

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Daniel D. Hall, Circuit Court Judge

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AUG 26 2015

S.C. Supreme Court

KENDRICK LITTLEJOHN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000772

773

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2) COURT OF GENERAL SESSIONS
3) 2010-GS-23-6449, 6450
4)

4 State of South Carolina) TRANSCRIPT OF RECORD

5 vs)

6 Kendrick Littlejohn)
7 -----)

8 April 26, 2011 - Day 1
9 Greenville, South Carolina

9 B E F O R E:

10 THE HONORABLE EDWARD MILLER, Judge

11 A P P E A R A N C E S:

12 KATRYNA SALISBURY, Esquire
13 Assistant Solicitor
14 Attorney for the State

15 DARREN HALEY, Esquire
16 Attorney for the Defendant

17 Caroline Hiskell
18 Circuit Court Reporter
19
20
21
22
23
24
25

I N D E X

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Matthew Marlon	59	76		
Shawn Stallo	81	116	121	
Jay Vess	126	130		
Troy Mitchell	131	137		

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P R O C E E D I N G S

THE BAILIFF: All rise, the Honorable Edward C. Miller presiding.

THE COURT: Thanks. Please be seated.

Anything we can do before this -- we're waiting on the jury panel.

MS. SALISBURY: Your Honor, there's the State's Motion In Limine regarding the evidence of this defendant's gang affiliation. I emailed a file copy of that motion to Your Honor last week as well as Mr. Haley in anticipation of the defendant's objection to the State's eliciting that kind of testimony. I prefer to address that motion and that issue before we get started.

THE COURT: Well, I hadn't heard an objection to it.

MR. HALEY: If it please the Court, Your Honor. I received this motion Thursday evening, Thursday night. I had until the close on Friday to do my research. My first motion to be to ask for a continuance to allow me a chance to do the research and bring in my own experts with regards to whatever the alleged activity, signs and behavior which the solicitor intends to elicit and then speculate or project that there was gang affiliation and gang involvement.

If the Court is not inclined to grant the

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1 continuance to thoroughly prepare and bring in experts to
2 address these questions, then I would object to the motion
3 itself and the evidence coming into court. And I would
4 further ask the Court to instruct the solicitor to limit
5 any testimony to the relevant facts of this case, no prior
6 bad acts, no gang affiliation.

7 In order for the solicitor to bring in prior
8 bad acts, they have to show there's a common mode or
9 scheme that has been used continuously, that this prior
10 bad act is a pattern used for identity of person or
11 identity based upon the common scheme or if there is a
12 repetitive pattern of conduct, and the charge we're here
13 for today is a lynching assault and battery with intent to
14 kill. I believe the solicitor is attempting to elicit
15 testimony regarding people he's around. They wish to
16 elicit possibly he had a bandanna or a tee shirt on and
17 that there was a robbery ---

18 THE COURT: You're objecting to it, right?

19 MR. HALEY: Yes, to the entire contents of
20 the gang affiliation as well as to the -- I believe it's a
21 two-part motion -- to admit gang related information as
22 well as prior bad acts. The only prior bad act I see ---

23 THE COURT: Well, let's find out what it is
24 she wants to put up. I don't know what it is.

25 MS. SALISBURY: Judge, would you like me to

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1 proffer that testimony?

2 THE COURT: Yeah, let's find out what you're
3 talking about.

4 MS. SALISBURY: Your Honor, the State calls
5 Investigator Brandon Brown.

6 THE CLERK: Investigator Brown, please place
7 your left hand on the Bible and raise your right.

8 BRANDON BROWN, having been duly sworn,
9 testified as follows:

10 Thank you. Please be seated. State your
11 full name for the record.

12 THE WITNESS: Brandon Brown.

13 DIRECT EXAMINATION

14 BY MS. SALISBURY:

15 Q. Investigator Brown, where are you employed?

16 A. Greenville County Sheriff's Office.

17 Q. And what's your capacity at the Sheriff's Office?

18 A. As a gang investigator assigned within Narcotics.

19 Q. What are your duties and responsibilities as a
20 gang investigator at the Sheriff's Office?

21 A. My day to day duties are to both interact with
22 gang members on the street, members that are locked up,
23 members that are coming to us willingly to either help
24 themselves get out of the gang or be involved in some
25 capacity ridding the community and gangs.

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1 Q. How long have you been performing that particular
2 function for the Sheriff's Office?

3 A. This summer will be six years.

4 Q. How long have you been in law enforcement outside
5 of your particular experience as a gang investigator?

6 A. Just over eight-and-a-half.

7 Q. Now, what education, specifically, what training
8 have you had with regard to gang recognition and
9 identification to prepare you to perform those duties for
10 the Sheriff's Office?

11 A. I had certified training equivalent to just over
12 298 hours of certified state and nationally accredited
13 classes and various different gang awareness classes. I
14 also do various different teaching aspects where I
15 training local law enforcement, state law enforcement
16 throughout the state and sit on a national advisory board.

17 Q. So in addition to your daily interaction with the
18 community, you also participate in teaching the community
19 about things as well as undergoing own training with
20 regard to ---

21 MR. HALEY: Your Honor, if I may, I don't
22 object to the investigator and his qualifications. I
23 object to the relevancy to the case.

24 THE COURT: Well, she's trying to establish
25 him as an expert, wants him to be qualified as an expert.

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1 Do you object to that? In gang -- what do you want him to
2 be qualified for?

3 MS. SALISBURY: Gang affiliation recognition.
4 Do you object to that?

5 MR. HALEY: No.

6 MS. SALISBURY: Okay. I'll skip forward,
7 Judge.

8 BY MS. SALISBURY:

9 Q. Investigator, is it part of your job to stay
10 current on gang trends including robberies, alliances,
11 customs, habits, those general components of gang culture?

12 A. Yes, ma'am, it is.

13 Q. How do you do that?

14 A. Through individuals on the street, dealing with
15 them on a day to day basis, finding out what kind of
16 feuds are going on throughout the county and throughout
17 the state. Those feuds directly spill over into what's
18 going on both inside the jails and on the streets, so it
19 requires a mixture of both, but those feuds lead us to
20 various different crimes that are committed in the street.

21 Q. Now, how frequently do you interact with gang
22 members yourself, personally?

23 A. During a work-week almost on a daily basis.

24 Q. In your experience, have you found gang members
25 to be forthcoming with you concerning information

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1 regarding either their own affiliation or the activities
2 of the gang for which you suspect they are affiliated?

3 A. On most occasions, yes, with me personally,
4 typically, not with most law enforcement.

5 Q. Okay. Are you investigations as it relates to
6 the Sheriff's Office related exclusively to members of
7 African American street gangs?

8 A. No, ma'am. We cover everything from white
9 supremacy to socialist movements.

10 Q. Have you ever had an opportunity to interact with
11 members of the blood street gang?

12 A. Yes, ma'am, I have.

13 Q. How frequently?

14 A. That is one of the most prominent street gangs we
15 have in the Greenville area so therefore it is one of the
16 major gangs we deal with on a day to day basis.

17 Q. Now, based on your experience, your training and
18 what you've learned about gangs through the course of your
19 work at the Sheriff's Office, how would you define a
20 criminal street gang?

21 A. A criminal street we use here in the County the
22 same definition defined by 16-8-240 set by the State of
23 South Carolina as defined as one or more individuals
24 working together to commit a criminal act.

25 Q. Based on what you've learned through the course

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1 of your experience, how does someone become involved in a
2 gang?

3 A. There's various different matters, however, the
4 most common would be putting in work which would be
5 committing a criminal act on behalf of the gang or in
6 furtherance of the gang, as well as what they call a beat-
7 in.

8 Q. Are you familiar with the concept of blood in
9 blood out?

10 A. Yes, ma'am, that's the most common identifier for
11 more specifically the bloods, using the word blood,
12 however, most gangs do adopt that philosophy.

13 Q. What does it mean?

14 A. It means once you're in, there is no getting out
15 unless you're bleeding to get out.

16 Q. Once in, Investigator Brown, do gang members
17 typically merely quit or walk away from the gang?

18 A. It's been my occurrence with most investigations
19 that gang members once in and truly involved in the gang
20 do not leave just up and run on a whim.

21 Q. With that in mind, to what extent do you
22 understand the concepts of respect and loyalty to have
23 special significance with regard to those involved in gang
24 culture?

25 A. Respect and loyalty is the main thing that most

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1 gangs thrive on that is where the set a fear in the
2 community therefore they demand respect. That respect
3 then builds the fear of the community around the gang. If
4 it helps to make it a little bit more clear, that respect
5 is the sole purpose of the gang and what they feed off of.
6 All criminal activity thrives off of the respect.

7 Q. How does a member gain respect or prestige?

8 A. Typically through criminal acts by instilling the
9 fear in the community. The more criminal acts they
10 commit, the more reputation they get on the street.

11 Q. I believe you've explained what it means to put
12 in work, but in practice what function does that
13 particular behavior have as it relates to the defendant?

14 MR. HALEY: Your Honor, again, my objection
15 is to the relevance of this line of testimony.

16 THE COURT: I understand. Mr. Haley, she's
17 making a proffer. When she's done with her proffer, then
18 we'll talk about.

19 Go ahead.

20 MR. HALEY: Your Honor, again, I'm not sure
21 where she's going. She's given us a history lesson on
22 gangs, but I guess I want to make sure she understood my
23 specific objection is to the relevance to this case. I
24 don't disagree with her.

25 THE COURT: Okay. Well, let her make her

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1 proffer.

2 Go ahead.

3 BY MS. SALISBURY:

4 Q. Investigator Brown, I believe my question was to
5 what extent does the concept of putting in work have
6 significance for a person's -- how it affects that gaining
7 of respect and prestige inside the gang?

8 A. The term putting in work specifically as it deals
9 with street gangs is a term used by the criminal activity
10 that is done by specific gang members for that gang; in
11 reference, armed robbery, lynching, various narcotics
12 transactions, those various different crimes then lead to
13 the reputation they earn on the street which then in turn
14 gives them respect throughout the community.

15 Q. Now, does territory have any special significance
16 in gang culture?

17 A. It does for the most part but it's not as defined
18 as it is in other parts of the country here in Greenville.

19 Q. What does that mean?

20 A. We have specific neighborhoods that are more
21 often than not gang related to a specific gang; however,
22 they are not lines drawn in the sand as in California
23 where the entire east side or west side of Greenville
24 would follow that same structure.

25 Q. Generally speaking, how do gangs generally

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1 identify themselves?

2 A. There are common identifies meaning most commonly
3 by color, by the color of their shirt, color of their
4 shoes, color flags, the various different colors
5 throughout the various different gangs, bloods being red,
6 blue being Crips, so forth and so on.

7 Q. You mentioned the color red with regard to
8 bloods, what are the other common identifiers that you've
9 been trained to recognize with regard to members of the
10 blood street gang?

11 A. Members of the bloods pretty much up and down the
12 east coast, it would fall underneath the No. 5, five-point
13 star, the color red.

14 Q. Along that same lines, Investigator, how do
15 members of a gang communicate with one another?

16 A. Various different hand signals and hand gestures.

17 Q. Do gang members ever use coded communication?

18 A. Absolutely.

19 Q. Why not plain english?

20 A. For the same reason law enforcement doesn't use
21 plain english, they don't want the general public to know
22 what's being said whether it being an act of violence
23 they're wanting occurred or specific criminal act.

24 Q. Do you know whether street gangs adopt a
25 hierarchy or a rank structure?

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1 A. Yes, they do.

2 Q. How does a member of a gang move up in the ranks?

3 A. Through their reputation.

4 Q. Now, Investigator Brown, based on your training
5 and experience, why do individuals join gangs?

6 A. For simply the reputation on the street which is
7 very important to a lot of the individuals in street
8 gangs, however, they also have begun to become a lot more
9 bonded with the feeling of belonging, needing something to
10 belong to.

11 Q. So what's the objective upon joining?

12 A. The objective is for the reputation.

13 Q. What does the member of a gang have to gain by
14 participating in the group?

15 A. Street will, they become more popular throughout
16 the community. They become more feared throughout the
17 community, which in essence gives them that self of
18 belonging that they need which is why the join.

19 Q. Is there a base level of pecuniary gangness in
20 associating with gang crime?

21 A. Such as?

22 Q. The proceed for a robbery, for example.

23 A. Absolutely. There would be various difference --
24 as you go through the rank structure within street gange,
25 that rank structure would be basically how new members put

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1 in work to get involved in the gang, older members make
2 money off the newer members.

3 Q. So if those are the overwhelming objectives of
4 the criminal gang, to enhance reputation, benefit in some
5 financial way or generally speaking maintain control over
6 a community, how do members of a gang go about achieving
7 those particular objectives?

8 A. Through various different products, violent acts,
9 robberies. Those violent crimes and licks as they call
10 them are what gives that individual as well as his gang
11 the reputation that is desired throughout the community.
12 Once that reputation is achieved throughout the community,
13 that fear is instilled in the civilian community, if you
14 will, therefore they are allowed to much more freely
15 commit those criminal acts in those communities because
16 the community is scared to tell on them.

17 Q. Do gang members typically act in concert to
18 achieve those objectives?

19 A. Yes, they do.

20 Q. Now, do you know whether street gangs operate in
21 specific geographical areas? I know you mentioned that
22 there was some fluidity to territory, but do you know,
23 based on your experience in Greenville, whether gangs
24 operate in geographical areas inside the counties?

25 A. Yes, I do.

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1 Q. Do you know whether the Bloods occupy specific
2 territories inside Greenville County?

3 A. Yes, I do.

4 Q. Is Dixie Estates included in that territory?

5 A. Yes, it is.

6 Q. To what extent do you think that street gangs
7 have a connection to weapons specifically guns?

8 A. Weapons are one of the most common tools used on
9 most of the violent crimes commit throughout gangs.

10 Q. Now, Investigator Brown, have you had an
11 opportunity to form an opinion as to whether this
12 defendant is a member of a street gang?

13 A. Yes, I have.

14 Q. How?

15 A. My personal contact with this defendant.

16 Q. What specific interactions with this defendant
17 have you based your opinion on?

18 A. Based on the frequency within an area that is
19 affected by the gang meaning the Dixie Estates area,
20 several areas within the southern part of Greenville
21 County as well as common identifies meaning a five-point
22 start tattoo on his chest, as well as being seen with red
23 bandannas in close proximity to him, as well as other gang
24 members that are well-known and self-documented or self-
25 admitted gang members of the Bloods.

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Brandon Brown - Cross-Examination

1 Q. I didn't catch that last part. What about the
2 other people?

3 A. Found on numerous occasions with other members of
4 the Bloods that are self-admitted.

5 Q. And based on all of those factors and all of
6 those observations that you made specifically to this
7 defendant, what criminal street gang do you believe this
8 defendant to be a member?

9 A. The Bloods.

10 MS. SALISBURY: Your Honor, that would be the
11 evidence proffered by Investigator Brown with regard to
12 defendant's gang affiliation. That's the substance of the
13 testimony that would support the State's motion. If you'd
14 like argument on the issues, I could ---

15 THE COURT: Well, I want to see if Mr. Haley
16 wants to cross-examine him.

17 MR. HALEY: Yes, sir, Your Honor. If it
18 please the Court.

19 CROSS-EXAMINATION

20 BY MR. HALEY:

21 Q. Investigator Brown, does everybody who lives in
22 Dixie Estates participates in a gang?

23 A. No, sir.

24 Q. People that participate in a gang don't
25 necessarily live in Dixie Estates?

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Brandon Brown - Cross-Examination

1 A. Yes, sir.

2 Q. And if this defendant lives in Dixie Estates --
3 strike that. If a person lives in a neighborhood are they
4 more likely than not hang with the people in that
5 neighborhood because they grew up with them?

6 A. I don't follow you on that. I'm sorry.

7 Q. If a person lives in a particular neighborhood
8 and probably has a house there and he lives in the house
9 with his mother grew up in that neighborhood, would that
10 person normally assimilate and associate with the people
11 in the neighborhood that he grew up with?

12 A. I think it's safe to say, yes, sir.

13 Q. You've testified that you've seen this gentleman
14 with people who have admitted to you that they are in the
15 Bloods; is that correct?

16 A. Yes, sir.

17 Q. He's never admitted to you that he's in the
18 Bloods?

19 A. No, sir.

20 Q. He has a tattoo on his chest that is a star; is
21 that correct?

22 A. Yes, sir.

23 Q. A five-point star?

24 A. Yes, sir.

25 Q. Everybody that has a five-point star are not

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Brandon Brown - Cross-Examination

1 members of the Bloods; is that correct?

2 A. That would be correct.

3 Q. In his five-point star he has his brother's name
4 that says "rest in peace," are you aware of that?

5 A. No, sir, I am not.

6 Q. So you've seen it or you've heard about the
7 tattoo?

8 A. I've seen the tattoo.

9 Q. But you didn't see ---

10 A. I know it's got letters in it. What it says, I
11 couldn't tell you?

12 Q. You've never seen him with a red bandanna on; is
13 that correct? You've seen him within proximity.

14 A. Not to the best of my knowledge, no, sir.

15 Q. And if one is in the proximity of the red
16 bandanna, that does not make them a Blood; is that
17 correct?

18 A. That is correct.

19 Q. So let me recall your testimony. If you live in
20 Dixie Estates, that does not necessarily make you a Blood.
21 If you hang with people who are Bloods, that doesn't
22 automatically make you a Blood, and if you have a five-
23 point star on your chest, that doesn't automatically make
24 you a Blood. Am I accurate in those assumptions?

25 A. Yes, sir, you are.

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Brandon Brown - Cross-Examination

1 Q. Did the Bloods to your knowledge have anything to
2 do with the crimes that we are before the Court today or
3 do you know?

4 A. Do I know?

5 Q. Yes.

6 A. If the Bloods have anything to do with the crime
7 today?

8 Q. Yes.

9 A. Considering the fact that the defendant in
10 question is a Blood, yes, it does affect directly the
11 reputation of the Bloods within Dixie Estates.

12 Q. But you don't know if it was ordered by the
13 Bloods?

14 A. No, sir.

15 Q. You don't know if the defendant is in the Bloods.
16 You said he associates and assimilates with people; is
17 that correct?

18 A. He meets State definition for documentation as a
19 Blood member.

20 Q. No, there is in the State Statute that says five
21 or more people sitting together to commit a crime, that's
22 not in the State Statute, is it?

23 A. It doesn't say Bloods, no, sir.

24 Q. So, again, he doesn't meet the State definition
25 of what a Blood is, he meets the State definition of what

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Brandon Brown - Redirect Examination

1 a gang is; is that correct?

2 A. It is, sir.

3 Q. And you do agree with me that you should be
4 accurate?

5 A. Yes, sir.

6 Q. So, again, you are saying he's in the Bloods, but
7 he's never said that to you.

8 A. Yes, sir.

9 Q. And you based that on just some factors that you
10 have learned school; is that correct?

11 A. Yes, sir.

12 Q. And when I asked if the Bloods had anything to do
13 with the charge that we're before the Court, you said,
14 yes, because you think he is a member, correct?

15 A. Yes, sir.

16 Q. And that is the only basis for you to say that
17 there is any affiliation or involvement in these charges
18 by a gang; is that correct?

19 A. Based on the area in which the incident occurred,
20 the defendant being a documented member of the Bloods, as
21 well as possibly other suspects involved also being self-
22 admitted members of the Bloods.

23 MR. HALEY: Judge, I have no further
24 questions.

25 THE COURT: You said that he matched the

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Brandon Brown - Redirect Examination

1 definition of being a Blood -- something like that; is
2 that right?

3 THE WITNESS: Yes, sir. There's a State
4 definition that we document gang members, of course, by
5 gang in correction to what the defense attorney said
6 earlier. They have to meet certain criteria if they are
7 not self-admitted which the defendant does meet all
8 criteria.

9 THE COURT: You're saying the Statutory
10 definition?

11 THE WITNESS: Yes, sir.

12 MS. SALISBURY: Your Honor, if I may clarify.
13 I believe there is a little bit of confusion here.
14 There's a Statute that defines what a gang is.

15 THE COURT: Yeah.

16 MS. SALISBURY: According to the Criminal
17 Gang Prevention Act. This investigator has relied on some
18 factors that are obviously not mentioned in that Statute.
19 I think maybe that's where there's some confusion about
20 where this information or the basis of his opinion is
21 coming from.

22 REDIRECT EXAMINATION

23 BY MS. SALISBURY:

24 Q. So in that respect, could you elaborate on where
25 those factors come from? What makes you think ---

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1 A. The factors that we use are, in correction to my
2 statement, what are used for Violent Gang
3 Territorial File through NCIC. There are certain criteria
4 that each individual has to commit -- or has to meet in
5 order for us to put them on that file and be able to
6 document them. So, I guess in correction, that's no
7 actually State driven. The definition of a gang is State
8 driven.

9 THE COURT: Okay. Is it against the law to
10 be member of a gang?

11 THE WITNESS: No, sir, it's not.

12 THE COURT: Y'all got anything other
13 questions.

14 MS. SALISBURY: Nothing from the State, Your
15 Honor.

16 MR. HALEY: None from the defense.

17 THE COURT: Y'all got anything else?

18 MS.. SALISBURY: Without going through sort of
19 a mini trial ---

20 THE COURT: Wait a minute. Anything you want
21 to proffer on this issue?

22 MR. HALEY: No, sir, Your Honor.

23 THE COURT: All right. Yes, ma'am.

24 MS. SALISBURY: There are some other
25 witnesses that would give information about this piece of

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1 evidence as it relates to every other component of the
2 case, and as I described in the motion, the defendant's
3 affiliation, that component, that piece of evidence, is
4 interwoven into every component of the State's case.

