky, did intentionally possess a dangerous and deadly weapon, to wit, a piece of sharpened glass fashioned into a knife;

- (p) On or about June 23, 2009, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, Big Sandy, Kentucky, did intentionally and unlawfully barricade himself inside his cell in the Special Housing Unit (SHU) and did attempt without justification to assault staff;
- (q) On or about April 14, 2010, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, Big Sandy, Kentucky, did without justification assault Associate Warden W. R. Price;
- (r) Between on or about May 16, 2010, and on or about July 29, 2011, on multiple occasions, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, Big Sandy, Kentucky, and United States Penitentiary, McCreary, Kentucky, did intentionally set arson fires;
- (s) On or about April 16, 2011, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, McCreary, Kentucky, in the Special Housing Unit (SHU), did intentionally possess a dangerous and deadly weapon, to wit, a “shank” or a piece of blue-plastic with razor blades melted into one end;
- (t) On or about April 16, 2011, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, McCreary, Kentucky, did without justification assault Corrections Officer M. Parsons;
- (u) On December 15, 2011, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, McCreary, Kentucky, did without justification bind, tie, and restrain a fellow inmate (Brandon Lightfoot) with a rope-type ligature and did hold a “shank” or knife-type instrument to and about the neck and/or throat of inmate Lightfoot, and did threaten to kill inmate Lightfoot;
- (v) On or about September 8, 2012, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, McCreary, Kentucky, did intentionally possess a dangerous and deadly weapon, to wit, a metal padlock securely tied to a sock;
- (w) On or about November 28, 2012, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, McCreary, Kentucky, did intentionally possess a dangerous and deadly weapon, to wit, a piece of metal that was sharpened to a point at one end, and he did also

intentionally possess a piece of angle-metal that was approximately 20 inches in length and was flattened at one end for continued fashioning into a dangerous and deadly weapon;

- (y) On or about April 10, 2013, JOHN TRAVIS MILLNER, while incarcerated at United States Penitentiary, McCreary, Kentucky, did intentionally possess a dangerous and deadly weapon, to wit, a “shank” or a piece of metal that was sharpened to a point at one end.

(2) Defendant JOHN TRAVIS MILLNER poses a continuing danger to others in that he is likely to commit additional acts of violence in any setting against inmates, correctional officers, staff, officials, employees, consultants, visitors, and others, at correctional institutions where he is or will be incarcerated as evidenced by his past acts of violence and dangerousness, and his pattern of violence. See *Simmons v. South Carolina*, 512 U.S. 154, 162-64 (1994).

(3) As evidenced by the victim’s personal characteristics as an individual human being and the impact of death upon the victims’ family and friends, defendant JOHN TRAVIS MILLNER caused injury, harm, and loss to the victim and the victims’ family and friends. See *Payne v. Tennessee*, 501 U.S. 808, 825-26 (1991).

Respectfully submitted,

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CERTIFICATE OF SERVICE

On October 3, 2013, I electronically filed this motion through the ECF system, which will send an electronic notification to Hon. Patrick Nash, *Attorney for John Travis Millner*

s/ Roger W. West

Assistant United States Attorney