

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 18-00036-01/02-CR-W-BCW

1. SHAWN BURKHALTER,
a/k/a "Deuce," and

2. JOSHUA NESBITT,
a/k/a "T,"

Defendants.

NOTICE OF INTENT TO SEEK DEATH PENALTY

The United States of America, pursuant to Title 18, United States Code, Section 3593(a), notifies the Court and the defendants, Shawn Burkhalter and Joshua Nesbitt, that it believes the circumstances of the offenses charged in Counts Six, Seven, Eight, and Nine of the Superseding Indictment are such that, in the event of a 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 United States will seek the sentence of death for these offenses: causing the death of Danny Lamont Dean through the use of a firearm in furtherance of a drug trafficking offense (Count Six), causing the death of Anthony Dwayne Johnson through the use of a firearm in furtherance of a drug trafficking offense (Count Seven); the murder of Anthony Dwayne Johnson in furtherance of an evidence tampering conspiracy (Count Eight); and the murder of Anthony Dwayne Johnson, a potential witness (Count Nine), all of which carry a possible sentence of death.

I. As to Shawn Burkhalter, the United States proposes to prove the following factors as justifying a sentence of death with regard to Counts Six, Seven, Eight, and Nine (except where other counts are specified):

- A. **Shawn Burkhalter was 18 years of age or older at the time of the offenses (18 U.S.C. § 3591(a)).**
- B. **Statutory Proportional Factors Enumerated Pursuant to Title 18, United States Code, Section 3591(a)(2)(A)-(D)**
- i. Shawn Burkhalter 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 a participant in the offense, and Danny Lamont Dean (Count Six) and Anthony Dwayne Johnson (Counts Seven, Eight, and Nine) died as a direct result of the act [18 U.S.C. § 3591(a)(2)(C)].
 - ii. Shawn Burkhalter 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 Danny Lamont Dean (Count Six) and Anthony Dwayne Johnson (Counts Seven, Eight, and Nine) died as a direct result of the act [18 U.S.C. § 3591(a)(2)(D)].
- C. **Statutory Aggravating Factors Enumerated Pursuant to Title 18, United States Code, Sections 3592(c)(1) through (16)**
- i. Shawn Burkhalter 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 section 921) against another person [18 U.S.C. § 3592(c)(2)].
 - ii. Shawn Burkhalter, in the commission of the offense in Count Six, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to 1 or more persons in addition to the victim of the offense [18 U.S.C. § 3592(c)(5)].
 - iii. Shawn Burkhalter committed the offense in Count Six as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value [18 U.S.C. § 3592(c)(8)].
 - iv. Shawn Burkhalter committed the offense in Counts Seven, Eight, and Nine after substantial planning and premeditation to cause the death of a person or commit an act of terrorism [18 U.S.C. § 3592(c)(9)].
- D. **Other, Non-Statutory Aggravating Factors Enumerated Pursuant to Title 18, United States Code, Sections 3593(a)(2)**
- i. Shawn Burkhalter committed the murder of Anthony Dwayne Johnson to obstruct justice.

- ii. Following Anthony Dwayne Johnson's murder, Burkhalter acted to obstruct justice by threatening to kill witnesses and by attempting to conceal or destroy the firearm used to murder Danny Lamont Dean and Anthony Dwayne Johnson.
- iii. Shawn Burkhalter demonstrated a lack of remorse for the murders of Danny Lamont Dean and Anthony Dwayne Johnson.
- iv. Shawn Burkhalter committed multiple murders.
- v. Shawn Burkhalter caused injury, harm, and loss to Danny Lamont Dean and his family and friends (Count Six); and Anthony Dwayne Johnson and his family and friends (Counts Seven, Eight and Nine). The injury, harm and loss caused by Shawn Burkhalter with respect to each victim is evidenced by the victim's personal characteristics and by the impact of the victim's death upon his or her family and friends.
- vi. Shawn Burkhalter is a continuing danger to the lives and safety of other persons, and he is likely to commit criminal acts of violence in the future as evidenced by:
 - a) a willingness to take human life and a lack of remorse for his acts of violence and attempted acts of violence as demonstrated by statements that he made following these violent acts;
 - b) a demonstrated capacity for orchestrating acts of violence while incarcerated; and
 - c) a low potential for rehabilitation as demonstrated by acts of misconduct while in custody.