5 The victim in this case, Agent Morlan
6 interacted with the defendant and believed the defendant
7 to be a gang member. He relayed that information to Agent
8 Stallo. Agent Stallo interacted with the defendant and
9 believed the defendant to be a gang member. They then
10 contacted Investigator Brown who otherwise had no
11 involvement in the case until he was needed to identify
12 who the defendant was.

13 His involvement and the extent to which he
14 assisted these investigators in identifying the defendant
15 is a necessary component of the jury's ability to evaluate
16 the credibility of the identification.

17 THE COURT: Why is it necessary for all this
18 gang membership to be a part of that?

19 MS. SALISBURY: Judge, I'd say at the outset
20 at the very very base level, it's necessary for the State
21 to meet the elements of the charges.

22 THE COURT: Wait a minute. Ms. Salisbury,
23 you're saying you couldn't have a lynching or assault and
24 battery with intent to kill from people who are not in
25 gangs?

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1 MS. SALISBURY: Absolutely not, Judge, but I
2 believe in order for me to demonstrate that there is a
3 connection between the people that participated in the
4 lynching, the group activity -- if the evidence were that
5 the defendants were all Boy Scouts or members of the same
6 blue grass band, that connection is what's necessary for
7 the jury to evaluate whether there is sufficient
8 premeditated intent for this group to have combined
9 together for the purpose of committing a violent injury.

10 Without knowledge of that groups connection,
11 the jury has no basis to conclude that the group acted any
12 other way than simply spontaneously.

13 THE COURT: So you're saying that unless
14 you're a member of some organization you can't be involved
15 in a lynching?

16 MS. SALISBURY: No, Judge, that's not what
17 I'm saying. What I'm saying is that without more the
18 State is required to rely exclusively on circumstantial
19 evidence to demonstrate to this jury that the group acted
20 in concert, acted together, acted for the shared
21 premeditated purpose of committing an act of violent
22 injury.

23 Unless the jury hears what that evidence is,
24 in this case it happens to be that they're connected by
25 that same five or all eight members of the Bloods, then

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1 the jury doesn't have a basis on which to formulate the
2 opinion and evaluate the evidence or determine whether
3 this group was acting together.

4 THE COURT: Well, couldn't they do that based
5 on what happened out there?

6 MS. SALISBURY: I don't believe so, Judge.
7 I've got ---

8 THE COURT: Well, then maybe it's not the
9 correct offense. I'm sorry. Anything you want to say?

10 MS. SALISBURY: That's the evidence that the
11 State has.

12 THE COURT: Let me just say that it is -- any
13 argument that you want to make, Mr. Haley?

14 MR. HALEY: No, Judge. You're more
15 experienced than -- Judge, I tried a case three weeks ago
16 in Lawrence County. I am very familiar with the Statute.
17 Two or more people acting together that causes the act
18 with premeditation. Premeditation and members of gangs
19 are mutually exclusive.

20 THE COURT: Well, I don't agree with that. I
21 don't think premeditation has to exist for any appreciable
22 length of time, I think it can be fairly spontaneous.

23 MR. HALEY: That's what I'm saying, Judge.
24 Premeditated crimes happen all the time without an
25 affiliation with a gang.

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1 THE COURT: Oh, yeah.

2 MR. HALEY: So the evidence is the evidence
3 and bringing in all this talk about gangs all that's going
4 to do is inflame the jury. That's the bottom line. She
5 so much as admitted I think this is an essential element
6 to the jury to understand what happened out there if I say
7 gang. Judge, the facts are the facts and it does not
8 require bringing in an hypothesis of all of this gang
9 activities, which is not element to this crime.

10 THE COURT: Well, it's a real interesting
11 question and, of course, it's very precedent right now. I
12 can't be, to be honest, based on what I've heard -- I've
13 qualified Investigator Brown as an expert before and you
14 know that.

15 MS. SALISBURY: Well, Your Honor, if you're
16 not persuaded by the State's argument with regard to it
17 being an element of the crimes that the State has to
18 prove, that's why there's a second part of the motion
19 about it being admissible under Lyles.

20 THE COURT: Tell me that.

21 MS. SALISBURY: To the extent the State is
22 allowed to offer evidence of defendant's prior bad acts,
23 in this circumstance, they could be appropriately
24 characterized as, which Brandon Brown testified ---

25 THE COURT: Well, what I read in your

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1 memorandum, the bad acts that you are pushing are simply
2 there to bolster Investigator Brown's opinion that he's a
3 member of a gang. What do they have to do with this
4 particular incident? I mean -- here's my problem -- and
5 everybody is aware of and concerned about gangs. Okay.
6 Their influence and their impact and all of that, but
7 what's imputed from this testimony is that it doesn't
8 matter which particular gang member is involved in which
9 particular criminal act, you're going to take that, the
10 gang activity, and impose it on particular defendant in
11 this case, and that's not appropriate.

12 MS. SALISBURY: I can see the Court's concern
13 if those were the facts that we were dealing with. The
14 difference, I think, from Your Honor's concern versus the
15 evidence that the State will present is there will be
16 testimony that physically places this defendant at the
17 scene, not speculation that the defendant is simply
18 responsibly because he associates with that same group.

19 But as I mentioned and I touched on briefly,
20 that evidence is powerful in a few different ways. I
21 think the most compelling of which is to allow the jury to
22 evaluate the identification of the defendant. As I
23 mentioned Investigator Brown had no roll in this case
24 until he was asked to assist.

25 THE COURT: It's not a problem that he

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1 testified about the identity. That happens all the time.
2 People go down and look through the mug shot books.
3 That's an independent -- they give a description and then
4 and you put together a photo line-up, all that's fine. I
5 don't have a problem with that, but you got to be careful
6 how far you go with this gang evidence.

7 MS. SALISBURY: To what extent is Your Honor
8 comfortable with me talking about that component of the
9 investigation?

10 THE COURT: Well, I don't know until I hear
11 it. How am I going to be able to judge that? You've been
12 living with this case since it came into your office. You
13 know it backwards and forwards. This is the first time
14 I've heard it, so I don't know what they're going to
15 testify to. But in order to -- I think what you're trying
16 to do and I appreciate the aggressive nature of your
17 prosecution, but you're trying to put the Bloods on trial.
18 Maybe that should occur, but that would usually occur in a
19 federal court unde a RICO case.

20 This guy is on trial for his conduct, so
21 evidence of his gang affiliation is appropriate if it
22 relates to this particular matter, and there's no clear
23 line in the sand as to where you have to stop that. I
24 mean you've taken it to the logical limit.

25 MS. SALISBURY: In that respect, I'll

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1 instruct my witnesses to tread carefully if you want me to
2 advise me at some point during the trial if we're
3 preparing to embark on ---

4 THE COURT: I think that would wise, yeah. I
5 thank you for alerting us. One thing that concerned me
6 was you said whatever the defendant's actual objective in
7 attacking Agent Morlan, evidence of his Blood affiliation
8 allows a jury to conclude that it is more probable than
9 not that the defendant did plan the attack. That's not
10 the standard in General Sessions court.

11 MS. SALISBURY: No, sir, it's not. But it is
12 the standard with regard to the evidence being relevant.

13 THE COURT: Well, before the jury hears the
14 evidence, it needs to pass muster. I certainly understand
15 it would help your case if you were able to do all that,
16 but I think it might be volatile of the rules.

17 MS. SALISBURY: I'll tell you right now,
18 Judge, my very first witness, there are some components of
19 his testimony that include references of what he suspects
20 that include gang affiliation. I would hate to start the
21 trial and send the jury right back out.

22 THE COURT: I understand and we all know that
23 law enforcement is investigating gang activity, okay.
24 Because quite often, people who commit crimes are
25 affiliated with gangs, but it's the conduct of the

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1 individual that's important and relevant. So if they're
2 out there and investigating gang activity, but as to what
3 happened is what y'all allege this gentleman did. It's
4 sort of a nebulous concept.

5 Anything else?

6 MR. HALEY: Your Honor, I'm still not clear
7 what the solicitor's motion is in wanting to introduce
8 prior bad acts. Normally those motions come with a
9 specific litany of acts that they wish to admit and the
10 only thing I saw in the body of the memorandum or the
11 motion was the prior robbery.

12 THE COURT: Well, that's sort of extrapolated
13 from that she wanted to introduce that to show that he was
14 climbing the ranks in the Bloods and that that was part of
15 the --- am I right?

16 MS. SALISBURY: Honestly, Your Honor, it has
17 a few different valuable elements. The primary of those
18 being that it places him in a neighborhood that
19 investigators know to be a Blood neighborhood, but more
20 than that it's the exact scene of this crime.

21 It's quite plausible that the defendant may
22 argue in his defense that he was not present during this
23 crime. In that anticipation of that defense, I'm prepared
24 to elicit testimony that the defendant frequents that
25 neighborhood, and example of which the crime that he

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1 committed in the very same neighborhood in 2007.

2 THE COURT: You know, you're really getting
3 into character evidence at that point.

4 MS. SALISBURY: It's certainly not offered to
5 prove any component of the defendant's character. It
6 certainly not offered to demonstrate or to ask this jury
7 to convict simply because the defendant is the kind of
8 person to commit this offense, but rather that the
9 defendant -- they can evaluate the State's case, the
10 testimony offered by the State's witnesses about whether
11 the defendant was actually present, whether the defendant
12 is the person these investigators say he is, and actually
13 committed the crimes as they say he did. In anticipation
14 of the defendant suggesting that he was at that scene and
15 did not commit these crimes, evidence of the fact that he
16 frequents that neighborhood and that he committed a crime
17 in that neighborhood in 2007 is relevant.

18 THE COURT: It might be relevant, but it also
19 might be volatile of certain other rules with respect to
20 the commission of a crime. As you said, you're
21 anticipating a defense. I don't know what the defense is
22 going to be, we just got to wait and see what happens.

23 MS. SALISBURY: I can certainly save that
24 evidence for reply, Your Honor.

25 THE COURT: Well, let's do that. Any other

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1 motions?

2 MS. SALISBURY: None from the State, Your
3 Honor.

4 THE COURT: How about you, Mr. Haley? Do you
5 have a witness list?

6 MR. HALEY: Judge, if anyone testifies, it
7 would just be the defendant. I guess, I do have a
8 question for clarification to make sure I'm on the same
9 page. The testimony, whatever it may be, with regards to
10 any gang affiliations and either gang members activities
11 has that been ruled inadmissible but if it's relevant, it
12 comes in through other witnesses or you haven't ruled?
13 And I guess the reason that I'm asking is because if the
14 Court is inclined in any point to let in any reference to
15 gang activity and the historical evidence of gang activity
16 and it goes to the credibility of why the gang would do
17 X,Y,Z, then I would renew my motion for a continuance to
18 allow me an opportunity to actually prepare research and
19 perhaps bring in my own defense expert to rebut and
20 dispute whatever the historical evidence would be as to
21 the affiliations with the Bloods and modus operandi and on
22 the issues I think was a part of the motion. I'm not sure
23 how that was handled, so if so, then I would just renew my
24 motion.

25 THE COURT: Well, Motions in Limine are not

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1 binding, you know. I can't give you an advisory opinion.
2 When the jury is sitting in the box, if you make an
3 objection to something inappropriate, then we will deal
4 with it at that time. If the State consents to a
5 continuance, I guess I can do it.

6 MS. SALISBURY: No, Judge.

7 THE COURT: Everybody is here at the table,
8 let's go ahead and eat.

9 Any voir dire that y'all want?

10 MS. SALISBURY: Nothing from the State, Your
11 Honor.

12 MR. HALEY: Two questions I would ask, if any
13 member has been a victim of a violent crime and any ---

14 THE COURT: Similar offense, I'll ask that.

15 MR. HALEY: Yes, sir. That would be it.

16 THE COURT: Let's bring them on in.

17 (Jury pool enters the courtroom.)

18 All right, ladies and gentlemen of the jury,
19 welcome up to courtroom 4. As I said I'm holding a term,
20 a week of general sessions court, criminal court, and you
21 all have been randomly selected to be qualified to serve
22 for this case, and so let me introduce the case to you.

23 There are two indictments in this case, the
24 first one is 2010-6449, the State versus Kendrick d.
25 Littlejohn. It's an indictment for assault and battery

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1 with intent to kill. The allegations contained in this
2 indictment are that Mr. Littlejohn did in Greenville
3 County on or about April 23, 2009 willfully and unlawfully
4 and with malice aforethought either expressed or implied
5 commit an assault and battery upon Matthew Morlan.

6 The second indictment is the State of South
7 Carolina versus Kendrick D. Littlejohn, Indictment No.
8 2010-6450 and this is for lynching in the second degree.
9 This indictment alleges that Mr. Littlejohn did in
10 Greenville County on or about April 23 of 2009 willfully
11 participate as part of a mob that inflicted an act of
12 violence upon the body of Matthew Morlan that did not
13 result in his death.

14 Now, to these indictments, Mr. Littlejohn has
15 pled not guilty and as such that entitles him to certain
16 rights that belong to every citizen and that is every
17 person who is charged with a crime is presumed to be
18 innocent unless and until the State can prove them guilty
19 beyond any reasonable doubt of each element of each
20 offense that they are charged with.

21 And I would also tell you that these
22 indictments are nothing more than they appear to be and
23 that is a piece of paper. They contain allegations and
24 they are the formal documents which allow this case
25 containing these allegations to wind it's way through the

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1 system to arrive here in court for resolution.

2 So please keep all that in mind throughout
3 the course of these proceedings.

4 Now, before I go forward at this time, I
5 would ask the attorneys to stand and introduce themselves
6 and their prospective clients.

7 MS. SALISBURY: Good afternoon, ladies and
8 gentlemen, my name is Katrina Salisbury. I am a
9 prosecutor in Greenville County prosecuting criminal
10 cases. The lead investigator on this case is Special
11 Agent Shawn Stallo with the Bureau of Alcohol, Tobacco and
12 Firearms.

13 THE COURT: Thank you, ma'am.

14 MR. HALEY: Good afternoon, my name is Darren
15 Haley. I'm a local attorney here in the Greenville area.
16 This is Mr. Littlejohn.

17 THE COURT: Ladies and gentlemen, is there
18 any member of the jury panel who is related by blood or
19 marriage or who has a business personal or social
20 relationship with any of the attorneys involved in this
21 case or any other member of the Thirteenth Circuit
22 Solicitor's Office? If so, please stand.

23 (No response).

24 Is there any member of the jury panel who is
25 related by blood or marriage or has a business personal or

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1 social relationship with Mr. Kendrick D. Littlejohn? If
2 so, please stand.

3 (No response).

4 All right, I'm going to read a list of
5 potential witnesses in this case. Please pay attention,
6 I'm going to need to know the same thing about these
7 names: Special Agent Matt Morlan with the Bureau of
8 Alcohol, Tobacco, Firearms and Explosives, Special agent
9 Shawn Stallo, Bureau of Alcohol, Tobacco, Firearms and
10 Explosives, Investigator Brandon Brown of the Greenville
11 County Sheriff's Office, Dr. Troy Mitchell, Saint Francis
12 Hospital, Joy Vess, Saint Francis Hospital, Agent Ashley
13 Asbill, South Carolina Law Enforcement Division, Deputy
14 Johnny Brown, U.S. Marshal's Service Task Force,
15 Investigator David Weiner, Greenville County Sheriff's
16 Office, Investigator Mike Jarvis, Greenville County
17 Sheriff's Office, Jennifer Shoviak, Verizon Wireless.

18 Is there any member of the jury panel who is
19 related by blood or marriage or has a business, personal
20 or social relationship with any of those potential
21 witnesses whose names I have just read.

22 Yes, sir, your name and number, sir.

23 JUROR NO. 226: Brian Wright, Juror No. 226,
24 Jennifer Shoviak with Verizon.

25 THE COURT: Tell me how you know

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1 Ms. Shoviak?

2 JUROR NO. 226: Just through business
3 correspondence.

4 THE COURT: You're employed there as well?

5 JUROR NO. 226: Used to be, yes.

6 THE COURT: Would the fact that you are
7 acquainted with her impair your ability to be fair and
8 impartial to both the State and the defense?

9 JUROR NO. 226: No.

10 THE COURT: Could you follow the law as I
11 would give it to you throughout the course of the trial?

12 JUROR NO. 226: Yes.

13 THE COURT: Thank you, sir.

14 Is there any member of the jury panel have
15 any knowledge about the events alleged in these
16 indictments? If so, please stand.

17 (No response).

18 Is there any member of the jury panel, family
19 member of very close personal friend who has ever been a
20 victim of a or charged with either of these types of
21 offenses? If so, please stand.

22 (No response).

23 Is there any member of the jury panel who is
24 aware of any bias or prejudice towards either the State or
25 the defense? If so, please stand.

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1 (No response).

2 Is there any member of the jury panel who is
3 a member of or a contributor to a group whose primary
4 concern is promotion of law enforcement or victim's
5 rights, examples being MAD, SAD or CAVE? If so, please
6 stand.

7 (No response).

8 Is there a juror who knows of any reason
9 whatsoever why you should not serve in this case with
10 particular emphasis being placed on your ability to be
11 fair and impartial to both the State and the defense and
12 to listen fairly to the evidence and judge this case based
13 on the evidence and the law as I would give it to you? If
14 you can not do that, please stand.

15 (No response).

16 All right, anything else?

17 MS. SALISBURY: Nothing from the State, Your
18 Honor.

19 MR. HALEY: Nothing from the defendant, Your
20 Honor.

21 THE COURT: Okay. All right, Mary.

22 THE CLERK: When I call you name, please
23 stand in place and wait for further instructions.

24 Juror 15, Brenda Barton. What says the
25 State?

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1 MS. SALSIBURY: Please present Ms. Barton.

2 THE CLERK: What says the defense?

3 MR. HALEY: Please seat the juror.

4 THE CLERK: Ms. Barton, please, come have a
5 seat in the jury box.

6 (Juror No. 15, Brenda Barton, black female,
7 was seated in the jury box.)

8 Juror No. 76, Michael Freeman. What says teh
9 State?

10 MS. SALISBURY: Please present Mr. Freeman.

11 THE CLERK: What says the defense?

12 MR. HALEY: Please seat the jury.

13 THE CLERK: Thank you. Come have a seat in
14 the jury box.

15 (Juror No. 76, Michael Freeman, white male,
16 was seated in the jury box.)

17 Juror No. 173, Kenneth Rodgers. What says
18 the State?

19 MS. SALISBURY: Please present Mr. Rodgers.

20 THE CLERK: What says the defendant?

21 MR. HALEY: Please excuse this juror.

22 THE CLERK: You may be seated. You have been
23 excused from this case.

24 Juror No. 109, Carolyn Johnson. What says
25 the State?

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1 MS. SALISBURY: Please excuse Ms. Johnson.

2 THE CLERK: Thank you may be seated. You
3 have been excused from this csae.

4 Juror 108, Michael Jenkins. What says the
5 State?

6 MS. SALISBURY: Please present Mr. Jenkins.

7 THE CLERK: What says the defendant?

8 MR. HALEY: Please seat the juror.

9 THE CLERK: Sir, please, come have a seat in
10 the jury box.

11 (Juror No. 108, Michael Jenkins, black male,
12 was seated in the jury box).

13 Juror No. 234, Amy Elgin. What says the
14 State?

15 MS. SALISBURY: Please seat Ms. Elgin.

16 THE CLERK: What says the defendant?

17 MR. HALEY: Please seat this juror.

18 THE CLERK: Ma'am, come and have a seat in the
19 jury box..

20 (Juror No. 234, Amy Elgin, white female, was
21 seated in the jury box).

22 Juror 30, John Bryan. What says the State?

23 MS. SALISBURY: Please present Mr. Bryan.

24 THE CLERK: What says the defendant?

25 MR. HALEY: Please excuse this jury.

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1 THE CLERK: Okay, sir, please have a seat.
2 You have been excused from the trial of this case.

3 Juror 42, Billy Cater. What says the State?

4 MS. SALISBURY: Please present Mr. Cater.

5 THE CLERK: What says the defendant?

6 MR. HALEY: Please seat the juror.

7 THE CLERK: Please come have a seat in the
8 jury box.

9 (Juror No. 42, Billy Cater, white male was
10 seated in the jury box).

11 Juror 237, Nicholas Mangle. What says the
12 State?

13 MS. SALISBURY: Please seat Mr. Mangle.

14 THE CLERK: What says the defendant?

15 MR. HALEY: Please seat the juror.

16 THE CLERK: Mr. Mangle, please have a seat in
17 the jury box.

18 (Juror 237, Nicholas Mangle, black male, was
19 seated in the jury box).

20 Juror 139, Richard Moore. What says the
21 State?

22 MS. SALISBURY: Please present Mr. Moore.

23 THE CLERK: What says the defendant?

24 MR. HAILEY: Please excuse this juror.

25 THE CLERK: Please be seated, you have been

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1 excused from this case.

