

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT  
for the  
Northern District of Oklahoma

**FILED**  
DEC 21 2022  
Mark C. McCartt, Clerk  
U.S. DISTRICT COURT

United States of America  
v.

Case No. 22-mj-817-SH

**SAMSON FRYE**

*Defendant(s)*

**CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of on or about November 2018 in the county of Delaware in the Northern District of Oklahoma, the defendant(s) violated:

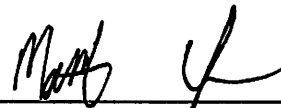
*Code Section*  
18 U.S.C. §§ 1151, 1153  
and 1111(a)

*Offense Description*  
First Degree Felony Murder in Indian Country

This criminal complaint is based on these facts:

See Attached Affidavit

Continued on the attached sheet.



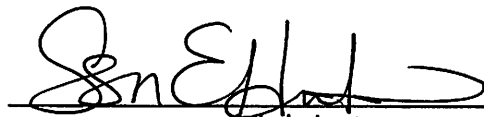
*Complainant's signature*

Special Agent, Matthew B. Upshaw, FBI

*Printed name and title*

Sworn to before me by phone.

Date: 12/21/22



*Judge's signature*

City and state: Tulsa, OK

Susan Hunstman, United States Magistrate Judge

*Printed name and title*

**Affidavit in Support of an Arrest Warrant  
in the Northern District of Oklahoma**

I, Matthew B. Upshaw, being first duly sworn, hereby depose and state as follows:

**Introduction and Agent Background**

1. I, Matthew B. Upshaw, am a Special Agent with the Federal Bureau of Investigation (FBI) and have been since September 2021. I am currently assigned to the Memphis Field Office. I am a federal law enforcement officer within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request a search warrant and make arrests. Since joining the FBI, I have investigated violations of federal law, to include federal violations concerning violent crimes in Indian Country. I have gained experience through training classes and work conducting these types of investigations. Further, as a Federal Agent, I am authorized to investigate violations of laws of the United States and to execute warrants issued under the authority of the United States.

2. The facts in this affidavit come from Your Affiant's training and experience, and information obtained from other agencies and witnesses. This affidavit is intended to show merely that there is sufficient probable cause. I have not included each and every fact known to me concerning this investigation nor have I set forth all of my knowledge about this matter. I have set forth only the facts that I believe are necessary to establish probable cause to for the Criminal Complaint and request for an Arrest Warrant.

3. Based on Your Affiant's training and experience and the facts as set forth in this affidavit, there is probable cause to believe that SAMSON FRYE (DOB xx/xx/1999) has committed the crime of First-Degree Felony Murder in Indian Country in violation of 18 U.S.C. §§ 1151, 1153 and 1111(a).

#### **Summary of the Offense**

4. At all times relevant to this Complaint, there is probable cause to believe that SAMSON FRYE (FRYE) has some quantum of Indian blood. FRYE became an enrolled member of the Muscogee (Creek) Nation on August 2, 2022. FRYE has held himself out to be an Indian, since before the date of the instant offense. Since he was a child, FRYE has received Indian Health Services and other benefits exclusively offered to Native Americans. FRYE's father is an enrolled member of the Muscogee (Creek) Nation. FRYE is identified as Native American by the Oklahoma Department of Corrections. FRYE is currently charged for the underlying offense in Delaware County, Case Number CF-2018-430. A motion to dismiss the case based on the Oklahoma Court of Criminal Appeals determination that FRYE is an Indian is currently pending in Delaware County. *Wadkins v. State*, 2022 OK CR 2 (2022).

5. At all times relevant to this Complaint, the violations described herein occurred in the vicinity 24902 South Pottawatomie Drive in Afton, Delaware County, in the Northern District of Oklahoma, within the bounds of the Cherokee Nation Indian Reservation, which is considered Indian Country as defined in Title 18, United States Code, Section 1151.