II. As to Joshua Nesbitt, the United States proposes to prove the following factors as justifying a sentence of death with regard to Counts Six, Seven, Eight and Nine (except where other counts are specified):

- A. Joshua Nesbitt was 18 years of age or older at the time of the offenses (18 U.S.C. § 3591(a)).**
- B. Statutory Proportional Factors Enumerated Pursuant to Title 18 United States Code, Section 3591(a)(2)(A)-(D)**
 - i. Joshua Nesbitt intentionally killed Danny Lamont Dean (Count Six) and Anthony Dwayne Johnson (Counts Seven, Eight and Nine) [18 U.S.C. § 3591(a)(2)(A)].

- ii. Joshua Nesbitt intentionally inflicted serious bodily injury that resulted in the death of Danny Lamont Dean (Count Six) and Anthony Dwayne Johnson (Counts Seven, Eight and Nine) [18 U.S.C. § 3591(a)(2)(B)].
- iii. Joshua Nesbitt 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 a participant in the offense, and Danny Lamont Dean (Count Six) and Anthony Dwayne Johnson (Counts Seven, Eight and Nine) died as a direct result of the act [18 U.S.C. § 3591(a)(2)(C)].
- iv. Joshua Nesbitt 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 Danny Lamont Dean (Count Six) and Anthony Dwayne Johnson (Counts Seven, Eight and Nine) died as a direct result of the act [18 U.S.C. § 3591(a)(2)(D)].

C. Statutory Aggravating Factors Enumerated Pursuant to Title 18, United States Code, Sections 3592(c)(1) through (16)

- i. Joshua Nesbitt, in the commission of the offense in Count Six, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to 1 or more persons in addition to the victim of the offense [18 U.S.C. § 3592(c)(5)].
- ii. Joshua Nesbitt committed the offense in Count Six as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value [18 U.S.C. § 3592(c)(8)].
- iii. Joshua Nesbitt committed the offense in Counts Seven, Eight and Nine after substantial planning and premeditation to cause the death of a person or commit an act of terrorism [18 U.S.C. § 3592(c)(9)].

D. Other, Non-Statutory Aggravating Factors Enumerated Pursuant to Title 18, United States Code, Sections 3593(a)(2)

- i. Joshua Nesbitt committed the murder of Anthony Dwayne Johnson to obstruct justice.
- ii. Following Anthony Dwayne Johnson's murder, Joshua Nesbitt acted to obstruct justice by threatening to kill witnesses and by attempting to conceal or destroy the firearm used to murder Danny Lamont Dean and Anthony Dwayne Johnson.

- iii. Joshua Nesbitt demonstrated a lack of remorse for the murders of Danny Lamont Dean and Anthony Dwayne Johnson.
- iv. Joshua Nesbitt committed multiple murders.
- v. Joshua Nesbitt caused injury, harm, and loss to Danny Lamont Dean and his family and friends (Count Six); and Anthony Dwayne Johnson and his family and friends (Counts Seven, Eight and Nine). The injury, harm and loss caused by Joshua Nesbitt with respect to each victim is evidenced by the victim's personal characteristics and by the impact of the victim's death upon his or her family and friends.
- vi. Joshua Nesbitt is a continuing danger to the lives and safety of other persons, and he is likely to commit criminal acts of violence in the future as evidenced by:
 - a) a willingness to take human life and a lack of remorse for his acts of violence and attempted acts of violence as demonstrated by statements that he made following these violent acts; and
 - b) a low potential for rehabilitation as demonstrated by acts of misconduct and violence while in custody.
- vii. Joshua Nesbitt has committed other unadjudicated criminal acts, including: assault with a firearm (2013, in Lambert, Mississippi); attempted escape from custody and aiding and abetting a rape (2016, in Jackson County, Missouri); assault in the first degree (2017, in Platte County, Missouri); and two assaults of correctional officers (2017, in Platte County, Missouri).

Respectfully submitted,




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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on July 30, 2019, to the Electronic Filing System (CM/ECF) of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.



Timothy A. Garrison
United States Attorney