2 Juror 73, Bradley Franks. What says the
3 State?

4 MS. SALISBURY: Please present Mr. Franks.

5 THE CLERK: What says the defendant?

6 MR. HALEY: Please present this juror.

7 THE CLERK: Please have a seat in the jury
8 box.

9 (Juror 73, Bradley Franks, white male, was
10 seated in the jury box.)

11 Juror 220, Michael Wilder. What says the
12 State?

13 MS. SALISBURY: Please present Mr. Wilder.

14 THE CLERK: What says the defendant?

15 MR. HALEY: Please present the juror.

16 THE CLERK: Please have a seat in the jury
17 box.

18 (Juror 220, Michael Wilder, white male was
19 seated in the jury box.)

20 Juror 36 Charles Cain. What says the State?

21 MS. SALISBURY: Please seat Mr. Cain.

22 THE CLERK: What says the defendant?

23 MR. HALEY: Please seat the juror.

24 THE CLERK: Thank you. Please have a seat in
25 the jury box.

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1 (Juror No. 36, Charles Cain, white male, was
2 seated in the jury box.)

3 Juror No. 42, Adriana Velasquez. What says
4 the State?

5 MS. SALISBURY: Please excuse Ms. Velasquez

6 THE CLERK: Thank you. You may be seated.
7 You have been excused from the trial of this case.

8 Juror 243, Allen Williams. What says the
9 State?

10 MS. SALISBURY: Please present Mr. Williams.

11 THE CLERK: What says the defendant?

12 MR. HALEY: Please seat this juror.

13 THE CLERK: Please have a seat in the jury
14 box.

15 (Juror No. 243, Allen Williams, black male,
16 was seated in the jury box.)

17 Juror No. 4, Carey Alverson. What says the
18 State?

19 MS. SALISBURY: Please present Mr. Alverson.

20 THE CLERK: What says the defendant?

21 MR. HALEY: Please seat the juror.

22 THE CLERK: You may have a seat int he jury
23 box.

24 (Juror No. 4, Carey Alverson, white male, was
25 seated in the jury box.)

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1 Juror 136 Clarence Miller. What says the
2 State?

3 MS. SALISBURY: Please excuse Mr. Miller.

4 THE CLERK: Thank you. You may be seated.
5 You have been excused from the trial of this case.

6 Juror 86 Dana Hallman. What says the State?

7 MS. SALISBURY: Please present Ms. Hallman.

8 THE CLERK: What says the defendant?

9 MR. HALEY: Please excuse this juror.

10 THE CLERK: Thank you. Please be seated, you
11 have been excused from the trial of this case.

12 Juror 238 Victor Mooney. What says the
13 State?

14 MS. SALISBURY: Please present Mr. Mooney.

15 THE CLERK: What says the defendant?

16 MR. HALEY: Please present this juror.

17 THE CLERK: Please be seated in the jury box.

18 (Juror 238, Victor Mooney, white male, was
19 seated in the jury box.)

20 THE COURT: All right, one alternate, one and
21 one.

22 THE CLERK: Juror 195, Katrina Stratton.
23 What says the State?

24 MS. SALISBURY: Please present Ms. Stratton.

25 THE CLERK: What says the defendant?

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1 MR. HALEY: Please seat the juror.

2 THE CLERK: Ma'am, please have a seat in the
3 jury box.

4 (Juror No. 185, Katrina Stratton, white
5 female, was seated in the jury box.)

6 THE COURT: All right, any exception or
7 objection to the jury panel pursuant to Batson or Jebbs?

8 MS. SALISBURY: Nothing from the State, Your
9 Honor.

10 MR. HALEY: Nothing from the defendant, Your
11 Honor.

12 THE COURT: All right, ladies and gentlemen,
13 we've got two distinct groups of people in here. Sorry, I
14 got to tell all the lawyers in here I use the same joke
15 every time, one of you thinks you won the lottery and one
16 thinks you lost. But I want to tell you that in my
17 opinion, the group that's been selected won the lottery,
18 so to speak. They have an opportunity to serve on a
19 trial. It's a very great privileged and responsibility to
20 do that.

21 So I hope the remainder of you will get an
22 opportunity at some point this week to do that. It's a
23 great experience and something you can be proud of and
24 feel very rewarded by. But you all at this time are free
25 to go and please call back after 6:00 tonight to find out

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1 when next to report.

2 Thank you very much.

3 (Remainder of panel exits the courtroom.)

4 All right, ladies and gentlemen, I'm sincere
5 about that when I say I think you all are the lucky ones
6 to have been selected and I hope at the conclusion of your
7 service at the end of the week that you'll agree with me
8 and feel rewarded and feel a real sense of contribution
9 and accomplishment.

10 Ladies and gentlemen, we have a dispute about
11 the facts in this case that could not be resolved in any
12 fashion other than to request or ask members of the
13 community to come listen to those facts as they are
14 presented in this courtroom and to make a decision
15 following the law to resolve that dispute and that is your
16 job and your purpose of here.

17 You all might think, well, gosh how do I do
18 that? Well, you do that just by using your common sense
19 and listening attentively to the case, but the standard by
20 which you will judge the evidence in this case to
21 determine the resolution and that is guilt or innocence is
22 beyond a reasonable doubt. So please keep that in mind
23 throughout the course of the trial.

24 Whenever a citizen is charged with a crime,
25 the burden is always on the charging body, in this case,

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1 the State to prove the allegations that have been made
2 beyond any reasonable doubt on each and every element of
3 each offense that a person is charged with. Those are
4 very fundamental basic rights that belong to all of us,
5 and just a moment you're going to swear an oath to make
6 sure that you all do that.

7 I would again remind you that the indictments
8 in this case are not evidence and you should take no
9 presumption for inference from the fact that they're
10 issued with respect to the outcome in this case. They are
11 just the documents that allow this matter to wind it's way
12 through the system and arrive here for resolution.

13 I would tell you that the resolution of this
14 dispute is based on evidence while following the law and
15 evidence can be presented generally in one of three ways
16 in the courtroom. The first way is what we all sort of
17 think of initially and that is the presentation of the
18 testimony by witnesses. A second, very common way, is
19 through the introduction of tangible things like documents
20 or physical items. And the third common way is by
21 stipulation of the parties when the parties and attorneys
22 agree that some fact that so beyond dispute that you
23 should accept it as true.

24 Now, I have no idea what combination will be
25 used to introduce evidence to you, but the evidence you

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1 will here will come in this courtroom.

2 Now, you can break a trial down into as many
3 parts as you like and if you read these novels or watch tv
4 or movies, they break it down into these tiny little
5 parts, but for our purposes so that you have a procedural
6 road map knowing where you are in the case, I break it
7 into five parts. The first part we will engage in when we
8 return, because I think we'll break for lunch before we
9 really get started, will be the opening statements to you
10 by the attorneys. They're kind of brief non argumentative
11 statements made by the attorneys to you all.

12 The second part of the trial is the meat and
13 potatoes of almost every case and that is the presentation
14 of the testimony and the evidence in the case. At the
15 conclusion of the testimony and the evidence the third
16 part of the trial are the closing arguments to you by the
17 attorneys where they advocate their positions and argue
18 for you to resolve the dispute in their favor.

19 The fourth part of the trial will be my
20 charge to you on the law and the fifth part of the trial
21 will be when you all retired to the jury room to
22 deliberate this case and resolve the dispute.

23 The parts of not of equal length and
24 generally the second part, the evidence, is the longest
25 part of any case.

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1 Now, I'll ask you to do probably mean things
2 throughout the course of the trial, but there are
3 principally three things that I ask you to do and the
4 first is to have an open mind about this case. That's why
5 we go through all the questioning that we do so we can
6 ensure we have a jury that is fair and impartial and who
7 will listen to the evidence that is presented in this
8 courtroom and follow the law to resolve the dispute.

9 The second thing I'll ask you to do is sort
10 of simple but it's very important and that is to pay
11 attention. If you were to daydream and let y our mind
12 wander through the course of the trial, it might be that
13 you would miss some important piece of testimony or how
14 some witness might act on the witness stand, which might
15 impact your decision when you're deliberating with your
16 fellow jurors at the end of the case. So please pay
17 attention.

18 And then finally I ask you and instruct you
19 not to discuss this case with anyone until you are free to
20 deliberate at the end of the trial. That's probably the
21 hardest thing I'm going to ask you to do. If this case
22 lasts into tomorrow and you go home and you know, like,
23 trust, generally converse with and talk about what you've
24 done during the day, the temptation is going to be very
25 strong to talk about with this case and you can not do

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1 that.

2 Let me explain why to you. As I said the
3 evidence on which you will decide this case will be
4 presented in this courtroom and that evidence is subject
5 to Constitutional protections and scrutiny. If you go
6 home or we break for lunch and you see somebody on the
7 street and they say what are you doing and you say I'm in
8 this case and it's about this, they make a comment to you,
9 even an innocent comment from you like and trust or
10 someone who you don't might have an impact on your state
11 of mind with respect this case and that would not be fair
12 to the parties in this case. That would not be fair to
13 your fellow jurors and that wouldn't be fair to yourself
14 to allow someone who is not making the sacrifices that
15 each of you are making to have any impact or input in the
16 outcome of this case.

17 So don't do Internet research, don't go visit
18 the scene or anything like that. Everything that you need
19 to decide this case will be presented in this courtroom.

20 I want to tell you all that you are the sole
21 judges of the facts in this case. The law does not allow
22 a trial judge to have any opinion about the facts of the
23 case, so don't think that anything I may say or do
24 throughout the course of the trial that I have an opinion
25 because I don't and the law does not allow it. You all

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1 are the sole judge of the facts. You decide what to
2 believe, who to believe, and any combination of what's
3 presented. Okay.

4 That same law makes me the sole judge of the
5 law in the case. So if you think you have any idea as to
6 what the law is or what the law should be and it conflicts
7 with what I tell you the law it, you're going to swear an
8 oath to set aside your own opinion and apply the law
9 precisely as I give it to you.

10 Now, maybe from time to time throughout the
11 course of the trial I may excuse you all to your jury room
12 to talk about some issue. If that's the case, I will tell
13 you we may be trying to keep something from you but we are
14 not trying to deceive you in any way. We may have to talk
15 about some piece of evidence that's disputed that might be
16 admissible. You can understand that you shouldn't hear
17 that because that might pollute your understanding of
18 what's going. We may be trying to keep things from you
19 but we are not trying to deceive you. And that would
20 include perhaps when we have a bench conference when the
21 attorneys come up here and we talk.

22 All right, ladies and gentlemen, we're going
23 to get you to stand and I'm going to excuse you for lunch
24 in just a second but I'm going to ask you to do one other
25 thing when you come back from lunch. I'll ask you to be

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1 back at 2:30. I want you all to try and elect a
2 foreperson from among the first 12 and a foreperson is
3 someone who will moderate discussions at the end of your
4 deliberations and be the jury's spokes person in the
5 courtroom should that become necessary. Okay. So you all
6 do that when you come back from lunch at 2:30.

7 So if you would, stand and please take the
8 oath.

9 THE CLERK: Please stand and raise your right
10 hand for the oath. The proper response is, I will.

11 You shall well and truly try the case .
12 2010-GS-23-6449, the State versus Kendrick D. Littlejohn,
13 indicted for assault and battery with intent to kill and
14 6450 for lynching in the second degree and the true
15 verdict render according to the law and the evidence so
16 help you God. I will.

17 (Jury collectively responds.)

18 THE COURT: All right, thank you very much
19 ladies and gentlemen. Please have a pleasant lunch. The
20 bailiff will show you where to go and where to come to
21 when you come back.

22 (Jury exits the courtroom).

23 Anything before we break?

24 MS. SALISBURY: Nothing from the State.

25 MR. HALEY: Nothing from the defense.

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1 THE COURT: Is he on bond?

2 MS. SALISBURY: No, Your Honor.

3 THE COURT: We'll see you at 2:30.

4 (Whereupon, lunch break to return at
5 2:30 p.m.)

6 (Foreperson name marked as Court's Exhibit
7 No. 1 for identification and admitted into evidence.)

8 (Jury re-enters the courtroom).

9 All right, ladies and gentlemen, welcome back
10 and thank you for agreeing to serve. At this time we'll
11 go to opening statements.

12 OPENING STATEMENTS

13 By Katryna Salisbury

14 MS. SALISBURY: Thank you, Your Honor, may it
15 please the Court.

16 THE COURT: Yes, ma'am.

17 MS. SALISBURY: Good afternoon, ladies and
18 gentlemen. As I was introduced to you a few hours ago my
19 name is Katryna Salisbury and I prosecute cases here in
20 Greenville County. Now, before we begin the trial in this
21 case, I want to very briefly tell you three things, what
22 this case is about, what the State is required and intends
23 to prove and how we intend to prove it.

24 In April of 2009, agents of the Federal
25 Bureau of Alcohol, Tobacco, Firearms and Explosives, what

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1 we know as the ATF were conducting an undercover
2 operation. The operation lead them to a neighborhood in
3 the Southern part of Greenville county called Dixie
4 Estates. On April 23, 2009, Special Agent Matthew Morlan
5 visited Dixie Estates in an undercover capacity. While he
6 was there, he met this defendant, Kendrick Littlejohn.

7 During their conversation, this defendant
8 offered to sell Agent Morlan an assault riffle. The two
9 exchanged phone numbers in anticipation of conducting this
10 sale at some future date. And sure enough, hours later,
11 this defendant called Agent Morlan and asked did he return
12 to Dixie Estates. Agent Morlan did exactly that. But
13 what happened once Agent Morlan got to Dixie Estates was
14 not the planned transaction but instead an orchestrated
15 and calculated and brutal attack against Agent Morlan.

16 You see, this defendant and between four and
17 seven of who the defendant characterized as his home boys
18 beat, punched, kicked, stomped Agent Morlan in his torso,
19 his arm, his face and his head. So much so that to this
20 day Agent Morlan has no memory of the beating.

21 And over the course of this trial, you'll
22 hear evidence that this defendant is responsible for
23 planning and leading that attack.

24 Now, as the Judge told you before lunch the
25 defendant is charged with two crimes, he's charged with

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1 lynching in the second degree. To prove that the
2 defendant is guilty of that crime, the State has to prove
3 two things; first that the defendant combined with a group
4 of two or more people for the purpose of committing
5 violent injury; second, that the group actually committed
6 the violent injury.

7 The defendant is also charged with assault
8 and batter with intent to kill. To prove that the
9 defendant is guilty of that crime, the State must again
10 prove two things; first that the defendant committed a
11 battery, an injury, against Agent Morlan, and second that
12 the defendant acted with malice, which is a meanness and
13 ill will or reckless disregard for somebody else's life.

14 Now, to prove that the defendant is guilty of
15 both of those crimes, you'll hear testimony for several
16 witnesses. First, you'll testimony from Agent Morlan
17 himself. Agent Morlan will testify about his role in the
18 undercover operation that led agents to Dixie Estates in
19 April of 2009. He'll testify about the conversation he
20 had with this defendant about purchasing an assault rifle
21 from the defendant, and to the extent that he can
22 remember, Agent Morlan will testify about what happened
23 when he arrived at Dixie Estates just before dusk in April
24 23rd.

25 After that, you'll hear testimony from

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1 Special Agent Ron Stallo who also works for the ATF. He
2 will testify about his roll in that very same undercover
3 cooperation and he'll testify about the fact that he
4 traveled with Agent Morlan that morning to Dixie Estates.
5 Agent Stallo will be able to testify that he witnessed the
6 entire incident that occurred between the defendant, a
7 large group of individuals, and Agent Morlan.

8 Then you'll hear testimony from Investigator
9 Brandon Brown who works at the Greenville County Sheriff's
10 Office. Investigator Brown will testify about his role in
11 the assisting these agents in identifying this defendant
12 as the primary player in the transaction turned attack.

13 Then you'll hear testimony from Dr. Troy
14 Mitchell and Joy Vess. Each of them works for Saint
15 Francis Hospital. They will testify as to the victim's
16 injuries that he sustained as a result of the attack, and
17 finally you'll hear from an employee at Verizon Wireless
18 who will testify the records that Verizon Wireless kept
19 with regard to the phone number that this defendant used
20 in April 23, 2009.

21 Ladies and gentlemen, the evidence in this
22 case will be very straight forward. You'll hear
23 eyewitness testimony about the vicious attack that this
24 defendant planned and executed, and at the end of this
25 trial I'll ask you to return a verdict that the defendant

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1 is guilty of both, assault and battery with intent to kill
2 and lynching in the second degree. Thank you.

3 MR. HALEY: If it please the Court, good
4 afternoon ladies and gentlemen. I have the pleasure of
5 representing Mr. Kendrick Littlejohn. Today is the most
6 important day of his life. He gets to be judged by his
7 peers after executing his Constitutional Rights. The
8 Judge has instructed you that we are hear today because of
9 two pieces of paper called indictments. Those are
10 allegations, those are charges, those are somebody said he
11 did something.

12 What happens in a case, as you've heard from
13 the Judge, there are various parts. This is the first
14 part, the openings. Then you'll get to the meat and
15 potatoes, but the interesting part about the meat and
16 potatoes is the solicitor has already told you what she's
17 going to show for you. It's not our job to show you
18 anything or do anything.

19 Imagine walking into Bally's Casino or one of
20 the neighboring casinos and there's one slot machine
21 backed into a corner and it takes on all comers. That's
22 the defendant's position. We don't have to prove
23 anything, but what I will ask is what they said they will
24 show, make sure they do. We don't want this to be a
25 highlight reel, Top Ten Sport Center's best plays, we want

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1 a real live 100 percent accurate trial. This isn't going
2 to be like Law and Order, Boston Legal or any of those
3 shows you see on tv.

4 There will not be any dispute there was phone
5 conversations. There will not be any dispute that there
6 was a fight. There will not be any dispute that the agent
7 was involved in it. I'm taking the guess work out of it.
8 She said that she will show there was a phone conversation
9 and that there was a fight. What the evidence will no
10 show is how and why it happened and who was involved.

11 I'm sure it was a slight oversight when it
12 was said they have to two things, two or more people
13 conspired to commit a violent act, but there's an
14 important part of act, that it was premeditated. So
15 having said that, what I'm going to ask is that you give
16 Mr. Littlejohn the utmost attention. This is the most
17 important day of his life.

18 Thank you in advance. You're here today
19 because as the Judge said you hit the lottery. That means
20 that you reside in Greenville County and we have you names
21 in a list as a responsible person. We ask you to remember
22 what she said that she will show you. Make sure they show
23 you.

24 THE COURT: All right, call your first
25 witness.

Matthew Morlan - Direct Examination

1 MS. SALISBURY: If it please the Court, the
2 State will call Special Agent Matt Morlan. Agent Morlan,
3 please come around and be sworn.

4 MR. HALEY: Your Honor, at this point the
5 defense would move to sequester the remaining witnesses.

6 THE COURT: Let me see y'all up here for a
7 second.

8 (Whereupon, there was a bench conference.)

9 THE CLERK: Sir, place your left hand on the
10 Bible and raise your right.

11 MATTHEW MORLAN, having been duly sworn,
12 testified as follows:

13 Thank you. Please be seated. State your
14 full name for the record.

15 THE WITNESS: Matthew Avery Morlan,
16 M-O-R-L-A-N.

17 THE CLERK: Thank you.

DIRECT EXAMINATION

18
19 BY MS. SALISBURY:

20 Q. Good afternoon, Agent Morlan, I'm going to stand
21 over just to make sure everybody hears you from where you
22 sit. Where do you work?

23 A. Bureau of Alcohol, Tobacco and Firearms, ATF.

24 Q. And how long have you worked with the AFT?

25 A. Since 2003.

Matthew Morlan - Direct Examination

1 Q. What are some of your duties and responsibilities
2 as an agent for the AFT?

3 A. Work violent crime, obviously gun crimes, tobacco
4 diversion, alcohol diversion, undercover work. I work
5 informants to make multi defendant conviction cases.

6 Q. And how does that point out day to day, how do
7 you spend your days?

8 A. Through investigative measures, meeting up with
9 leads, and building a case.

10 Q. Did you have any law enforcement experience
11 before you joined AFT?

12 A. Yes, I was a state trooper in South Carolina for
13 five-and-a-half years.

14 Q. Now, do you living in the Greenville Area?

15 A. No, ma'am, I do not.

16 Q. From which region, I suppose, do you work?

17 A. I'm assigned to the Columbia field office but I
18 live out towards Augusta, Georgia.

19 Q. What brought you to Greenville in April of 2009?

20 A. The supervisor agent called and asked if I would
21 help out with a store front in an undercover capacity. I
22 worked the case with Shawn Stallo in Greenville County.

23 Q. Now, what is this store front? What was that
24 operation about?

25 A. The main drive behind the store front was the

Matthew Morlan - Direct Examination

1 entire store as far as cases were being made, everything
2 was already being video recorded so everything we wanted
3 to do, primarily we wanted to revolve around the store
4 because obviously that produced the best evidence because
5 everything is being recorded all the time. The main focus
6 was with violent crime it commonly associates firearms and
7 narcotics so our main goal was to go ahead and move
8 towards getting cases against those who engage in that
9 kind of activity in the community.

10 Q. Now, you said you had this store. Were you
11 selling items? What was happening inside this store?

12 A. We were selling items and we were doing some
13 tattoo work. We had a tattoo artist. A lot of the stuff
14 that they had laid out Shawn Stallo and Bill Lynn, they
15 had all the stuff put together before they actual got out.
16 The primary was the tattoos and then we also sold some
17 stuff like pipes and things like that, some shirts and
18 shoes and so forth trying to create an environment that's
19 a store, but when you walk in with the type of logo that
20 we use, it wasn't something that was supposed to make
21 other people that were involved in criminal activity, we
22 wanted to make them feel comfortable. That's kind of the
23 atmosphere we set up.