6. On or about November 9, 2018, Kingson Frye (KINGSON), an infant approximately 3 months old, was admitted to the Grove Oklahoma Integris Hospital emergency room for difficulty breathing. KINGSON was brought to the emergency room by his biological parents, FRYE and J.H.

7. Medical personnel evaluated KINGSON and observed obvious signs of child abuse. Medical personnel separated KINGSON from his parents and notified law enforcement of the suspected abuse. The Delaware County Sheriff's Office initiated a criminal investigation.

8. Due to KINGSON's condition, life saving measures were taken by Grove Hospital and KINGSON was transported to Saint Francis Children's hospital in Tulsa, Oklahoma. KINGSON was placed on life support until he succumbed to his injuries and was pronounced dead on November 14, 2018, at 2:36 PM.

9. Child Abuse Pediatrician Specialist at Saint Francis, Dr. Sarah Joanne Passmore filed a medical report in which she detailed KINGSON's injuries as "cerebral edema, subdural hemorrhages, retinal hemorrhages, bruising and multiple fractures from abusive head trauma/child physical abuse." Dr. Passmore determined the mechanism for this type of head injury was caused by a shaking (acceleration/deceleration) event with or without impact. The medical report also stated KINGSON had multiple rib fractures of varying ages.

10. During an interview with the Delaware County Sheriff's Office, Dr. Passmore stated the injuries KINGSON sustained occurred sometime within 24 hours of his admission to the Grove Integris Hospital. Dr. Passmore indicated babies

are frequently dropped from normal distances such as from changing tables and arm height, but KINGSON's injuries were inconsistent with normal, accidental drops or falls.

11. On November 13, 2018, FRYE was interviewed by law enforcement officers post-Miranda. FRYE said he heard J.H. shaking KINGSON at their residence a few days before November 9, 2018. FRYE admitted he failed to report or stop this abuse. FRYE stated that on November 9, 2018, FRYE woke up to J.H. yelling at KINGSTON for crying. FRYE took KINGSON outside and put him on a toolbox to let him cry himself back to sleep. FRYE claimed that KINGSON fell backwards headfirst off the toolbox approximately three feet onto the ground. FRYE agreed that the fall caused the head injuries KINGSON sustained.

12. On November 13, 2018, J.H. was interviewed post-Miranda. J.H. denied the allegations and denied having any knowledge of child abuse against KINGSON. During their interviews both FRYE and J.H. said they had not left home since November 6, 2018. FRYE and J.H. also indicated that they were in their room asleep with KINGSON during the night before KINGSON was admitted to the hospital. Based on FRYE and J.H. own admissions, they were the only people who had contact with and were directly responsible for the care of KINGSON during the 24 hours before KINGSON was taken to the emergency room.

13. Medical Examiner Dr. Joshua Lanter examined KINGSON after his death and listed the probable cause of death as Craniocerebral injuries due to blunt trauma of the head and determined the manner of death as a homicide.

**Relevant Statutes**

**18 U.S.C. § 1151  
Provides**

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian Country” as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether or without the limits of the state and (c) all Indian allotments the Indian titles to which have not been extinguished, including the rights-of-way running through the same.

**18 U.S.C. § 1153  
Provides**

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

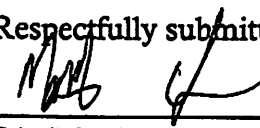
**18 U.S.C. § 1111(a)  
Provides**

a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree.

**Conclusion**

Based on the information set forth in this affidavit, I submit there is probable cause to believe that SAMSON FRYE has committed the crime of First-Degree Felony Murder in Indian Country in violation of 18 U.S.C. §§ 1151, 1153 and 1111(a).

Respectfully submitted,

  
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SA, Matthew B. Upshaw, FBI

*by telephone*

Subscribed and sworn to before me on December 21, 2022

  
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UNITED STATES MAGISTRATE JUDGE  
SUSAN E. HUNTSMAN