

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

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|----------------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 02-05025-01-CR-SW-GAF |
| |) | |
| THOMAS D. SMITH, |) | |
| |) | |
| Defendant. |) | |

**NOTICE OF INTENT
TO SEEK THE DEATH PENALTY**

Comes now the United States of America, by Todd P. Graves, United States Attorney for the Western District of Missouri, and the undersigned Assistant United States Attorney, and pursuant to Title 18, United States Code, Section 3593(a), notifies the Court and the defendant, Thomas D. Smith, that in the event the defendant is convicted of intentionally killing Paris Harbin and Chandy Bresee-Plumb, as alleged in Counts Six and Seven of the Second Superseding Indictment, the government believes a sentence of death is justified, and the government will seek a sentence of death.

If the defendant is convicted, the government will seek to prove the following factors as the basis for imposition of the death penalty.

A. Statutory Proportionality Factors Enumerated Pursuant to Title 18, United States Code, Section 3591(A) through (D)

1. Thomas D. Smith intentionally killed Paris Harbin

[18 U.S.C. § 3591(a)(2)(A)].

2. Thomas D. Smith intentionally killed Chandy Bresee-Plumb [18 U.S.C. § 3591(a)(2)(A)].

3. Thomas D. Smith intentionally participated in an act, contemplating 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 Paris Harbin died as a direct result of the act [18 U.S.C. § 3591(a)(2)(C)].

4. Thomas D. Smith intentionally participated in an act, contemplating 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 Chandy Bresee-Plumb died as a direct result of the act [18 U.S.C. § 3591(a)(2)(C)].

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

1. Thomas D. Smith committed the offenses described in Counts Six and Seven of the Second Superseding Indictment, thereby intentionally killing more than one person in a single criminal episode [18 U.S.C. § 3952C)(16)].

2. Thomas D. Smith committed the offenses described in Counts Six and Seven of the Second Superseding Indictment after substantial planning and premeditation to cause the death of a person [18 U.S.C. § 3592(c)(9)].

3. Thomas D. Smith committed the offenses described in Counts Six and Seven of the Second Superseding Indictment, after having previously been convicted of 2 or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance [18 U.S.C. § 3592(c)(10)].

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

1. Future dangerousness based upon the probability that Thomas D. Smith would commit criminal acts of violence that would constitute a continuing threat to the lives and safety of others. In addition to the capital offenses charged in the Second Superseding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, Thomas D. Smith has engaged in a continuing pattern of violent conduct, has threatened others with violence, and/or has demonstrated lack of remorse, including but not limited to one or more of the following:

- (a) the defendant's participation in the burglary and armed assault upon Crystal Kress, on or about March 26, 1999;
- (b) the defendant's long term involvement with criminal street gangs in the Tulsa, Oklahoma, and Joplin, Missouri, areas;
- (c) the defendant's rape at gunpoint of Alicia Reyes, on or about January 11, 2000;
- (d) the defendant's assault of Lisa House on or about July 12, 2001, at which time House was approximately nine months pregnant;
- (e) the defendant's lack of remorse for the murders of Paris Harbin or Chandy Bresee-Plumb.

2. Thomas D. Smith has previously been convicted of a State felony offense, punishable by a term of imprisonment of more than one year, as follows: on or about May 10, 1994, the defendant was convicted of Inciting a Riot, in the District Court of Tulsa County, Oklahoma, and sentenced to a term of one (1) year imprisonment.

3. Victim impact, as evidenced by the impact of the murder upon the families of Paris Harbin and Chandy Bresee-Plumb due to the victims' personal characteristics. The surviving members of the family have been deprived of their loved ones and the benefit of having their loved ones in their lives.

4. The victims were killed by the defendant in order to protect, enforce and advance the defendant's continued narcotics distribution activities. Said narcotics distribution activities involved the distribution of narcotics to juveniles and the enlistment and use of juveniles in the distribution activities by the defendant.

5. Obstruction of Justice. Thomas Smith engaged in the following conduct to hinder, delay or prevent the communication by the named persons to law enforcement of information relating to the murder of Paris Harbin and Chandy Bresee-Plumb and/or to influence, delay or prevent the named persons from testifying regarding the murders of Paris Harbin and Chandy Bresee-Plumb:

- (a) Victim, Chandy Bresee-Plumb, was killed by the defendant with intent to prevent her communication to a law enforcement officer of information relating to the murder of Paris Harbin;
- (b) On or about November 19, 2000, the defendant contacted cooperating witness Alisha Reyes and threatened to kill her;
- (c) On or about March 10, 2002, cooperating witnesses Joe Johnson and Christal Kress were harassed and threatened by the defendant;
- (d) On or about April 26, 2002, cooperating witness Diamond Bradley was assaulted and, during the course of the assault, received a phone call from the defendant in which the defendant threatened to come to Bradley's house and "take care of him."

Shortly after the assault, Bradley's mother, Vera Simmons, received a phone call from the defendant in which he stated he was on his way to kill Bradley.

Respectfully submitted,

Todd P. Graves
United States Attorney

By /s/

David P. Rush, Bar No. 36013
Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2003, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent e-mail notification of such filing to all CM/ECF participants in this case, and I hereby certify that I have mailed by United States Postal Service the foregoing documents to any non-CM/ECF participants in this case.

/s/ _____
David P. Rush
Assistant United States Attorney