24 Q. So how did that store, how did your participation
25 in that store front take you to Dixie Estates?

Matthew Morlan - Direct Examination

1 A. When we first started out it's like everything
2 else in business. You got to get your name out there as
3 far as recognition and so forth so we decided to take
4 flyers and go out through different parts of the community
5 especially ones in Greenville County that were trouble
6 neighbors, bad spots, gun problems, drug problems, and we
7 made it a point to go to those areas and pass out flyers
8 to see if we could draw up interest from those who were
9 doing that kind of activity.

10 Q. Again Morlan, I'm going to show you State's
11 Exhibit No. 1. Do you recognize that items?

12 A. Yes, I do.

13 Q. What is that?

14 A. That, in fact, one of the flyers that we used.

15 Q. So these are the flyers that you handed out to
16 the community?

17 A. That's correct, yes, ma'am.

18 MS. SALISBURY: Your Honor, the State offers
19 Exhibit 1.

20 THE COURT: Any objection?

21 MR. HALEY: No objection, Your Honor.

22 (Flyer marked as State's Exhibit No. 1 for
23 identification was admitted into evidence.)

24 MS. SALISBURY: With the Court's permission,
25 I'd like to publish this exhibit to the jury.

Matthew Morlan - Direct Examination

1 THE COURT: Yes, ma'am.

2 BY MS. SALISBURY:

3 Q. Now, Agent Morlan, to get you back on track you
4 mentioned you would go out into the community and hand out
5 these flyers. What was the desired purpose? What were
6 you hoping to achieve by handing out these flyers?

7 A. Well, the flyers served the purpose of
8 advertising our store but also serve as a way to talk to
9 guys or talk to girls or whoever and actually get into a
10 conversation with them to see if they would actually come
11 into the store. And that, of course, let us get
12 introduced without using informants. We didn't use
13 informants in this case. Everything we were doing was
14 what was called cold. We were trying to build a repore
15 with those who would be interested in selling us drugs or
16 guns. That was an avenue for us to try and initiate that.

17 Q. Now, you mentioned that the flyers are what took
18 you to Dixie Estates. What happened between the flyers
19 and Dixie Estates? What happened to sort of culminate
20 what we're dealing with?

21 A. How we got there or just go into that day?

22 Q. Well, if you want to tell the jury about how you
23 got there, that's fine.

24 A. I did the same thing with some of the other areas
25 that we were going to pass out flyers. There was a lot of

Matthew Morlan - Direct Examination

1 gun activity and narcotics in these areas, so obviously we
2 wanted to go down there and pass out flyers to see if we
3 could actually build a case on who was actually involved
4 in that.

5 Q. Do you remember the date that you actually
6 traveled to Dixie Estates?

7 A. I believe it was April 23rd.

8 Q. Did you only visit that neighborhood that single
9 day?

10 A. Yes, ma'am, that was that day early afternoon. I
11 traveled there after going to two other places, but when I
12 actually traveled there, there were individuals standing
13 on the side. I had passed out flyers for maybe an hour or
14 two give or take. I was passing out flyers talking to
15 some of the guys. The way this was going sometimes people
16 would take them and sometimes they wouldn't, so I went
17 down there to pass out the flyers and talk to some of the
18 guys and I actually ran into the individual named KJ who
19 was out there with some of the other individuals that kind
20 of sprout in the road.

21 Q. Did you know him at that time to be KJ? Had you
22 ever encountered him before?

23 A. No, ma'am.

24 Q. Who happened when you initially met him in the
25 neighborhood?

Matthew Morlan - Direct Examination

1 A. When I initially met him, like I said it was kind
2 of routine thing where I'd go to one guy and spoke to the
3 other guys. I had met him and he introduced himself as KJ
4 and I told him my undercover name, passed to flyer to him.
5 He asked if we were selling guns and I'd like him know we
6 could purchase guns as what we referred to as off-paper,
7 which is a common term when you do these kind of
8 investigations and you let people know there is no kind of
9 IDs, no kind of personal attachment to the gun. Most of
10 the time that's how it works on the street and that is
11 they don't want their name associated with any kind of gun
12 so we'll buy them off paper and that would people,
13 hopefully, who are buying and selling that stuff at ease
14 with us.

15 Q. So you mentioned that you were discussing this
16 off paper gun sale with the person who introduced himself
17 as KJ?

18 A. That's correct, yes, ma'am.

19 Q. How did that conversation go?

20 A. It went fine. We were fine we cut back and
21 forth. That's kind of the way I am when I'm doing this.
22 I try to make light of all the things. And I recall him
23 asking for a ride to the basketball courts. At that time
24 I said sure. What he referred to as his younger brother
25 also needed a ride to a restaurant he worked out so he

Matthew Morlan - Direct Examination

1 asked me to give him a ride too. So he hopped in the
2 truck and I'm not sure what neighborhood but he let me
3 know he had a SKS for sale for like \$300, 40 caliber hand
4 gun and I didn't discuss the price as far as that and that
5 he could sell me crack, coke, weed, whatever I needed. At
6 the time we were leaving Dixie Estates.

7 When I pulled up at the basketball courts, I
8 saw his brother. I dropped him off. When I dropped him
9 off I seen a lot of hand signs, hand gestures and so forth
10 between him and other guys at the basketball court. And I
11 took his brother from there to a restaurant and dropped
12 him off. At that time that's when I called the case
13 agent, Shawn Stallo, to let him know this is what's going
14 on and so forth. And that was kind of the general thing
15 that we had because there was so much stuff going on that
16 you try to make sure that a case agent would know what was
17 going so he can go back and forth with idea so forth and
18 so on. And that's what I had done that afternoon, here's
19 what's going on, here's how things went.

20 I informed him to let him know about the
21 individual KJ and that he was willing to do some business
22 later on.

23 Let me back up just a little bit. He had a
24 cell phone at that time. He had told me the call, and I
25 don't have the number but I can refer back to the report,

Matthew Morlan - Direct Examination

1 but he had given me this phone number to call. He didn't
2 have it and he said it was on charger at one of the homes
3 there. When I called it, he would catch the number there
4 and then he would call me later on to set up the deal as
5 far as to buy the gun or anything else as far as drugs.

6 Q. So to be clear, he offered to sell you two
7 distinct weapons?

8 A. Yes, ma'am, an SKS and a 40 caliber pistol.

9 Q. And the SKS is what kind of weapon?

10 A. It's kind of referred to as an assault riffle as
11 far as terminology.

12 Q. Now, you mentioned that this individual that
13 introduced himself as KJ was in the vehicle with you and
14 that you drove him somewhere. How long were you seated
15 with him in your car?

16 A. I'd say like five minutes. I don't remember the
17 area so when we were pulling out he told me where to go to
18 the basketball court.

19 Q. What time of the day was it at this point?

20 A. It was in the afternoon. It was sunny and the
21 weather was fine.

22 Q. What did this person KJ look like?

23 A. He had long dreads, kind of tall, slender, light
24 skinned. That's who I was talking to, the defendant.
25 That's who I was talking to in the car.

Matthew Morlan - Direct Examination

1 Q. So the defendant is the person who introduced
2 himself to you as KJ?

3 A. Yes, ma'am.

4 Q. Now, after you dropped off KJ -- the person you
5 believed to be KJ and his brother, what did you do next?

6 A. I eventually went back to the store front where
7 we had it. And then later on that evening, I actually got
8 the phone call from the same number which I called earlier
9 which is the number that KJ gave me. And he had let me
10 know then that he wasn't going to travel to the store but
11 he had some guns to sell. I let him know then that we
12 were either going to do it there in the store, because
13 obviously the goal was if he was going to sell us guns and
14 drugs, that his associates were going to do the same. And
15 once his associates get up there and other associates get
16 up there and feel comfortable with the place, then the
17 other associates who are involved in criminal activity
18 will do business with us while it was being audio and
19 video recorded.

20 So at that time we agreed to go to the area
21 of Dixie Estates. At that time Agent Stallo and I spoke
22 and we agreed to drive two different vehicles, one being
23 the tow truck and the other one being the red Chevrolet I
24 was driving.

25 Q. Well, let me stop you right there. If the plan

Matthew Morlan - Direct Examination

1 was to conduct all of the business inside the store, why
2 did you agree to go down to Dixie Estates?

3 A. Because he wouldn't come up there. He wasn't
4 driving. He was not going to drive with the gun.

5 Q. What was your plan to happen after you got back
6 down to Dixie Estates? What did you have in mind was
7 going to happen next?

8 A. What we agreed to do was Agent Stallo was going
9 to drive the tow truck and I was going to drive the red
10 Chevrolet. We was going to drive to Dixie Estates which
11 would allow them more comfort level on their part. Let
12 them put the guns or whatever else in the tow truck with
13 Shawn. Then at that time, since I already had the repore
14 with KJ, KJ was going to drive with me and hopefully
15 anybody else associated with him follow behind him and go
16 to the store and get tattoos or anything the store would
17 offer to keep that relationship going. That was,
18 obviously, going to help us?

19 Q. So it was your plan to ultimately do this gun
20 transaction at the store?

21 A. Yes, ma'am, it's got the best recording set up.

22 Q. We can get back on track now. You mentioned that
23 you and Agent Stallo drove separate vehicles. Why did you
24 chose separate cars?

25 A. The man reason was to separate the guns from the

Matthew Morlan - Direct Examination

1 individual we were buying them from so he didn't pick
2 anything up, in other words, not to cause any concern
3 because the guns were in the same vehicle we were riding
4 around. You got to remember at the time they don't think
5 we're the police, obviously, so they don't want any
6 problems with the guns being in the car, us being in the
7 same car, and they being in the same car with the guns.
8 So we try to take that element away, put the guns in a
9 second vehicle and let KJ or whoever else ride with me and
10 then, hopefully like I said, anybody else to trail behind
11 us to go to the store.

12 Q. So once you and Agent Stallo arrive at Dixie
13 Estates in your separate vehicles, describe what happened?

14 A. I made contact with KJ.

15 Q. Did you see him immediately?

16 A. When we pulled down in the neighbor. I just
17 remember a bunch of roads in the neighborhood. I haven't
18 been back since then. I made contact with him and at some
19 point before we moved down further in the neighborhood I
20 spoke with him, he got in the car with Agent Stallo and
21 then he got back in the car with me. Immediately we
22 started talking about the guns and we let him know that
23 we'll take him back to the store trying to reiterate
24 everything as to what we wanted to do initially which was
25 go back to the store.

Matthew Morlan - Direct Examination

1 Q. Now, when you saw him and the both of you arrived
2 at Dixie Estates, was he outside? Was he in one of the
3 residences in the neighborhood?

4 A. No, ma'am, he was outside.

5 Q. Was he alone?

6 A. At that time he had us move down farther once he
7 got in the car with me and once we stopped that's when I
8 looked over and seen six, seven guys off to the side.
9 That's when I got out because that's when he was telling
10 me I need to go either on the porch or inside the
11 residence to look at the guns at that time. When I had
12 gotten out of the vehicle and I had come around and you
13 could hear us talking about just trying to keep everything
14 at a calm pace, he keeps wanting to go around. At this
15 time it had started getting dark.

16 Q. Since it was the plan to take the guns back to
17 the store from Dixie Estates, what changed?

18 A. It was. We were just trying to go with what was
19 handed to us which was KJ and the other guys he was with
20 were obviously wanting the deal there and we obviously
21 didn't want to do the deal there, we wanted to go back to
22 the store. So when I had gotten out some of the guys went
23 over -- the way it's laid out, it's in rows as far as the
24 homes. I remember looking around the corner and it was
25 getting dark. The guys, the same guys and KJ and

Matthew Morlan - Direct Examination

1 something told me don't go around there, so I held up and
2 I hollered for him to go back over. We had talked and we
3 talked back and forth as far as tattoos and some other
4 guys, but I'm conversating more with KJ.

5 Q. And at this point, had you gotten out of your
6 vehicle or are you still in your car?

7 A. I was out of the vehicle at this time.

8 Q. Where was Agent Stallo at this time?

9 A. He was in the tow truck behind because again the
10 whole goal was he needed to be in the truck so he could
11 put the guns in there and then somebody get in the car --
12 KJ get in the car with me and then hopefully by the time
13 we got to Dixie Estates there might be some other people
14 who wanted tattoos in the store so they would trail behind
15 us.

16 So Agent Stallo was keeping with the plan and
17 I was trying to keep with the plan and try to keep things
18 moving at a calm pace and try to keep everybody at ease as
19 best we could. But when I came back and we're talking
20 some more and the group of six or seven one was about this
21 far and the others was like a half moon and the tow truck
22 and my car were very close to each other. We weren't
23 spread out. I started walking towards the two vehicles
24 coming back from the corner and that's when all I heard
25 was the guy to the left taking the punch and at that point

Matthew Morlan - Direct Examination

1 I don't remember anything else.

2 Q. Now, you mentioned there was a group of six or
3 seven that you saw that were in the area. Were they
4 participating in the conversation that you were having
5 with KJ?

6 A. Yes, ma'am. It's kind of between the rubber
7 tires on the side of the trailer there's a telephone box,
8 all that's within close proximity. These guys were
9 discussing tattoos and stuff like that, but when we
10 started walking around the corner, all them guys were
11 walking around the corner and KJ was too. That's why I
12 was hollering for KJ to stop because I wasn't going around
13 the corner. So initially I had thought about it, but no
14 we're going to wait and I started hollering for KJ to come
15 back over and the guys come back over with him.

16 And like I said it was kind of half moon and
17 I should have picked up on it then but it was a half
18 circle around me as I was talking and it went from there.

19 Q. Do you remember anything of substance with regard
20 to that attack?

21 A. No, just like a little mental picture as far as
22 in the hospital walking down the hallway like a brief
23 second or so of the stuff that happened and that's it.

24 Q. You mentioned a couple of times that you can hear
25 the and that and what you're alluding to is these facts

Matthew Morlan - Direct Examination

1 may have been audio recorded.

2 A. Yes, ma'am.

3 Q. How do you know they were audio recorded?

4 A. Because I press the play on the recorder.

5 Q. How did you carry that item?

6 A. That was there and I actually just put it in my
7 pocket. Obviously we have things there that we can use
8 that are a little better, but in this case, as I said
9 before, we were supposed to come down there, pick up the
10 guys and then come back to the store. The store is what
11 had all this nice stuff as far as audio and video, but I
12 just put the digital recorder in my pocket, pressed in the
13 date and time on the digital recorder and went into a very
14 light overview of what we were about to do.

15 Q. Do you specifically remember activating that
16 recording device?

17 A. Yes, I do.

18 Q. Do you recall ever turning it off or stopping it
19 at any point during those events?

20 A. No, I just put in the side pocket so I couldn't
21 accidentally turn it off.

22 (CD marked as State's Exhibit No. 2 for
23 identification.)

24 BY MS. SALISBURY:

25 Q. I'm going to show you State's Exhibit 2. Do you

Matthew Morlan - Cross-Examination

1 recognize this item?

2 A. Yes, ma'am, I do.

3 Q. How do you recognize it?

4 A. That's the date as far as the CD that has a
5 digital audio.

6 Q. Have you had an opportunity to review that
7 recording?

8 A. Yes, ma'am, I have.

9 Q. To the extent that you can remember, is that an
10 accurate recording of the events as they transpired the
11 evening of April 23rd?

12 A. Yes, ma'am, it is.

13 Q. Agent Morlan, are you certain that the person to
14 whom you handed the flyer, discussed the gun sale, drove
15 to the basketball courts, met up with later that night and
16 spoke with at Dixie Estates is seated in the courtroom?

17 A. Yes, ma'am.

18 Q. Do you recall during the course of those events,
19 I know you remember hallways and hospitals, do you
20 remember specifically being taken to the hospital that
21 night?

22 A. I don't remember that.

23 Q. Do you remember being treated for your injuries?

24 A. No.

25 Q. Based on your experience, your understanding of

Matthew Morlan - Cross-Examination

1 what happened, what injuries do you believe that you
2 suffered?

3 A. Like the next morning?

4 Q. Based on what you know to have happened, what you
5 know to be the effects that you experienced today, what
6 are the injuries.

7 A. I still can't remember ---

8 MR. HALEY: Your Honor, at this point I would
9 object if he's going to give a medical diagnosis. It's
10 hearsay if he's going to testify as to what surgeries or
11 what not ---

12 THE COURT: I'm going to let him testify to
13 what injuries he received. Go ahead.

14 THE WITNESS: I can't recall anything from
15 that time. I remember being told that maybe in a couple
16 days or a few weeks it might come back around but it never
17 did, but a lot of injury on this side, the ribs as far as
18 bruising, and a lot of it was over here. Everything else
19 I would say would be theory.

20 MS. SALISBURY: Please answer any questions
21 Mr. Haley may have for you.

22 MR. HALEY: If it please the Court, Your
23 Honor.

24 CROSS-EXAMINATION

25 BY MR. HALEY:

Matthew Morlan - Cross-Examination

1 Q. Agent Morlan, you never saw Kendrick Littlejohn
2 hit you that night; is that correct?

3 A. As I said before the one that was off to the
4 left, the other guy that was with him, that's all I
5 recall.

6 Q. The way this started is you guys set up a store
7 front; is that correct?

8 A. Yes, sir.

9 Q. And you had flyers?

10 A. Yes, sir.

11 Q. You came into Greenville to go into a black
12 neighborhood to hand out flyers to solicit illegal
13 activity?

14 A. It had nothing to do with a black neighborhood.

15 Q. Dixie Estates is a predominantly black
16 neighborhood, is that correct, or do you know?

17 A. I didn't know until I pulled in there as far as
18 the guys that were there.

19 Q. Now, when you pulled in there it was just your
20 general observation and you could make that observation,
21 is that accurate?

22 A. Yes, sir. But, again, before I went down there I
23 did not know that.

24 Q. But when you got there you did?

25 A. Yes, sir.

Matthew Morlan - Cross-Examination

1 Q. And when you got there based on your experience
2 and your observation, there was no illegal activity going
3 on at that time; is that correct?

4 A. Not at that time, no, sir.

5 Q. So then you hand out the flyers and then you
6 initiate the conversation as to anybody selling guns,
7 drugs or whatever?

8 A. I wouldn't go about it just that blunt.

9 Q. But that was the gist of what your job was?

10 A. Yes, sir.

11 Q. Now, you prepared reports and narratives as a
12 part of your duties; is that correct?

13 A. As far as the store front, yes, sir.

14 Q. When this incident took place I believe you
15 testified that you went back down there along with Agent
16 Stallo; is that correct?

17 A. Yes, sir.

18 Q. And how long had you been with AFT at that time?

19 A. Almost six years.

20 Q. So as you go into there you see some other guys
21 that were not with Mr. Littlejohn at the time you pulled
22 up; is that correct?

23 A. Are we talking about the first time?

24 Q. Second time.

25 A. No, sir, it was just KJ at the time. He had us

Matthew Morlan - Cross-Examination

1 drive down to where the other guys were.

2 Q. Your testifying that he volunteered to sell you
3 guns and drugs; is that correct?

4 A. Yes, sir, we talked about the riffle and the
5 pistol and then he just kind of went on and said he could
6 get anything we want for us like coke, weed.

7 Q. And you're remember this conversation about drugs
8 today. Did you put that in any of the reports back then
9 that there was a conversation about drugs as well as guns?

10 A. Well, even in the report it doesn't say anything
11 about when I called the phone that he didn't have on him.

12 Q. Agent, my question is did you put into the report
13 anything about drugs?

14 A. No, sir.

15 Q. And the reports that were prepared were prepared
16 fairly contemporaneously to that event meaning within the
17 same time frame, is that correct, within 30 days?

18 A. I need to refer to the report.

19 Q. Would you agree with me that your memory would be
20 more accurate that day as opposed to today as to what
21 happened in the events?

22 A. Yes, sir.

23 Q. You never heard Mr. Littlejohn tell anybody to
24 jump you, hit you, or attack you; is that correct?

25 A. That's correct.

Shawn Stallo - Direct Examination

1 Q. When you said that you got hit, and I'm kind of
2 mirroring you, you pointed to your left side and you said
3 you got hit by somebody to the left side?

4 A. Yeah, that's what I remember. It was over here
5 to the left.

6 Q. Do you remember what happened or what was said to
7 make him hit you?

8 A. No, sir, I don't.

9 Q. So the punch just kind of happened out of the
10 blue from what you recall?

11 A. Yes, sir.

12 MR. HALEY: Thank you. I have no further
13 questions.

14 THE COURT: Any redirect?

15 MS. SALISBURY: No, Your Honor.

16 THE COURT: All right, sir, you may step
17 down.

18 (Witness leaves the witness stand.)

19 MS. SALISBURY: Your Honor, at this time the
20 State calls Agent Shawn Stallo to the stand. Agent
21 Stallo, come around to be sworn.

