

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA)
)
)
 v.) Criminal No. 3:07CR433
)
)
 DANNY DAMON SMITH,)
 a.k.a. "Duke,")
)
 Defendant)

NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH

Pursuant to the requirements of 18 U.S.C. § 3593(a), the United States hereby gives notice that the circumstances of this case are such that, in the event that the defendant DANNY DAMON SMITH is convicted of a capital offense relating to the death of Fannie Beard, a sentence of death is justified and that the United States will seek the death penalty. Specifically, the United States will seek a sentence of death for Count One of the Indictment, which charges Retaliating against an Informant Resulting in Murder in violation of 18 U.S.C. § 1513(a)(1)(B) and (a)(2)(A), and Count Two, which charges Use and Carry Firearm Causing Death To Another in violation of 18 U.S.C. § 924(j).

AGGRAVATING FACTORS AS TO COUNTS ONE AND TWO

The Government will seek to prove the following aggravating factors as the basis for imposition of the death penalty in relation to Counts One and Two of the Indictment for the killing of Fannie Beard:

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

Pursuant to 18 U.S.C. § 3591(a)(2), the United States will rely on the following proportionality factors to establish the defendant's eligibility for the death penalty:

1. **Intentional Killing:** The defendant intentionally killed Fannie Beard. 18 U.S.C. § 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury:** The defendant intentionally inflicted serious bodily injury that resulted in the death of Fannie Beard. 18 U.S.C. § 3591(a)(2)(B).

3. **Intentional Acts to Take Life:** 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 Fannie Beard died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

4. **Intentional Acts of Violence Creating Grave Risk of Death:** The defendant 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 Fannie Beard died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

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

Pursuant to 18 U.S.C. § 3592(c), the United States will rely on the following statutory aggravating factors as justifying a sentence of death:

1. **Substantial Planning and Premeditation:** The defendant committed the offenses after substantial planning and premeditation to cause the death of a person. 18 U.S.C. §

3592(c)(9).

2. **Conviction for Two Felony Drug Offenses:** The defendant has previously been convicted of 2 or more State offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance, including a conviction on March 14, 2003, for possession with intent to distribute cocaine and on January 29, 2007, for possession with intent to distribute cocaine. 18 U.S.C. § 3592(c)(10).

C. Other, Non-Statutory, Aggravating Factors Identified under 18 U.S.C. §§ 3592(b) and 3593(a)(2)

1. **Obstruction of Justice:** The defendant killed the victim in retaliation for the victim's cooperation with law enforcement.

2. **Membership in a Criminal Street Gang:** The defendant has demonstrated an allegiance to and active membership in the Brickyard Boys, an organization falling within the definition of criminal street gangs set forth in 18 U.S.C. § 521(a).

3. **Bond Status at Time of Offenses:** At the time of the offenses, the defendant was free on bond pending sentencing, following his no contest plea to possession with intent to distribute cocaine in the Richmond Circuit Court on September 15, 2006, case number CR06-F-3350.

4. **Pattern of Prior Convictions For Serious Offenses.** The defendant has engaged in a continuing pattern of serious criminality, including the crimes of which the defendant was previously convicted: possession with the intent to distribute cocaine on March 14, 2003, and of possession with intent to distribute cocaine on January 29, 2007.

5. **Custodial Misconduct:** The defendant has engaged in a continuing pattern of

misconduct while incarcerated, including, but not limited to, the following incidents: Assaulting Another Inmate, Tampering With Jail Security Equipment, Indecent Exposure, and Threatening Bodily Harm to A Staff Member.

The Government further gives notice that in support of imposition of the death penalty on Counts One and Two, 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 Indictment as they relate to the background and character of the defendant, his moral culpability, and the nature and circumstances of the offenses charged in the Indictment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 2008, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF filing system which will then send a notification of such filing (NEF) to counsel of record.

_____/s/_____
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