22 THE CLERK: Sir, please place your left hand
23 on the Bible and raise your right hand.

24 SHAWN STALLO, having been duly sworn,
25 testified as follows:

Shawn Stallo - Direct Examination

1 Thank you. Please be seated. Please state
2 your full name for the record.

3 THE WITNESS: Shawn Stallo.

4 DIRECT EXAMINATION

5 BY MS. SALISBURY:

6 Q. Agent Stallo, where do you work?

7 A. I work for the Bureau of Alcohol, Tobacco,
8 Firearms & Explosives, the ATF here in Greenville, South
9 Carolina.

10 Q. And how long have you been with the ATF?

11 A. Approximately five-and-half years.

12 Q. And in your roll with the ATF what are some of
13 your duties and responsibilities?

14 A. As Agent Morlan testified, we investigate
15 criminal activities mostly in violations of federal law,
16 but often violent crime, narcotics, state trafficking,
17 arson explosives and also tobacco violations.

18 Q. Did you have any law enforcement experience
19 before you joined the ATF?

20 A. I was a special agent with the Georgia Bureau of
21 Investigation for approximately six years.

22 Q. Now, were you working in your current capacity in
23 April of 2009?

24 A. That's correct.

25 Q. What were some of your duties at that time? What

Shawn Stallo - Direct Examination

1 was happening in your day to day job during April of 2009?

2 A. In 2009, ATF in conjunction with the Greenville
3 County Sheriff's Department took on a unique opportunity
4 to start what you heard as a store front investigation. A
5 store front investigation is where you open up retain
6 space just like a business and you sell product such as
7 cigarettes. We offer tattoos, tobacco products, shoes,
8 clothing, et cetera. We do that in an attempt to elicit
9 individuals who are in criminal activities specifically
10 gun violations and narcotic violations.

11 Q. Now, how did that investigation take your
12 operation to Dixie Estate?

13 A. Keep in mind this was in April of 2009, the store
14 front investigation which ran approximately one year
15 started in February so we were early on in the
16 investigation. We didn't have any outside sources. It
17 was all law enforcement. No one else was aware of the
18 situation so we needed to go out and try to instigate or
19 try to obtain criminal conduct, so what we did was we --
20 I'm not from Greenville and neither was Agent Morlan so we
21 teamed up with Greenville County and they showed up what
22 they considered high crime areas that involved firearms,
23 narcotics, violent crime, et cetera, and we tried to focus
24 specifically on those areas in order to reduce the violent
25 crime, guns, and narcotics of those areas.

Shawn Stallo - Direct Examination

1 Q. Now, what do you mean by focusing on those areas?
2 What did you do to focus?

3 A. Just like you heard earlier we would go out and
4 hand out flyers. The flyers would be an attempt to get
5 the individuals to the store front. To back up a little
6 bit, based on our experience and the experience of other
7 successful store front operations in the country, we
8 intentionally designed the store front to be what we hoped
9 if you were a law abiding citizen, you would enter the
10 store front and be uncomfortable. We tried to make it a
11 comfortable setting for those of a criminal element again
12 using -- we didn't reinvent the wheel so to speak -- we
13 stole things from other successful operations and that was
14 our goal. So we would go to high crime areas and we would
15 introduce ourselves, we do by firearms, narcotics, and if
16 you're interested here's our address. If you're not, have
17 a nice day.

18 Q. Now, we've heard that Agent Morlan travelled to
19 Dixie Estates at some point during the day, April 23rd,
20 were you with Agent Morlan during that event?

21 A. No. It was not uncommon for different members of
22 the operation to go out to different areas alone and hand
23 out flyers and create conversation, et cetera.

24 Q. Now, at what point did you learn that Agent
25 Morlan had a lead, so to speak?

Shawn Stallo - Direct Examination

1 A. He telephoned at approximately 2:00, 2:30 p.m.
2 and said, hey, I just spoke to an individual who offered
3 to sell me an AKA assault riffle and a .40 caliber
4 handgun. He may call later in the day and he may call
5 later in the day or early afternoon. I don't know if
6 he'll call or not. I just want to keep you up to speed as
7 to what's going on and I'm out here working.

8 Q. During the course of this operation, how
9 frequently would you get information of that kind where
10 there's a potential source or potential lead?

11 A. Throughout the day.

12 Q. And to what extent did you manage that
13 information?

14 A. We tried our best -- it was a busy atmosphere,
15 there was not doubt. I tried my best to manage them and I
16 had a little system where I would jot down notes, but we
17 specifically had a cell phone log where we would write
18 down individual's nicknames and cell phone numbers
19 associated with that name so it wouldn't become lost at a
20 later date and we'd have a record of it. For example,
21 someone would call and say ask for this individual and he
22 said his name was "x" and this is his cell phone number
23 and I would write it down.

24 Q. Do you specifically recall putting the phone
25 number that Agent Morlan relayed to you after he described

Shawn Stallo - Direct Examination

1 his encounter with KJ?

2 A. I did. It was right in front of my desk so I
3 jotted it down.

4 Q. Do you recall what that telephone number was?

5 A. It 864. I don't recall exactly what the last
6 digits were.

7 Q. Did you ever record that phone number in any
8 reports?

9 A. I did.

10 Q. Would that refresh your recollection as to what
11 the phone number was?

12 A. Certainly. It would be the same number I wrote
13 down would be in my report.

14 Q. Is this the report that you prepared as part of
15 your investigation?

16 A. It is. The telephone number would be
17 864-361-[REDACTED].

18 Q. All right. So I believe where we were is that
19 Agent Morlan relayed to you that he had phone number, he
20 had this conversation, someone had offered to sell him an
21 assault riffle. What happened next?

22 A. To the best of my knowledge, Agent Morlan
23 returned to the store front location and at that point
24 nothing for a few hours. Later on, Agent Morlan came back
25 and said this individual who he was calling KJ at the time

Shawn Stallo - Direct Examination

1 telephone and said that he wanted to conduct a transaction
2 but he was not willing to come to the store front
3 location.

4 Agent Morlan offered for us to travel in two
5 separate vehicles. I would pick up the firearms. Agent
6 Morlan would pick up KJ and any associate he wanted to
7 bring back to the store front and the transaction would be
8 conducted there.

9 I need to make this clear, it was very
10 specific that no money and no transaction as far as an
11 exchange of money would be conducted anywhere but at the
12 store front location.

13 Q. So was it your understanding at that point that
14 the purpose of going to Dixie Estates was to act as
15 transportation?

16 A. Yes. According -- KJ did not want to travel, so
17 to speak, ride with the firearms in his vehicle so we were
18 willing to that for him.

19 MS. SALISBURY: Your Honor, if you give us
20 just a minute, we want to set up this projection system so
21 we can review some photographic evidence.

22 THE COURT: Ladies and gentlemen, are you all
23 right? You might want to stand and stretch while we're
24 doing this thing.

25 BY MS. SALISBURY:

Shawn Stallo - Direct Examination

1 Q. Agent Stallo, I'm going to show you State's
2 Exhibit 3 and ask you if you recognize that image?

3 A. I do. This is an aerial view of the Dixie
4 Estates neighborhood.

5 Q. Based on your experience during the course of
6 your investigation, is this an accurate depiction of how
7 the neighborhood appeared in April of 2009?

8 A. Yes, ma'am.

9 MS. SALISBURY: Your Honor, the State would
10 offer Exhibit 3.

11 THE COURT: Any objection?

12 MR. HALEY: No objection.

13 THE COURT: All right, without objection.

14 (Audio disc marked as State's Exhibit No. 2
15 for identification.)

16 (Aerial view photograph marked as State's
17 Exhibit No. 3 for identification and admitted into
18 evidence.)

19 MS. SALISBURY: With the Court's permission
20 I'd like to publish this exhibit.

21 THE COURT: All right.

22 BY MS. SALISBURY:

23 Q. Agent Stallo, if you would step down. What I'm
24 going to try to do is have you describe to the jury the
25 lay out of Dixie Estates and basically where your

Shawn Stallo - Direct Examination

1 investigation led you once you and Agent Morlan arrived in
2 the neighborhood.

3 A. Again this was April 23, 2009, this is
4 approximately 8:00, 8:15 p.m., and I remember specifically
5 it was a very nasty storm coming up and it was getting
6 dark very quick. So when we came into the neighborhood it
7 was dark; by the time we left it was pitch black.

8 When we came into the neighborhood, we came
9 this route. As Agent Morlan said he came in a pick up
10 truck and I was driving a tow truck directly behind him.
11 When we came in, we were instructed, and again -- I don't
12 believe I was instructed. I was following Agent Morlan
13 and where he got the instructions from, I don't know.
14 Again, I was there following Agent Morlan.

15 We pulled in and as we pulled back this is
16 Holder Lane and this is Inez Lane and we pulled into an
17 area right there. At this point I first met the defendant
18 Kendrick Littlejohn. I'm driving a tow truck at this time
19 and it's diesel and it's really loud and you can hear it
20 on the audio. Littlejohn gets in the truck with me and he
21 starts talking. I quickly realize he thinks I'm agent
22 Morlan who he met earlier that day.

23 I specifically remember being in that area
24 because the tow truck is a straight drive, it's holder,
25 and it's very difficult to maneuver in a very tight area.

Shawn Stallo - Direct Examination

1 So at this point I back out.

2 Littlejohn instructs us to drive through
3 here.

4 MR. HALEY: Your Honor, at this point I would
5 object to the hearsay. If the Agent is testifying to what
6 the defendant told Agent Morlan, then that's hearsay. If
7 he's testifying as to what he told him, then that's okay.

8 THE WITNESS: I can testify as to what he
9 told me.

10 THE COURT: Okay.

11 THE WITNESS: Again, we're here and
12 Littlejohn gets in the vehicle with me and I immediately
13 recognize that he thinks I'm Agent Morlan.

14 BY MS. SALISBURY:

15 Q. What made you think that?

16 A. Usually when you meet someone for the first time
17 you introduce yourself. He was very comfortable
18 immediately then he started talking about hey I got what
19 you need, firearms, et cetera. Then he said hey, I've got
20 crack, cocaine. I've got weed or whatever you need. And
21 I realized just by prior experience that's not how you
22 normally introduce yourself. That's what made me realize
23 that he thinks I'm Matt who he met earlier that day.

24 BY MS. SALISBURY:

25 Q. So did he at that point instruct you to head back

Shawn Stallo - Direct Examination

1 sort of in the direction that you had come into the
2 neighborhood?

3 A. He did. But prior to that I was able to identify
4 several individuals in this particular area walking in
5 this general direction as if they were going to come
6 through here. I didn't say anything about it. I just
7 witnessed these individuals and Littlejohn said hey, don't
8 worry about those guys, they're here for my protection
9 just to make sure you're straight. So it's me and my
10 partner and there was about eight individuals that
11 Littlejohn was taking care of.

12 Q. Did he ever tell you his name? Did he ever
13 properly introduce himself?

14 A. No.

15 Q. How did you know that this was the same KJ that
16 Agent Morlan told you about?

17 A. Just based on probability. When you specifically
18 meet an individual and that individual jumped in the car
19 and we had a general conversation, proactive, and then I
20 said you think I'm my partner and he said, yeah, I do. He
21 acknowledge that. I said he's up in the front. And he
22 said his associates were just there to make sure we were
23 straight. He directed us to drive here. Keep in mind
24 Agent Morlan is in front of us and we're driving there
25 here and at about this point Littlejohn gets out of the

Shawn Stallo - Direct Examination

1 vehicle with me and gets into the vehicle with Agent
2 Morlan.

3 Q. Let me stop you right there. How long was he in
4 the car with you?

5 A. By the time I got the two truck here and messed
6 around and manipulated the area, three or four minutes.

7 Q. And at this point you said it was getting dark
8 quickly. I know you said a storm was coming.

9 A. Uh-hum.

10 Q. How was the lighting outside. Were you able to
11 see the person to whom you were speaking?

12 A. Oh, yeah. We had a very clear view when we first
13 arrived?

14 Q. Now, what did this person look like? What was
15 the physical description of this person to whom you were
16 speaking?

17 A. Tall, slender, black male, young with dread
18 locks.

19 Q. And I believe you were about to describe how the
20 defendant got into Agent Morlan's car?

21 A. We were about at the corner here when Littlejohn
22 gets out of my tow truck and we were going very slow.
23 This is a neighborhood setting so he runs ahead and jumps
24 into the passenger side with Agent Morlan or he walks
25 beside it I can't recall, but he's right there. He may or

Shawn Stallo - Direct Examination

1 may not have gotten in the vehicle or just stood at the
2 windows when we were driving and directs him where to
3 stop. And then I pull up directly behind Agent Morlan
4 with probably enough room for one or two people to walk
5 through. We were pretty close. I was pretty close to his
6 car and that would have been approximately this area right
7 here.

8 Q. Okay. You can take a seat. We'll pick up from
9 here. Now, what happens once you arrive at a stopping
10 point? I mean did you get out of the car, did Agent
11 Morlan get out of the car? What happened once you
12 stopped?

13 A. At that point I didn't get out of the car. Agent
14 Morlan did get out of the vehicle and I roll down my
15 driver's side window. I did not roll down my passenger
16 side window. I rolled down my driver's side window so I
17 could hear the conversation and what was going on, et
18 cetera.

19 Q. So were you close enough to actually hear the
20 conversation that was taking place between the defendant
21 and Agent Morlan?

22 A. I was. I would argue -- I would guess that we
23 were approximately the distance we are right now, fairly
24 close.

25 Q. I'd like to show you State's Exhibits 4 and 5.

Shawn Stallo - Direct Examination

1 Do you recognize what's depicted in those photographs?

2 A. I do.

3 Q. What's depicted there?

4 A. State's Exhibit 4 is a photograph of my view when
5 I was in the vehicle, I looked straight forward and to my
6 left that's what I would have seen at that time. It's
7 simply two trailers and a courtyard area in between the
8 two trailers and a maybe a wood porch on the front of two
9 of the residences. State's Exhibit 5 would be the
10 location where I was parked which would be if you're
11 looking at the photograph to my right. And what this
12 depicts is two things I'd like to point out. One is a
13 street light that was able to illuminate the area a little
14 bit, and the other being a little parking area. I
15 remember that specifically that I didn't want to block the
16 residents of whoever lived there.

17 Q. Are these accurate depiction of how the
18 neighborhood looked on April 23rd of 2009?

19 A. They are.

20 MS. SALISBURY: Your Honor, the State offers
21 Exhibits 4 and 5.

22 MR. HALEY: No objection.

23 THE COURT: Without objection.

24 (Photograph marked as State's Exhibit No. 4
25 for identification and admitted into evidence.)

Shawn Stallo - Direct Examination

1 (Photograph marked as State's Exhibit No. 5
2 for identification and admitted into evidence.)

3 BY MS. SALISBURY:

4 Q. Now, Agent Stallo, I'm going to show you on this
5 projection system Exhibit 4 and I'll ask you if you can
6 describe for the jury now that they're looking at what
7 we're seeing in the photograph.

8 A. Again, this would have been my perception or my
9 view to my left. I'm again in the driver's side of my
10 vehicle. I'm again parked all the way over to the right.
11 There's enough room there for another vehicle to come
12 through the front and if I look to my left I have two
13 mobile homes that has a courtyard of sorts in between and
14 a wooden porch.

15 Q. Now, as you were watching what transpired and
16 what you can hear, what's going on while you're still
17 seated in the car?

18 A. I'm sitting in the car and Agent Morlan, his feet
19 are right on where that railroad tie is and for some
20 reason I'm kind of kicking the railroad tie. He's talking
21 to Littlejohn. There's a few other individuals right in
22 that area, but again, it's starting to get dark quick and
23 a good thunderstorm rolls in it can get dark really fast,
24 and that's what was happened. I could make out
25 individuals that are backed on the trailer back towards

Shawn Stallo - Direct Examination

1 the back of that trailer. I feel like -- I can see there
2 are several individuals. I can't say if there were five
3 or 20 but there was a lot of people back there but I can't
4 see specifically. I felt like -- I hoped Agent Morlan
5 wouldn't go back there because this could suddenly go bad.

6 Q. How many people were participating in the
7 conversation between Agent Morlan and the rest ---

8 A. The primary conversation would have been with the
9 defendant but there was other individuals kind of popping
10 in and out of the conversation. Agent Morlan would
11 describe hey, we're going to get tattoos, we're going to
12 go to the shop, et cetera, so people would pop in and out
13 of the conversation, but the primary conversation was with
14 the defendant. Again, including the defendant, two or
15 three other individuals over here and other individuals
16 further back in the courtyard area?

17 Q. Now, how long did the conversation component of
18 this incident last?

19 A. Five minutes, maybe.

20 Q. What do you recall happened next?

21 A. Again, my driver's side window was down and the
22 passenger's side window was up, and the tow truck is very
23 loud. I could hear the conversation but the audio is a
24 little bit interrupted. I, again, was thinking that this
25 could quickly turn into an assault. I felt like it was

Shawn Stallo - Direct Examination

1 going to so I removed my firearm. I had it in my hand and
2 Agent Morlan was walking in the front of my vehicle and
3 all of a sudden there is somebody at my passenger window
4 that quickly comes up to me and says, man, what are you
5 doing over here or something to that effect. In hindsight
6 I think it was ---

7 MR. HALEY: Your Honor, objection to the
8 speculation that the Agent was about to make.

9 THE COURT: He can testify to his state of
10 mind.

11 Go ahead.

12 THE WITNESS: I felt like I was being
13 distracted at that point. I look over and Agent Morlan is
14 no longer there. He was, again, on the front right bumper
15 of my vehicle. I was distracted. I turn and look over
16 and Agent Morlan is just gone. I then look over and I
17 witness the defendant and several other individuals
18 stomping and punching and hitting towards the ground. And
19 the defendant was very clear of my mind because he has
20 long -- similar to the hairstyle he has today -- which is
21 long dreadlocks which were waving and flopping as he was
22 assaulting Agent Morlan.

23 I then witness -- this is all in a very split
24 second. This isn't much time but it is, you know, it was
25 sensory overload a second or two but everything was

Shawn Stallo - Direct Examination

1 processed fairly clearly. And then I see an individual in
2 my passenger's side who was waving his arms saying stay in
3 the vehicle, stay in the vehicle.

4 I exited the vehicle. I moved back towards
5 the back of the tow truck and then I pointed my firearm at
6 the group who by this point I distinctly remember somebody
7 yelling he's got a gun, he's got a gun. The individual --
8 some back off, some ran, and some stood there in like a
9 deer in headlights look just frozen. They didn't know
10 what to do. I pointed my gun. I didn't -- at that
11 particular moment, my life wasn't in immediate danger nor
12 was Agent Morlan's. Eventually everybody else ran. I
13 went to the aide of Agent Morlan who at the time was
14 kneeling on the ground and appeared to be lucid but -- he
15 seemed to be okay. His brains weren't laying on the
16 ground but he definitely appeared to be in a disturbed
17 state of mind.

18 I put him in the car ---

19 BY MS. SALISBURY:

20 Q. Let me stop you right there before we got too far
21 ahead.

22 A. Sure.

23 Q. How long did the actual -- the punching and the
24 hitting and the stomping you described, how long did that
25 go on before whatever you did caused the group to

Shawn Stallo - Direct Examination

1 disperse?

2 A. I think because of the distraction and because of
3 the initial one or two second delay, 15 seconds.

4 Q. What did you think they were trying to do?

5 A. I thought they were trying to kill him.

6 MR. HALEY: Your Honor, I'm going to object
7 to that. It's pure speculation.

8 THE COURT: It's his state of mind. It's all
9 right.

10 BY MS. SALISBURY:

11 Q. Why didn't you shoot anybody?

12 A. The law is clear as far as use of deadly force.
13 In layman's terms, you can use deadly force which would be
14 shooting someone to protect your life or the life of
15 someone else at that particular moment. Law enforcement,
16 and it shouldn't be, in the revenge business. I can't
17 shoot someone because of what happened five seconds or
18 five minutes earlier.

19 At the time when I exited my vehicle, the
20 individuals were not assaulting Agent Morlan. They were
21 not kicking him in the head, face, at that particular
22 time. They were a few seconds earlier but at that time,
23 they were not. My life, also, I did not feel was in
24 immediate danger at that point.

25 So it's a very fast call. It's a call you

Shawn Stallo - Direct Examination

1 have to make in a matter of seconds, but at that time I
2 did not feel that my life or Agent Morlan's was in
3 immediate physical danger.

4 Q. Now, I want to show you State's Exhibit 5 and
5 have you describe what's depicted here as it relates to
6 the incident that you just described?

7 A. Imagine a long tow truck parked where those
8 railroad ties are now located. When I came out, keeping
9 in mind, I had the street light to my advantage as far as
10 the illumination. It pretty much lit up the area. When I
11 came out on the back right in that little grassy area,
12 Agent Morlan was actually pinned between the railroad tie
13 and the front tire of my tow truck. So there was little
14 space there. He was kind of pinned sort of kneeling down
15 in that area and the other individuals were standing -- it
16 may have been four, five, six, it's hard to remember --
17 right in that general area.

18 Q. Now, after you got out of the car, presented your
19 weapon, and for the most part the group fled on foot.

20 A. For the most part, yes.

21 Q. What did you do then?

22 A. Grabbed Matt put him in -- I say put him in --
23 assisted him into the passenger side of the tow truck and
24 left the area?

25 Q. Where did you go?

Shawn Stallo - Direct Examination

1 A. Just right up the street. We took a right
2 outside of the top of the entrance of the neighborhood.
3 We took a right and I believe there is some sort of
4 manufacturing company or construction of sorts. We pulled
5 in there and just kind of regain our composure and
6 thoughts.

7 Q. Did you leave the other car behind?

8 A. We did.

9 Q. Why?

10 A. Well, I thought it was the safest move. I had
11 displayed a firearm. I had a firearm and threatened to
12 use that firearm and I felt that anyone who would assault
13 someone and be in possession of firearms it was only a
14 matter of minutes before we had a gun fight so we had to
15 get out of there and we didn't have time to worry about a
16 car or anything material.

17 Q. Did you decide to call for emergency help? Did
18 you call 911?

19 A. We did. Agent Morlan told him that his AFT
20 telephone was in his vehicle because this was a long term
21 undercover operation. We felt it was necessary to call
22 law enforcement to go back to the scene to assist us in
23 going back to the scene to obtain the vehicle but most
24 importantly his AFT undercover telephone. And he lost his
25 shoes.

Shawn Stallo - Direct Examination

1 Q. Did you ultimately get some assistance to go back
2 into the neighborhood?

3 A. We did. I dialed 911. Again, we had been in an
4 undercover capacity and this had been a short term into a
5 long term undercover operation. To be quite honest with
6 you, I didn't want to jeopardize the case, so I tried to
7 make it a quiet 911 call which really didn't work.
8 Greenville County as they should come with several
9 officers. We identified ourselves as ATF agents and we
10 were escorted briefly back to the Dixie Estates
11 neighborhood only to obtain the car and we left the area
12 and I telephoned my supervisor just to let him know what
13 was going on.

14 In other words, there wasn't an investigation
15 or investigators called out and that was per our
16 instructions we asked that it be kept quite.

17 Q. Now, when you were assisting Agent Morlan, did
18 you notice any injuries?

19 A. Immediately at that point, no. May some bruising
20 around his face, but, no, I didn't know. He seemed to be
21 okay at that point.

22 Q. At what point did you elect to have him
23 transported to the hospital or pursue that avenue?

24 A. Greenville County, again, came and assisted us.
25 We obtained the vehicle that was left, the pick-up truck.

Shawn Stallo - Direct Examination

1 Matt even drove it away. We go back to the little
2 construction site that was only a few blocks away and Matt
3 kept repeating himself. At first I thought it was more of
4 a questioning type scenario and then it was continuous.
5 He kept asking the same thing over and over and over. By
6 this time my supervisor had arrived on the scene. I
7 called him and said I think he needs to go to the hospital
8 because although he appears to be lucid and of good mind,
9 I can see it deteriorating fast. So we collectively made
10 the decision that was the best thing so a supervisor drove
11 him to Saint Francis.

12 Q. Now, in front of you on the board right there is
13 State's Exhibit 2. Do you know what that is?

14 A. This is the compact disc for the audio. He was
15 wearing a digital recorder.

16 Q. Now, how did it get from the digital recorder to
17 that CD?

18 A. It was common practice if we were doing -- which
19 was rare -- if we were going outside and engaging in type
20 of, not even a transaction, but conversation of this
21 magnitude, we would wear a digital recorder. At that time
22 Matt, obviously, had the recorder. The recorder was later
23 provided to me by my supervisor. He obtained it from
24 Special Agent Morlan at the hospital. I took that
25 recorder, downloaded it to my computer and created this --

Shawn Stallo - Direct Examination

1 transferred the file on to this compact disc.

2 Q. Have you had an opportunity to review that
3 recording?

4 A. I have.

5 Q. To the extent that you witnessed the
6 conversations in pieces on that recording, do you know
7 whether it is an accurate recording of the events as they
8 transpired that night?

9 A. It is.

10 MS. SALISBURY: Your Honor, may we approach
11 briefly.

12 (Whereupon, there was a bench conference.)

13 THE COURT: Ladies and gentlemen of the jury
14 I have an issue with law we need to discuss so it's
15 probably a good time for a break. So y'all go back to the
16 jury room and don't talk about the case and we'll get with
17 you in just a minute.

18 (Jury exits the jury room.)

19 Okay.

20 MR. HALEY: Your Honor, it's my understanding
21 that she now intends to move into evidence the exhibit
22 marked as State's No. 2.

23 THE COURT: I don't think it's marked yet.

24 MS. SALISBURY: Yes, sir.

25 THE COURT: It's marked as No. 2. That's

Shawn Stallo - Direct Examination

1 very efficient.

2 MR. HALEY: It just hasn't been admitted yet.

3 THE COURT: Okay.

4 MR. HALEY: Your Honor, we object to the
5 publishing and playing of the portion that deals with any
6 mention of gangs. It's my understanding from listening
7 that's the preliminary officer giving recitation as to
8 what he's doing before he gets there. It's not the actual
9 conversation or recording of the event.

10 Secondly, there's been a casual
11 identification of the disc but I would like an opportunity
12 to specifically voir dire if it's going to be introduced
13 through this agent the disc's authenticity.

14 THE COURT: Go ahead.

15 MR. HALEY: If it please the Court, may I
16 approach the witness?

17 THE COURT: Yeah.

18 VOIR DIRE

19 BY MR. HALEY:

20 Q. Agent Stallo, you were provided that disc and you
21 testified what was on it. How do you know what's on that
22 disc?

23 A. At one particular time myself and Ms. Salisbury
24 listened to it in her office.

25 Q. Do you know it's specifically that disc in front

Shawn Stallo - Direct Examination

1 A. Right. My supervisor did not listen to the
2 audio. He just provided it to me.

3 MR. HALEY: Your Honor, just for the record I
4 would object to the admission of this evidence. What we
5 have is somebody who is going to give an opinion to
6 authenticate a recording that he got from somebody who got
7 it from somebody. I'm not sure if we can ---

8 THE COURT: Well, first off let's play it.
9 You're concerned with the chain of custody so let's find
10 out if this is the one he listened to.

11 MS. SALISBURY: Your Honor, may I respond to
12 that particular chain issue?

13 THE COURT: Yeah.

14 MS. SALISBURY: To the extent that State's
15 Exhibit 2 contains uniquely identifiable evidence and is
16 nonfungible in that respect, the State is not required to
17 demonstrate a chain of custody with regard to it's
18 authenticity or that it's an accurate recording.

19 THE COURT: Well stated. It's kind of like a
20 photograph. It's a recording of a conversation.

21 MR. HALEY: My first objection is I didn't
22 know what it was. She's waiving the disc around that we
23 don't know what's on that disc.

24 THE COURT: Well, let's play it to make sure
25 it's the right disc.

Shawn Stallo - Direct Examination

1 of you either than the name Littlejohn being written on
2 the generic slip cover?

3 A. I can't say for certain with this ---

4 THE COURT: We can fix that. Plug it in,
5 play it and see if he remembers.

6 MR. HALEY: Your Honor, while she is doing
7 that I can continue with the line of custody to speed up
8 things.

9 THE COURT: Okay.

10 BY MR. HALEY:

11 Q. How did the recording or the digital recording
12 get into your possession?

13 A. My supervisor provided me the digital recording
14 device.

15 Q. So you didn't see the supervisor get the digital
16 recording device from Agent Morgan; is that correct?

17 A. That is correct.

18 Q. You were provided a digital recording and was
19 just told what it was?

20 A. No, I was provided the digital recorder and my
21 supervisor said I obtained this, it was in Matt's pocket,
22 here you go.

23 Q. Right, that's what I'm saying you were advised as
24 to what this was meaning this was the digital recording
25 for Agent Morlan?

Shawn Stallo - Direct Examination

1 (Video played outside the presence of the
2 jury.)

3 THE WITNESS: That's the same recording.

4 THE COURT: Can you pause it a moment?

5 That's what you object to?

6 MR. HALEY: Yes.

7 THE COURT: The rest of it is an accurate
8 depiction of the events of the evening?

9 MS. SALISBURY: That's been the testimony,
10 Your Honor.

11 THE WITNESS: Yes, sir.

12 THE COURT: What do you say about redacting
13 that portion? It's sort of a self-serving statement that
14 identifies the tape for the benefit of the officer. I
15 don't know that it's got ---

16 MS. SALISBURY: Well, to the extent that Your
17 Honor is prepared to rule that that's an inadmissible
18 component of the exhibit, I can obtain a redacted version
19 that does not contain that particular portion.

20 THE COURT: Well, it's not -- I don't see any
21 reason to let that in. Can't you just start it right
22 there or does that start the whole thing over?

23 MS. SALISBURY: I can certainly start it from
24 here. It just removes Agent Morlan's characterization of
25 the date and time and anything else if the jury has any

Shawn Stallo - Direct Examination

1 concerns about it or if Your Honor has any concerns about
2 admitting an exhibit that has otherwise a piece of
3 inadmissible evidence.

4 THE COURT: You know, I don't know how -- it
5 just goes to his state of mind. It doesn't prove
6 anything.

7 MR. HALEY: Your Honor, I have no objection
8 to the rest of the tape, it's just that. If she's going
9 to play it for the jury, if you can push a button from
10 there like a pause play, I'm okay with that.

11 THE COURT: And then what we'll do when
12 they're deliberating if they want to hear it again, we'll
13 just have to play it. We can't put it in their custody.
14 And certainly the first part I'm suppressing over the
15 State's objection because the State wants it in so that's
16 part of the record if the case were to be appealed.

17 MS. SALISBURY: All right.

18 THE COURT: So the first comments by Agent
19 Morlan are a Court's Exhibit. Okay.

20 (First portion of the disc marked as a
21 Court's Exhibit for identification.)

22 Y'all just want to take five or ten minutes?

23 Officer, you can stand down and please don't
24 discuss your testimony.

25 (Whereupon, there was a break.)

Shawn Stallo - Direct Examination

1 THE BAILIFF: Come to order, court is now in
2 session.

3 THE COURT: Okay. We're ready to go.

4 (Jury re-enters to courtroom, witness retakes
5 the stand)..

6 All right, yes, ma'am. Go ahead.

7 MS. SALISBURY: Your Honor, at this point the
8 State offers Exhibit 2 into evidence.

9 THE COURT: Subject to previous objections.
10 (Audio Disc previously marked as State's
11 Exhibit No. 2 for identification was admitted into
12 evidence.)

13 MS. SALISBURY: With the Court's permission,
14 I'd like to publish that exhibit for the jury.

15 THE COURT: Yes, ma'am.

16 (Whereupon, audio disc was played in open
17 court.)

18 All right, ladies and gentlemen, I would tell
19 you that y'all when the time comes will be free to listen
20 to the entire rest of it. I understand that it's pretty
21 much what you were listening to when we turned it off, but
22 it's in evidence and you can hear the whole thing if you
23 chose to do that. I think it ends up when Agent Morlan is
24 taken to the hospital. I think that's where it ends.

25 Am I correct about that, counsel?

Shawn Stallo - Direct Examination

1 MS. SALISBURY: Yes, Your Honor.

2 THE COURT: So just to save a little bit of
3 time, we'll skip over that.

4 MS. SALISBURY: Thank you, Your Honor.

5 BY MS. SALISBURY:

6 Q. Agent Stallo, once Agent Morlan was actually
7 transported to the hospital -- I believe you testified
8 earlier that someone drove him to the hospital.

9 A. Yes.

10 Q. What did you do?

11 A. Eventually I went back to the store front
12 location and telephoned the investigator, Brandon Brown,
13 with the Greenville County Sheriff's Department?

14 Q. Why?

15 A. Investigator Brown is familiar with the area
16 where we were located. Again, I was not and I wanted to
17 try to solicit Investigator Brown to help me identify who
18 assaulted Agent Morlan.

19 Q. By the time you got back to the store front and
20 the time you contacted Investigator Brown, what time was
21 it?

22 A. 1:00 in the morning.

23 Q. Now, did you get an opportunity to speak with
24 Investigator Brown that night?

25 A. I did.

Shawn Stallo - Direct Examination

1 Q. What did you ask of him?

2 A. I simply told Investigator Brown that Agent
3 Morlan was attacked earlier that night by several
4 individuals. The only individual that I could
5 specifically identify was a tall, slender, black male,
6 fairly young with dreadlocks, and Investigator Brown said
7 I know maybe one or two individuals that match that
8 description but I need to put some photographs together,
9 et cetera.

10 Q. Now, did you ever hear back from Investigator
11 Brown regarding any possible suspects?

12 A. That next morning I believe I spoke with him and
13 he had e-mailed me a photo of an individual matching the
14 characteristics of the description that I said earlier.

15 Q. Did you review that photograph?

16 A. I did.

17 Q. Was the person in that photograph the person that
18 you believe had attacked Agent Morlan?

19 A. It was not. It matched the physical description,
20 tall, slender, black male, dreadlocks, young, but it
21 wasn't the individual that I saw attack Agent Morlan.

22 Q. So what did you do?

23 A. I telephoned Investigator Brown and stated this
24 isn't the individual. Would you continue to do your
25 investigation and assist us in finding out who it was.

Shawn Stallo - Direct Examination

1 Q. Did you ever, after that conversation, hear from
2 Investigator Brown?

3 A. I did. He telephoned me and said that ---

4 MR. HALEY: Your Honor, at this point I would
5 object to whatever Investigator Brown said.

6 THE COURT: That's hearsay.

7 BY MS. SALISBURY:

8 Q. Without describing what Investigator Brown told
9 you, when did you hear next from Investigator Brown?

10 A. I received the name Kendrick Littlejohn from
11 Investigator Brown.

12 MR. HALEY: Your Honor, again, that would be
13 my objection.

14 THE COURT: You can talk about what you did
15 as a result of that.

16 THE WITNESS: Based on information I received
17 from Investigator Brown, I queried the South Carolina's
18 Department of Motor Vehicles database.

19 BY MS. SALISBURY:

20 Q. How long between the time that you spoke to
21 Investigator Brown and shared with him the photo that he
22 sent was not the right person? How long from that
23 conversation until you heard from him again?

24 A. I want to say it was few hours. I believe it was
25 the same date. The assault occurred on a Thursday and I

Shawn Stallo - Direct Examination

1 obtained this information on a Friday. I don't know
2 exactly what time. I may have written it in my report.

3 Q. So based upon your second conversation or perhaps
4 your third -- if the first is the night of, the second is
5 the e-mail version, the third time you spoke with
6 Investigator Brown, did you review a photograph?

7 A. I did.

8 Q. I'm going to show you State's Exhibit 6. Is that
9 the photograph you reviewed after you spoke with
10 Investigator Brown?

11 A. That is correct.

12 MS. SALISBURY: Your Honor, the State moves
13 Exhibit 6 into evidence.

14 MR. HALEY: Without objection.

15 THE COURT: No objection.

16 (Photograph marked as State's Exhibit No. 6
17 for identification was admitted into evidence.)

18 BY MS. SALISBURY:

19 Q. After looking at the photograph depicted in
20 State's Exhibit 6, were you able to determine the identity
21 of the person you believe had attacked Agent Morlan?

22 A. Yes, I was.

23 Q. Do you recognize the person in the photograph?

24 A. Absolutely.

25 Q. Who's depicted in that photograph?

Shawn Stallo - Direct Examination

1 A. The defendant in the white shirt, dreadlocks.

2 Q. Agent Stallo, did you ever attempt to identify,
3 the identity of the person to whom the phone number was
4 registered that was provided to Agent Morlan?

5 A. Yes, ma'am, we did. I contacted our intel
6 specialist in Charlotte, North Carolina and provided her
7 with the telephone number that was provided to Agent
8 Morlan on April 23, 2009.

9 Q. Now, you mentioned that you contacted your
10 intelligence analysis?

11 A. That's correct.

12 Q. Now, why did you do it that way?

13 A. Well, specifically she has access to certain
14 databases where you can pick subscriber information on a
15 telephone number, power companies, et cetera. She was
16 specifically assigned to the store front investigation so
17 when I obtained the telephone number I called her and
18 simply said, hey, do me a favor and see if you can find
19 out who this subscriber information is on this particular
20 cellular telephone number.

21 Q. And did you give her the telephone number that
22 Agent Morlan related to you and is documented that you
23 testified about earlier?

24 A. I did.

25 Q. Is State's Exhibit 7, the result of that

Shawn Stallo - Direct Examination

1 particular inquiry?

2 A. It is, that's the result of the inquiry I
3 received.

4 Q. Now, how much longer after the incident did you
5 receive the results of that inquiry?

6 A. I believe I received these results on Monday
7 which would have been 4/26 2009.

8 Q. Now, Agent Stallo, do you see the person in the
9 courtroom today who was speaking with Agent Morlan who you
10 overheard speaking with Agent Morlan and who you
11 ultimately observed physically attacking Agent Morlan in
12 the courtroom?

13 A. Oh, yes, it's the defendant Kendrick Littlejohn
14 in the white shirt.

15 Q. Is that the defendant the same person that got in
16 the car with you?

17 A. Yes.

18 Q. Did you ever observe the defendant or any members
19 of that group arguing with Agent Morlan?

20 A. No.

21 Q. Did you ever see what appeared to you to be
22 physical confrontation between the two?

23 A. No, there wasn't.

24 Q. Are you certain that you observed this defendant
25 striking Agent Morlan?

Shawn Stallo - Cross-examination

1 A. 100 percent, yes.

2 Q. Agent Stallo, answer any questions that Mr. Haley
3 may have.

4 MR. HALEY: If it please the Court, Your
5 Honor.

6 THE COURT: Go ahead.

7 CROSS-EXAMINATION

8 BY MR. HALEY:

9 Q. Agent, you just testified you're 100 percent
10 certain you saw this gentleman strike Agent Morlan?

11 A. That's correct.

12 Q. Do you recall on direct examination about 45
13 minutes ago that the solicitor asked what did you see and
14 you said you saw people kicking and punching towards the
15 ground but I didn't see anything because Agent Morlan was
16 laying in front of the truck?

17 A. Correct.

18 Q. So which one is true?

19 A. I believe they're both true. I guess I inferred
20 based on Agent Morlan's injuries and the direction --

21 Q. Okay.

22 A. Let me finish.

23 Q. You've answered my question.

24 THE COURT: Let him finish. He can fully
25 answer the question. Go ahead.

Shawn Stallo - Cross-examination

1 THE WITNESS: Based on the location I found
2 on his injuries and the type of manner he was punching and
3 stomping towards the ground was a direct assault on Agent
4 Morlan.

5 BY MR. HALEY:

6 Q. The word you're using is inferred; is that
7 correct? Did I quote you accurately?

8 A. You did.

9 Q. Inferred is like guessing or speculating; is that
10 correct?

11 A. Well, maybe ---

12 Q. Is that correct?

13 A. I don't have a dictionary per say of what the
14 definition of inferred is. I logically grabbed the
15 conclusion that because of what I witnessed the defendant
16 doing that is who he was punching, kicking and stomping.

17 Q. Let's back up. Solicitor's last question was are
18 you 100 percent certain you saw this gentleman strike
19 Agent Morlan and you said, yes; is that accurate?

20 A. That is accurate.

21 Q. Now, from you vantage point you couldn't see who
22 struck Agent Morlan, all you could see is people making
23 physical movements towards the ground; is that accurate?

24 A. That is accurate.

25 Q. So it is quite possible that if this defendant

Shawn Stallo - Cross-examination

1 was the one there swinging and kicking as you testified,
2 it's possible he never struck him and he could have been
3 missing; is that possible?

4 A. Unlikely but possible, yes, sir.

5 Q. A logical conclusion that you -- the definition
6 that you gave is that you drew a logical conclusion?

7 A. Yes, sir.

8 Q. That's a hypothesis; is that correct?

9 A. A theory, I think.

10 Q. So you have a theory as to what happened that day
11 but you're not 100 percent certain out of all the
12 gentlemen did what; is that correct?

13 A. I am 100 percent certain in my mind that the
14 defendant struck Agent Morlan.

15 Q. But you did not see any part of his body make
16 contact with Agent Morlan; is that accurate?

17 A. That is accurate.

18 Q. Did you see the first punch that struck Agent
19 Morlan as you heard him describe came from his left side?

20 A. No.

21 Q. Now, you're his back up; is that correct?

22 A. That's correct.

23 Q. But you wasn't paying attention?

24 A. No, as I testified earlier I was distracted by an
25 individual in my driver's side window.

Shawn Stallo - Cross-examination

1 Q. How long have you been an agent?

2 A. AFT agent, right now, five-and-a-half years,
3 prior six years with GBI.

4 Q. And for those who don't know GBI is Georgia
5 Bureau of Investigation?

6 A. It's a state agency, yes, sir, equivalent to the
7 SLED agency here.

8 Q. So it's safe to say this was not your first
9 undercover stake out or undercover op; is that correct?

10 A. That is correct.

11 Q. So it's your testimony that a seasoned veteran
12 officer experienced in undercover was momentarily
13 distracted by someone talking therefore you lost contact
14 with your responsibility of maintaining cover for your
15 agent; is that accurate?

16 A. I definitely testified that I was distracted and
17 lost visual sight of Agent Morlan who was in the front of
18 my vehicle for a few seconds.

19 Q. And do you have a theory as to what happened when
20 you lose contact or visual sight of your agent?

21 A. Based on the evidence, based on the audio, I
22 believe the moment I was distracted is when Agent Morlan
23 was hit in the head and caused (inaudible).

24 Q. Do you know what caused the fight, the punch, the
25 may lay or whatever you want to describe it.

Shawn Stallo - Cross-examination

1 A. Greed, I guess. I don't know.

2 Q. Was there an argument over money?

3 A. No. I don't know. I don't want to speak to his
4 mind set.

5 MS. SALISBURY: Your Honor, may we approach
6 briefly?

7 THE COURT: All right.

8 (Whereupon, there was a bench conference.)

9 BY MR. HALEY:

10 Q. Agent Morlan, I believe where we left off was you
11 didn't see the first punch thrown?

12 A. No.

13 Q. And you don't know what started it like if it was
14 an argument or whatever started that incident?

15 A. I know there -- keep in mind I had a very clear
16 audio and I could hear the conversation. I'm certain
17 there was no conflict or confrontation, et cetera.

18 Q. Right and that's what I was asking?

19 A. No, there was not.

20 Q. Did you ever -- strike that. Now, you testified
21 that the only person you could identify was
22 Mr. Littlejohn?

23 A. In the assault, yes, sir.

24 Q. So the other people that you identified was not
25 involved in this argument?

Shawn Stallo - Redirect Examination

1 A. There was another individual that I later
2 identified who I can testify was there, but I could not
3 swear 100 percent that he was involved in the physical
4 assault.

5 Q. I believe you testified that was your first
6 encounter or visit into that neighborhood on that day?

7 A. Investigator Brown drove us through Greenville
8 County at one point. Did we drive in that neighborhood?
9 I don't specifically remember it.

10 Q. Agent, I'll ask a better question. I apologize.
11 Was that your first day working in that neighborhood?

12 A. That's correct, first and last.

13 Q. So up until that point, you didn't know
14 Mr. Littlejohn or had no contact with him?

15 A. That's correct.

16 MR. HALEY: I have no further questions.

17 THE COURT: Redirect?

18 MS. SALISBURY: Very briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. SALISBURY:

21 Q. There's been a lot of discussion, Agent Stallo,
22 about what you saw from your vantage point inside the
23 driver's seat. Would you be willing to come off the stand
24 and show the jury precisely what you saw the defendant
25 doing?

Shawn Stallo - Redirect Examination

1 A. I can try. From my vantage point ---

2 THE COURT: Just keep your voice up.

3 THE WITNESS: We'll go to my vantage point
4 first. The first place I am is I'm sitting in a tow truck
5 and my driver's side window is down so I can retain
6 earshot. The passenger's side window was up. In
7 hindsight it should have been down. It was
8 air conditioning, hot. While I'm sitting in the window, I
9 can see Agent Morlan about where the podium is there and
10 he's having a general conversation. It seems to be or he
11 seems to be relaxed, but I can definitely tell you my
12 mind set was this was about to go bad real quickly.

13 Agent Morlan is -- the conversation I could
14 hear Littlejohn saying come over here ---

15 MR. HALEY: Your Honor, at this point I'm
16 going to object. He is exceeding the scope of my cross.
17 I specifically did not ask what he heard and any
18 conversations that Mr. Littlejohn or anybody else heard.

19 THE COURT: Your objection is noted for the
20 record. Go ahead.

21 THE WITNESS: Agent Morlan walks back again
22 in between the front of my vehicle and to the bumper of
23 his vehicle and he is approximately the center of my
24 vehicle and an individual distracted me. Whether it was
25 intentional or not I don't know but I think it was and he

Shawn Stallo - Redirect Examination

1 did distract me. He came up real quick, real fast. I was
2 watching my rear view mirror and he was right there, and
3 he said something, and I look up and Agent Morlan had
4 disappeared. He was right here, turned and he is gone
5 just like that. (Demonstrating)

6 So then I witness Littlejohn and several
7 other individuals stomping towards the ground, swinging
8 fists, doing things in this manner in a very violent and a
9 very fast manner.

10 BY MS. SALISBURY:

11 Q. Thank you, Agent Stallo.

12 MS. SALISBURY: I don't have any other
13 questions.

14 MR. HALEY: Just a few questions.

15 REDIRECT EXAMINATION

16 BY MR. HALEY:

17 Q. Would you agree that this assault specifically
18 took place it appears somewhere from 10 to 35 seconds?

19 A. That sounds reasonable.

20 Q. Give or take a few either way?

21 A. Yes, sir.

22 Q. And how soon did you jump up and get out the
23 vehicle to see?

24 A. I don't know. I really don't know. Time was,
25 you know, different.

Shawn Stallo - Redirect Examination

1 Q. Can you tell the jury how long you were
2 distracted and looked to the other gentleman before you
3 turned and looked back?

4 A. My best guess is the assault took around 10
5 seconds and I was distracted for maybe five or six of
6 those seconds. I really don't know. I try to play it
7 back in my mind.

8 Q. And that's fair. I appreciate that. Once you
9 realized, that's when you got out and displayed your
10 firearm?

11 A. That's correct.

12 Q. And you helped Agent Morlan up?

13 A. Yes.

14 Q. And at that point he said he looks okay may be a
15 bruise or something here (demonstrating); is that correct?

16 A. That's correct.

17 Q. Did you notice any blood?

18 A. No.

19 Q. Was there any broken bones or anything when you
20 helped him?

21 A. No.

22 Q. Is it possible that bruise came from the punch
23 that he described?

24 A. Punch to the head, sure.

25 Q. And I believe you testified that he was somewhat

Shawn Stallo - Redirect Examination

1 disoriented and you realized it because he kept asking the
2 same question over and over and then he was taken to the
3 hospital?

4 A. It progressively got worse, yes.

5 Q. Could that have come from the blow to the head?

6 A. I would argue that it did come from a blow to the
7 head, yes.

8 Q. And you would agree that Agent Morlan testimony
9 would suggest that Mr. Littlejohn was not the one who
10 threw the punch to the head while he was standing?

11 A. I don't know.

12 MR. HALEY: Thank you.

13 MS. SALISBURY: Nothing further, Judge.

14 THE COURT: All right, you may step down.

15 Come on up here and let me talk to you.

16 (Whereupon, there was a bench conference.)

17 MS. SALISBURY: The State calls Ms. Joy Vess.

18 THE CLERK: If you would come around to be
19 sworn. If you'll please pause at the end of the bench,
20 place your left hand on the Bible and raise your right
21 hand.

22 EVELYN JOY VESS, having been duly sworn,
23 testified as follows:

24 Thank you. Please be seated. State your
25 full name for the record.

Evelyn Vess - Direct Examination

1 THE WITNESS: Evelyn Joy Vess.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MS. SALISBURY:

5 Q. Good afternoon, Ms. Vess. Thank you for being
6 here. I'm standing way over here just to make sure the
7 jury hears you all right.

8 Just tell the jury real briefly, where do you
9 work?

10 A. Saint Francis Hospital.

11 Q. And what are your responsibilities as an employee
12 at Saint Francis Hospital?

13 A. I'm in the emergency department. I'm a nurse
14 practitioner.

15 Q. Now, what sort of training have you had in
16 education and background to prepare you to perform those
17 functions in the emergency room?

18 A. I have a master's degree as an acute care nurse
19 practitioner and I have a doctrine in nursing practice
20 with a specialty in emergency medicine and critical care.

21 Q. Now, if somebody is admitted into the emergency
22 room at Saint Francis or somebody arrives at the emergency
23 room, at what point might they interact with you?

24 A. After they've been triaged by a registered nurse
25 and placed in a room, we are given the charts and either

Evelyn Vess - Direct Examination

1 the physicians or myself then takes the chart and goes to
2 see the patient in the examining room.

3 Q. Were you working in that capacity in April of
4 2009?

5 A. I was.

6 Q. Do you recall whether you had been working during
7 the evening of April 23, 2009?

8 A. I was.

9 Q. And what were your specific responsibilities that
10 night?

11 A. That night I was working a 10-hour shift in the
12 emergency department from -- actually the shift was from
13 6:00p to 2:00a seeing all emergency patients that came in
14 either through triage or through EMS, the emergency
15 medical system.

16 Q. Do you recall whether you treated Special Agent
17 Matt Morlan that night?

18 A. I do recall that I did treat him.

19 Q. Now, can you describe for the jury what you
20 observed?

21 A. When I first went into the room, as is typical, I
22 reviewed the chart from what the triage nurse had written
23 on there before I went into the room. And I went into the
24 room and discussed with him what had happened. It was
25 obvious he had some trauma to his face and I asked him

Evelyn Vess - Direct Examination

1 questions about the event and I did a physical exam on him
2 in order to diagnostic test him.

3 Q. Now, do you recall whether he was able to recount
4 for you the details of what had happened?

5 A. He was repeatedly asking several of the same
6 questions over and over and the two specifically that I
7 remembered he asked me on more that one occasion: What
8 happened and he asked me why he was there. He was able to
9 answer some of the questions I asked him related to his
10 age and some of his medical history, and I remember asking
11 him if he had had a fever prior to that visit and he said,
12 no. But he was unable to recall any of the events that
13 led up to that and the history. Some of the history I
14 received is from the person who accompanied him to the
15 E.R.

16 Q. Now, based on your treatment of Agent Morlan that
17 night and your observations and your interactions with him
18 and all of the tests that you did as part of your roll in
19 the emergency room, what did you conclude were his
20 injuries in total?

21 A. I concluded that his presentation and his
22 diagnostic testing was consistent with a closed head jury,
23 more commonly known as a concussion.

24 Q. Is it your in the emergency room to elect how to
25 treat someone's injury? Do you give a patient advice as

Evelyn Vess - Cross-Examination

1 to how that injury should be treated and to make decisions
2 about dealing with that trauma?

3 A. There are standards of care for particular
4 diagnosis that presented obviously. We cater specifically
5 to the patient. In his case with his presentation and the
6 result of his exam, I was the person that made the
7 decision about how he should be treated with that
8 diagnosis.

9 Q. What did you elect to have him do in terms of the
10 treatment?

11 A. Typically in this situation how I felt was most
12 appropriate for him was to give him a written copy of
13 discharge instructions explaining what a concussion is,
14 what kind of things to anticipate over the coming days,
15 and also to give him something for his pain which he had
16 and what I expected him to have in the coming period of
17 time, and to make sure he had a follow up appointment and
18 somebody responsible to take care of him.

19 Q. Was he released from the hospital that night?

20 A. He was discharged from the emergency room.

21 Q. Why did you elect to send him home rather than
22 keep him in the event the injuries manifested into a more
23 serious problem?

24 A. It's standard of care. As I have been trained
25 and as I treat often in the ER for a concussion to

Evelyn Vess - Cross-Examination

1 discharge someone with the instructions that someone can
2 look for and observe changes in this patient because as
3 long as they have a responsible person that's able to
4 observe them and they have appropriate follow up and that
5 person is aware of what things to anticipate, it is not
6 standard to admit someone to the hospital for observation.

7 There's clear instructions on the discharge
8 instructions that if they notice some particular symptoms
9 that they are to return to the ER.

10 Q. Now, did you ever interact with Agent Morlan
11 again after that night?

12 A. I have not.

13 Q. Thank you. Please answer any questions Mr. Haley
14 may have for you.

15 A. Yes, ma'am.

16 MR. HALEY: Just briefly, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. HALEY:

19 Q. Ma'am, a concussion, can that occur from one
20 blow, one punch to the end?

21 A. I am not an expert witness, sir, but in my
22 experience in the emergency department which includes 13
23 years of experience, I have seen in many occasions that a
24 concussion certainly can occur from one blow to the head.

25 Q. Thank you, ma'am.

Troy Mitchell - Direct Examination

1 THE COURT: Anything else?

2 MS. SALISBURY: No, sir.

3 THE COURT: Thank you, ma'am. You can step
4 down and you are released from subpoena.

5 (Witness leaves the witness stand.)

6 MS. SALISBURY: Your Honor, the State calls
7 Dr. Troy Mitchell.

8 THE CLERK: Step around, Doctor, to be sworn
9 in. Place your left hand on the Bible and raise your
10 right hand.

11 TROY MITCHELL, having been duly sworn,
12 testified as follows:

13 Thank you. You can be seated. State your
14 full name for the record, please.

15 THE WITNESS: Troy Michael Mitchell.

16 DIRECT EXAMINATION

17 BY MS. SALISBURY:

18 Q. Dr. Mitchell, thank you for being here. I'm
19 standing over here so everybody can hear you. Where do
20 you work now?

21 A. Saint Francis Emergency Room.

22 Q. How long have you been employed at Saint Francis?

23 A. Approximately three-and-a-half, four years.

24 Q. What are some of your responsibilities at Saint
25 Francis?

Troy Mitchell - Direct Examination

1 A. I am currently the assistant medical director.

2 Q. What day to day is your roll inside the hospital?

3 A. Specifically inside the ER, I schedule all the
4 doctors and all the mid-level providers and, of course, I
5 work myself in the ER and I supervise.

6 Q. Were you working in that supervisory capacity in
7 April of 2009?

8 A. Yes.

9 Q. Now, Dr. Mitchell, are you licensed to practice
10 medicine in the State of South Carolina?

11 A. I am.

12 Q. How long have you been licensed?

13 A. Twenty years or so.

14 Q. What was your background in education before you
15 became licensed to practice?

16 A. Naval Academy graduate for under grad, medical
17 school, Medical College of Virginia.

18 Q. Now, in your capacity at Saint Francis are you
19 actively engaged in the practice of medicine?

20 A. Yes.

21 Q. In your practice have you had occasion to treat
22 people with head injuries?

23 A. Yes.

24 Q. Now, in the normal performance of your practice,
25 have you had occasion to examine the medical records of

Troy Mitchell - Direct Examination

1 patients that had been prepared by your colleagues,
2 specifically from individuals who you supervise?

3 A. Yes.

4 MS. SALISBURY: Your Honor, at this point,
5 I'd offer Dr. Mitchell as an expert witness.

6 MR. HALEY: Your Honor, I have no objection
7 to Dr. Mitchell being an expert on head injuries as he's
8 presented before this court.

9 THE COURT: Okay.

10 MS. SALISBURY: Thank you, Your Honor.

11 BY MS. SALISBURY:

12 Q. Dr. Mitchell, on April 23, 2009, do you recall
13 specifically whether you were working in the ER at Saint
14 Francis?

15 A. I was based on the medical review, yes.

16 Q. Do you know whether at that date you were acting
17 then as a supervisor over the emergency room?

18 A. Yes, I was.

19 Q. Have you had an opportunity to examine the
20 medical records as it relates to Special Agent Matt
21 Morlan's medical treatment at the emergency room that
22 night?

23 A. Yes.

24 Q. Can you form an opinion to a reasonable degree of
25 medical certainty as to what injuries Agent Morlan

Troy Mitchell - Direct Examination

1 sustained on April 23rd?

2 A. Yes.

3 Q. What is your opinion about those injuries?

4 A. Based on the review of medical record, itself,
5 because I didn't personally see him in the ER, it looks
6 like we sustained what we call a mild head trauma.

7 Q. Is it customary for someone to be admitted in the
8 emergency room, diagnosed, treated, and released without
9 you as the supervisor actually interacting with that
10 patient?

11 A. Yes.

12 Q. Why is that the case?

13 A. Well, depending on which ER he comes to, we have
14 one doctor and perhaps two mid-level providers which can
15 be a physician's assistant or nurse practitioners or two
16 doctors and one mid-level, and the doctor can't see
17 everyone and that's why we have our extenders.

18 Q. Would you please describe for the jury the
19 general nature of this kind of head injury, what Ms. Vess
20 characterized as a concussion, a closed head injury and
21 it's varying degrees?

22 A. As far as varying degrees, over time there's been
23 several attempts to classify concussions. I think the
24 easiest system is they're broken down into simple
25 concussion or a more complex concussion. Simple being

Troy Mitchell - Direct Examination

1 they expect the person or the symptoms to basically
2 resolve over seven to ten days. Anything beyond that
3 would be considered a complex concussion.

4 Q. Would you consider a sustained memory loss from a
5 head injury characteristic of a simple or a complex
6 concussion?

7 A. It depends on the length of time. If it's beyond
8 say seven to ten days, complex.

9 Q. If someone had sustained a memory loss for two
10 years regarding a specific incident, would you consider
11 that a symptom of a complex concussion?

12 A. Definitely.

13 Q. What are the possible effects other than the
14 memory loss that was referred to in this case, what might
15 be the possible side effects from a complex concussion in
16 any particular case?

17 MR. HALEY: Your Honor, at this point I would
18 object to that line of questioning as having no
19 foundation. Dr. Mitchell is as expert regarding the
20 relevant facts of Agent Morlan's injuries but now she's
21 getting into what other side effects and there's been no
22 testimony from Agent Morlan that he had suffered any side
23 effects.

24 THE COURT: Your objection is noted for the
25 record. Go ahead.

Troy Mitchell - Cross-Examination

1 BY MS. SALISBURY:

2 Q. What might the possible effects of a complex
3 concussion be in any particular case?

4 A. Well, it doesn't necessarily have to be a
5 complex. Even a simple concussion sort of has the same
6 type of side effects with just the length of time is
7 different; dizziness. In addition to the memory, they can
8 have nausea, vomiting, headaches, long term headaches,
9 vision problems, emotional problems. It extends over a
10 wide range of different symptoms.

11 Q. Is it possible that someone might die from the
12 injuries sustained as a result of a complex concussion?

13 A. How we define concussion, no. It's a minor -- a
14 concussion is considered a minor head trauma; however,
15 when that concussion is diagnosed as in this case, the CT
16 with CAT scan was done there was no evidence of bleeding
17 at that time, the brain bleeding. There was no skull
18 fracture and therefore the diagnosis of skull fracture was
19 made. However, when we do discharge the patient from the
20 ER, they are told to follow up with an additional doctor
21 and be seen in a couple of days because it's a possibility
22 that that CAT scan at that moment is fine and two or three
23 days from then, there could actually be a bleed. So, yes,
24 there is always a possibility that one could die even with
25 a concussion diagnosis but it could also be something else

State versus Littlejohn

1 later on down the way.

2 Q. Now, in your professional opinion, can the type
3 of attack that occurred in this case where it is alleged
4 between four and seven individuals kicked and punched an
5 individual -- or I should say between four and seven grown
6 men kicked and punched someone in their face, torso, and
7 head, could that type of attack result in a person's
8 death?

9 MR. HALEY: Your Honor, I'm going to object
10 to this whole line of questioning at this point.

11 MS. SALISBURY: May I respond, Your Honor?

12 THE COURT: You can approach the bench.

13 (Whereupon, there was a bench conference.)

14 Go ahead.

15 BY MS. SALISBURY:

16 Q. Dr. Mitchell, if you would answer any questions
17 Mr. Haley may have for you, sir.

18 CROSS-EXAMINATION

19 BY MR. HALEY:

20 Q. Dr. Mitchell, are you familiar with professional
21 fights?

22 A. As in boxing?

23 Q. As in boxing.

24 A. Yes.

25 Q. And concussions are a risk or sometimes a product

State versus Littlejohn

1 of that sporting event; is that correct?

2 A. Yes.

3 Q. Concussions are a product of or a result now of
4 helmet to helmet collisions in football; is that correct?

5 A. Yes.

6 Q. In fact, there is a lot of studies now on whether
7 it can be projected onto future injuries; is that correct?

8 A. Yes.

9 Q. In your expert opinion, could you sustain a
10 concussion from getting struck in the head with a powerful
11 blow?

12 A. Yes.

13 Q. One blow?

14 A. Yes.

15 MR. HALEY: No further questions.

16 MS. SALISBURY: Nothing further from the
17 State, Your Honor. I'd ask that Dr. Mitchell be excused.

18 MR. HALEY: I have no objection to
19 Dr. Mitchell being released.

20 THE COURT: All right, thank you sir.

21 (Witness leaves the witness stand.)

22 All right, ladies and gentlemen, this is of
23 the jury I think probably now is a good time to break for
24 the evening. I know some folks have some obligations you
25 have to attend to and we want to make sure you get an

State versus Littlejohn

1 opportunity to do that.

2 Please remember what I've told you about
3 discussing the case. There maybe some things you find of
4 great interest in what you've heard in the courtroom and
5 what's been presented in the evidence and you may be going
6 home to someone you can trust and trust in their judgment
7 and would like their input, but just remember that that's
8 not appropriate. You've sworn an oath not to do that and
9 remember it wouldn't be fair to allow anybody else to add
10 any input in the outcome of this case. So don't go visit
11 the scene, don't do any research. Go home and have a
12 pleasant night and I'll see you back at 9:30.

13 (Jury exits the jury room.)

14 THE COURT: Anything before we break?

15 MS. SALISBURY: Nothing from the State.

16 MR. HALEY: Nothing from the defendant.

17 (Whereupon, the trial was concluded for the
18 day to resume the next morning at 9:30 a.m.)

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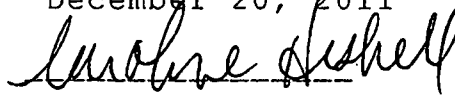
25

State versus Littlejohn

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 26th day of April, 2011.

9 I do further certified that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12
13 December 20, 2011

14 

15 Caroline Hiskell
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State versus Littlejohn

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
3) 2010-GS-23-6449, 6450
4)
4 State of South Carolina) TRANSCRIPT OF RECORD
5 vs)
6 Kendrick Littlejohn)
7 -----)

8 April 27, 2011 - Day 2
Greenville, South Carolina

9 B E F O R E:

10 THE HONORABLE EDWARD MILLER, Judge

11 A P P E A R A N C E S:

12 KATRYNA SALISBURY, Esquire
13 Assistant Solicitor
Attorney for the State

14 DARREN HALEY, Esquire
15 Attorney for the Defendant

16
17 Caroline Hiskell
Circuit Court Reporter
18
19
20
21
22
23
24
25

Brandon Brown - Direct Examination

I N D E X (Day 2)

WITNESSES	DR	CR	RED	REC
Brandon Brown	142	151		
Jennifer Sloviak	152	155		

E X H I B I T S

IDENTIFICATION	ID	IN EVD

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S-3	Photograph	87	87
S-4	Photograph	94	94
S-5	Photograph	94	94
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Court Exhibit

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Brandon Brown - Direct Examination

1 (Trial, State versus Kendrick Littlejohn
2 continues this 27th day of April 2011.)

P R O C E E D I N G S

4 THE COURT: Okay. Y'all ready to go?

5 MS. SALISBURY: The State is ready.

6 MR. HALEY: The defense is ready.

7 THE COURT: Okay. Let's bring them in.

8 (Jury enters the courtroom).

9 All right, ladies and gentlemen, welcome
10 back. I hope y'all had a pleasant evening and we're ready
11 to resume.

12 MS. SALISBURY: Thank you, Your Honor. The
13 State would call Investigator Brandon Brown.

14 Investigator Brown, please come around to be
15 sworn.

16 THE CLERK: Please place your left hand on
17 the Bible and raise your right hand.

18 BRANDON BROWN, having been duly sworn,
19 testified as follows:

20 Please be seated. State your full name for
21 the record.

22 THE WITNESS: Brandon Brown.

D I R E C T E X A M I N A T I O N

24 BY MS. SALISBURY:

25 Q. Investigator Brown, where do you work?

Brandon Brown - Direct Examination

1 A. Greenville County Sheriff's Department.

2 Q. And how long had you been with the Sheriff's
3 Office?

4 A. Coming up on nine years.

5 Q. In what capacity are you employed?

6 A. Currently I am employed inside the Vice Narcotics
7 Unit within the Greenville County Sheriff's Office.

8 Q. What are some of your responsibilities inside of
9 the Vice Narcotics Unit?

10 A. I handle multiple different avenues. I'm
11 currently assigned also to the Federal Bureau of
12 Investigations for Violent Crime Task Force. With that I
13 handle anything from dealing with informants, street
14 interviews, various different types of undercover narcotic
15 buys, using various different types of surveillance
16 methods, undercover wires, anything that you can imagine
17 that you've ever seen on tv for anything to do with
18 narcotics.

19 Q. What was your experience in law enforcement
20 before you joined the Vice Narcotics Unit?

21 A. I initially started after I got out of the
22 Criminal Justice Academy, I did three years in uniformed
23 patrol at which time I was then sent to the Bureau of
24 Alcohol and Firearms for a short stint during organized
25 crime efforts with them. I then moved from there into

Brandon Brown - Direct Examination

1 narcotics.

2 Q. Now, were you working in your current capacity in
3 April of 2009?

4 A. Yes, ma'am, I was.

5 Q. Are you familiar with the undercover operation
6 which is the subject of this trial known as "Joker's
7 Wild"?

8 A. Yes, ma'am, I am?

9 Q. How are you familiar with that operation?

10 A. I was used just on the aspect of assisting and
11 identifying possible targets where the undercover agents
12 in that case had made controlled purchases of narcotics or
13 firearms from that they possibly did not know. Based on
14 what I do within narcotics, I was typically a little more
15 able to identify some of the people.

16 Q. Are you familiar with a neighborhood called Dixie
17 Estates?

18 A. Yes, ma'am, I do.

19 Q. Is that a neighborhood in Greenville County?

20 A. It is.

21 Q. How did you become involved in the investigation
22 that ultimately ended up in Dixie Estates?

23 A. On the night of, I believe, the 23rd, I was
24 contacted by a uniformed patrol deputy that had heard come
25 across the radio that a couple of ATF agents had been

Brandon Brown - Direct Examination

1 jumped in the area. He called just to simply let me know
2 based on my dealing with that neighborhood in an effort to
3 hopefully I could get involved in the investigation to
4 some extent.

5 I then attempted to make contact with Special
6 Agent Stallo and Special Agent Morlan and was unable due
7 to the fact that they were actually victims in the
8 incident. A short time later Special Agent Stallo called
9 me, asked if -- gave me a brief description of what had
10 happened, the individual that was involved in it, and I
11 began looking for a subject that went by the name of KJ is
12 what I was told. Black male, tall, slender that went by
13 KJ with long dreads.

14 Q. Were you able to identify a possible subject?

15 A. I was.

16 Q. Did you pass along that information to Agent
17 Stallo?

18 A. I did and he advised ---

19 MR. HALEY: Your Honor, at this point I would
20 object to what Agent Stallo would say. It's hearsay, it's
21 not an exception, and it's mainly to bolster the
22 testimony.

23 THE COURT: Yeah. Just don't go into
24 hearsay.

25 THE WITNESS: Okay.

Brandon Brown - Direct Examination

1 BY MS. SALISBURY.

2 Q. Investigator, without describing what Agent
3 Stallo actually said to you, what did you do after passing
4 along with information about a possible suspect?

5 A. I found the possibility suspect that I had sent
6 Agent Stallo was, in fact, the wrong individual and was
7 not involved in this incident. I began looking for other
8 individuals in that area and discussing possible avenues
9 of obtaining identification in that area; however, because
10 this was a still ongoing undercover investigation we had
11 to be very careful as we approached that area.

12 Q. What did you decide to do to arrive at the
13 ultimate suspect?

14 A. Later that evening or first thing that morning we
15 had -- Special Agent Stallo and I had discussed the
16 possibility of me going into that area in effort to talk
17 with some of the people that live in that neighborhood in
18 an effort to hopefully get identification. While I was
19 there in the area talking with residents of the area, a
20 vehicle pulled up with an individual that I am familiar
21 with multiple passengers in it.

22 Q. Did you know all the occupants in that car?

23 A. I did. Anthony Valentine was driving the
24 vehicle. It was a large Expedition which I knew to have
25 been used in previous acts.

Brandon Brown - Direct Examination

1 Q. Who else was in the vehicle?

2 A. Do you mind if I look at my notes?

3 Q. Sure.

4 A. Inside the vehicle was Mark West Marksdale,
5 Darius Franks, Mario Tate, Kendrick Littlejohn and Brandon
6 Ellison.

7 Q. Did you speak with the occupants of that car?

8 A. I did. I spoke with all involved and based on
9 the smell of burnt marijuana within the vehicle, we then
10 obtained consent another vehicle in which time all
11 occupants were identified, verified, pictures of the
12 tattoos were taken and a basic field interview which is
13 what we typically do when we run across suspects possibly
14 involved in crimes.

15 Q. At this point, did you suspect that any number of
16 these individuals might be a suspect in the incident that
17 occurred the previous night?

18 A. It was. I was told that there were several
19 individuals ---

20 MR. HALEY: I object, Your Honor, at this
21 point as to what he was told.

22 THE COURT: Well, don't get into hearsay.
23 Just tell us what you did regarding the investigation.

24 BY MS. SALISBURY:

25 Q. I'll repeat the question. To the extent that you

Brandon Brown - Direct Examination

1 were trying to identify suspects to assist in this
2 investigation, did at that point who the suspect might be?
3 What was the purpose of going through this exercise of
4 interviewing everyone on the scene taking photographs and
5 doing these interviews that you described?

6 A. One of the suspects inside the vehicle that
7 happens to be the defendant matched the description I was
8 giving of tall, black male, slender with long dreads in
9 the Dixie Estate area and this was less than 24 hours from
10 the time of the actual incident.

11 Q. Did you ask the defendant about the circumstances
12 from the night before?

13 A. I talked to him in general amongst the group,
14 man, I heard somebody got jumped over here the other
15 night, y'all know anything about, y'all know anybody by
16 the name of KJ, and everybody played it off as though they
17 didn't have a clue of what I was talking about and that
18 was kind of my goal to maintain the undercover capacity.

19 Q. After your interaction with those individuals
20 inside Dixie Estates that day, then what did you do?

21 A. I called Agent Stallo, advised him the name of a
22 possible suspect. At which point he obtained other means
23 to identify him.

24 Q. Specifically, whose name did you provide him as a
25 possible suspect?

Brandon Brown - Direct Examination

1 A. I gave him all names; however, I did advise him
2 that Kendrick Littlejohn did match the description.

3 Q. Did you ever learn whether Agent Stallo was every
4 to determine the ultimate identity of this defendant who
5 participated in the attack?

6 A. I did.

7 Q. Investigator Brown, do you know whether this
8 defendant lives in Dixie Estates?

9 A. No, he does not.

10 Q. How did you know that?

11 A. Every incident I've dealt with him dating back to
12 the ---

13 MR. HALEY: I would object and I would ask to
14 have a sidebar.

15 THE COURT: All right, come on up.

16 (Whereupon, there was a bench conference.)

17 BY MS. SALISBURY:

18 Q. I believe my question was if the defendant
19 actually lived inside the Dixie Estates?

20 A. He does not.

21 Q. Now, after you assisted in this identification
22 and interview process in this investigation, did you have
23 any further involvement in assisting these agents in this
24 case?

25 A. Not until the time when we were persuing Kendrick

Brandon Brown - Cross-Examination

1 at the point of this warrants.

2 Q. Did you ever work with these agents to try and
3 identify other members of the group who participated in
4 the attack?

5 A. I did.

6 Q. The collective interview, were you able to
7 identify anyone else who participated in the attack?

8 A. We were able to identify another possible suspect
9 but it was unknown whether he actually participated in the
10 physical act of any of the charges in question.

11 Q. Thank you. Answer any questions Mr. Haley may
12 have for you.

13 A. Thank you.

14 MR. HALEY: If it please the Court.

15 THE COURT: All right.

16 CROSS-EXAMINATION

17 BY MR. HALEY:

18 Q. You had been given a description of a young black
19 male with dreadlocks?

20 A. Tall, slender, young, black male.

21 Q. And based on that you sent a picture to the agent
22 and the first time that was not who you thought it was; is
23 that correct?

24 A. No, sir.

25 Q. You were not there that not, though?

Jennifer Sloviak - Direct Examination

1 A. Yes, sir, that's correct.

2 MR. HALEY: No further questions.

3 THE COURT: Any redirect?

4 MS. SALISBURY: No, sir.

5 The state calls Ms. Jennifer Sloviak to the
6 stand.

7 THE CLERK: Please pause at the end of the
8 bench. Place your left hand on the Bible and raise your
9 right hand.

10 JENNIFER SLOVIK, having been duly sworn,
11 testified as follows:

12 Thank you. Please state your full name for
13 the record.

14 THE WITNESS: Jennifer Sloviak.

15 DIRECT EXAMINATION

16 BY MS. SALISBURY:

17 Q. I'm going to stand over here so everybody can
18 here you.

19 A. Okay.

20 Q. Tell everybody where you work?

21 A. I work at Verizon Wireless?

22 Q. And how long have you been at Verizon?

23 A. About 10 years.

24 Q. What is your official title capacity at Verizon?

25 A. Store manager.

Jennifer Sloviak - Direct Examination

1 Q. And in that capacity do you have supervisory or
2 managerial control over the records that are contained
3 with regard to subscriber information and when people
4 purchase cell phones?

5 A. Yes.

6 Q. Now, you mentioned that you work at Verizon. Can
7 you explain for the dynamics between the Verizon
8 Corporation as it relates to what was formally known as
9 the Alltel Communication?

10 A. Last year we purchased Alltel. About 95 percent
11 of Alltel is now owned by Verizon Wireless.

12 Q. So now those two are in effect the same company
13 is Verizon responsible for managing what would have been
14 Alltel's records?

15 A. Yes.

16 Q. Do you know whether Verizon or Alltel as it
17 existed in 2009 received a subpoena for phone records
18 related to a particular phone number in this case?

19 A. Yes, we did.

20 Q. I'm going to show you State's Exhibit 7 and have
21 you look at that item. Do you recognize that item?

22 A. Yes. That is confirmation of service with Alltel
23 now Verizon.

24 Q. How are these records created when someone either
25 purchases a cell phone or perhaps a prepaid phone?

Jennifer Sloviak - Direct Examination

1 A. When someone comes in, they provide their
2 information. A driver's license has to be shown to verify
3 they are who they say they are.

4 MR. HALEY: Your Honor, at this point I have
5 an objection and would ask if we can approach.

6 THE COURT: All right. Come up here.

7 (Whereupon, there was a bench conference.)

8 (Subscriber information marked as State's
9 Exhibit No. 7 for identification.)

10 BY MS. SALISBURY:

11 Q. We were discussing how this record is created,
12 describing how this record is created when someone enters
13 into a contract for a prepaid phone. Is a record of that
14 information kept in the ordinary course of the wireless
15 company's business?

16 A. Yes. Once they give all that information, it's
17 entered into the computer and then it's kept on file once
18 everything is approved and the account is activated.

19 Q. Now, is there any way to tamper with that record?

20 A. No, ma'am.

21 Q. Now, is the record that is created, created at
22 the time the plan is initiated?

23 A. Yes, everything is done that very second.

24 Q. Based on State's Exhibit 7 which you have in
25 front of you, who was the subscriber of the phone number

Jennifer Sloviak - Cross-Examination

1 864-361-██████?

2 A. Kendrick Little.

3 Q. Based on the record that you've obtained there,
4 if the individual's name is longer than perhaps the screen
5 allows, is it possible that some letters maybe omitted?

6 A. Yes.

7 Q. Thank you. Please answer any questions Mr. Haley
8 may have.

9 CROSS-EXAMINATION

10 BY MR. HALEY:

11 Q. Ma'am, the point that Verizon assume Alltel, do
12 you know when that was?

13 A. I don't know the exact date but it was the end of
14 2009, beginning of 2010. It was a six to nine month
15 progression.

16 Q. And have you ever worked for Alltel?

17 A. No, I haven't.

18 Q. So you have not been personally trained on what
19 Alltel's procedures were to initiate a contract, were you?

20 A. If this was an Alltel/Verizon merger, it would be
21 exactly how I described.

22 Q. But if it was pre-merger then you would not know
23 the procedure for input and all that kind of stuff; is
24 that correct?

25 A. That's correct.

Jennifer Sloviak - Cross-Examination

1 Q. So you don't whether or not somebody walked up
2 with an ID or not if it was pre-merger; is that correct?

3 A. That is correct. Although most companies ---

4 Q. That's ---

5 THE COURT: You can finish your answer.

6 THE WITNESS: Although most companies, they
7 follow the same policies and procedures to make sure that
8 the accounts are accurate and the person who is coming
9 into the store is the person who is actually activating
10 the account.

11 BY MR. HALEY:

12 Q. Again, my question is you don't know if that
13 happened if it was pre-merger.

14 A. That's correct, I don't know.

15 MR. HALEY: Thank you.

16 THE COURT: Anything else?

17 MS. SALISBURY: No, Your Honor.

18 THE COURT: Thank you. You can step down.

19 MS. SALISBURY: Your Honor, the State rests.

20 THE COURT: All right, ladies and gentlemen
21 of the jury, this is time when I need to discuss some
22 legal issues with the attorneys so I'm going to excuse you
23 to your jury room. Don't talk about the case and we'll
24 get back with you pretty soon. Thank you.

25 (Jury exits the courtroom).

State versus Littlejohn

1 Any motions?

2 MR. HALEY: For procedural purposes if I may
3 put an objection on the record.

4 THE COURT: Go ahead.

5 MR. HALEY: Your Honor, we would object to
6 the testimony regarding the phone document and would argue
7 that it is not a document that is kept in the regular
8 course of business in Verizon. It was an Alltel account
9 that was pre-merger. Her testimony is she's not sure and
10 she can only say what other companies do. She's not how
11 it was kept, how it was entered and how it was stored up
12 to the merger and therefore she would not have the ability
13 to maintain those records in the normal course of
14 business.

15 THE COURT: For the record we had a bench
16 conference and a bench conference and I overruled it, and
17 you would be allowed to put it on the record as an
18 objection.

19 Anything else?

20 MR. HALEY: We would move for a directed
21 verdict. First we would move for a directed verdict and
22 I'll kind of separate it. Your Honor, first we would move
23 for a directed verdict as to the charge of lynching. The
24 elements of lynching require premeditation. There's been
25 no testimony by any witness, the victim, Agent Stallo or

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1 any other investigator to suggest this was a planned or an
2 action in concert.

3 What we have is testimony, I believe, he
4 looked away, he was distracted. Somebody threw a punch
5 and then he saw people swinging and kicking in the
6 vicinity of where he thought his agent was, but there's no
7 testimony as to the premeditation that is required for
8 lynching.

9 THE COURT: Well, I think there is a
10 reasonable inference to be drawn from the fact that Agent
11 Stallo was distracted at the time the beating occurred so
12 your motion is denied.

13 MR. HALEY: Your Honor, we move for direct
14 verdict with regards to the charge of assault and battery
15 with intent to kill. I believe the testimony of the
16 doctor was -- the medical testimony indicates there was a
17 mild concussion and that was the term he used. And the
18 elements of assault and battery with intent to kill,
19 there's four elements as the Court is aware of is four
20 elements. One, there needs to be malice and two there
21 needs to be an intent to commit death whether death occurs
22 or not with deadly force. And what we have is one punch
23 with a concussion that is not likely to lead to death or
24 great bodily injury.

25 I think the testimony was it was a

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1 concussion. His scans were negative. We told him to
2 follow back up. There's no testimony as to any follow up
3 to show possible clotting or any other derivative ---

4 THE COURT: The extent of the injury doesn't
5 have anything to do with it. An assault and battery with
6 intent to kill can occur with no injury.

7 MR. HALEY: Your Honor, I believe that would
8 be assault with intent to kill.

9 THE COURT: You're probably right about that
10 but he testified that this was a violent concussion and I
11 think the -- what question did you illicit from him,
12 Ms. Salisbury?

13 MR. HALEY: Your Honor, I think the questions
14 were along the line of the seriousness of the concussion.

15 THE COURT: No, I think she asked about could
16 it lead to death and I circled that he replied yes and you
17 objected to it. There was one question and then she asked
18 another one and you objected to it.

19 MS. SALISBURY: Your Honor, if my notes are
20 accurate, I specifically asked Dr. Mitchell if it was
21 possible to die from the kind of injury he described which
22 is a complex concussion. He described the process of a
23 skull fracture as well as edema and bleeding that could
24 occur.

25 THE COURT: That could occur three or four

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1 days later.

2 It's overruled.

3 MR. HALEY: Your Honor, if I could put just
4 one more thing on the record.

5 THE COURT: Sure.

6 MR. HALEY: One of the elements of assault
7 and battery with intent to kill is the malice and malice
8 shown has to be, I guess, derived just at or before the
9 intent of assault and battery.

10 THE COURT: Anything you want to tell me?

11 MS. SALISBURY: Judge, I think there is
12 certainly sufficient evidence of malice if we think of
13 malice in more common language of ill-will or intent to
14 injury and having certainly reckless disregard for the
15 life of another person. I think there's more than ample
16 evidence of malice.

17 THE COURT: I'm going to deny your motion on
18 that ground as well. Anything else?

19 MR. HALEY: That would be our motions, Your
20 Honor.

21 THE COURT: Mr. Littlejohn, would you raise
22 your right hand for me, please.

23 KENDRICK LITTLEJOHN, having been sworn,
24 testified as follows:

25 Please stand up. You understand you have an

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1 absolute Constitutional Right to testify in this case and
2 you would be subject to, should you take the stand, cross-
3 examination where they could state, I believe there's an
4 impeachable offense on your record which could raised just
5 as to your credibility.

6 You have an equal right not to testify in
7 this case and if you decide not to testify, that can not
8 be held against you. Do you understand that?

9 DEFENDANT LITTLEJOHN: Yes, sir.

10 THE COURT: Have you had opportunity to talk
11 to your attorney about these various rights?

12 DEFENDANT LITTLEJOHN: Yes.

13 THE COURT: Do you know what you want to do
14 or do you want some time to talk to your attorney right
15 now to make sure your decision ---

16 DEFENDANT LITTLEJOHN: Yeah.

17 THE COURT: Yeah what?

18 DEFENDANT LITTLEJOHN: I need to talk to my
19 attorney.

20 THE COURT: Okay. I'll let you step in there
21 and we'll be at ease.

22 (Whereupon, there was a break.)

23 All right, Mr. Littlejohn, have you had ample
24 opportunity to speak with your attorney about your
25 decision?

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1 DEFENDANT LITTLEJOHN: Yes, sir.

2 THE COURT: What is your decision?

3 DEFENDANT LITTLEJOHN: I'm not going to
4 testify.

5 THE COURT: Are you making that decision
6 freely and voluntarily?

7 DEFENDANT LITTLEJOHN: Yes, sir.

8 THE COURT: Do you have any questions you
9 need to ask me about your rights?

10 DEFENDANT LITTLEJOHN: No, sir.

11 THE COURT: You think you fully understand
12 them?

13 DEFENDANT LITTLEJOHN: Yes, sir.

14 THE COURT: Mr. Haley, do you have any other
15 evidence to put up?

16 MR. HALEY: Your Honor, the defense rests.
17 For the record, we renew our previous motions.

18 THE COURT: Okay. Same ruling. Y'all have
19 any proposed charges you want.

20 MS. SALISBURY: Nothing with the exception of
21 what we discussed yesterday, Your Honor. Nothing
22 specific.

23 MR. HALEY: Your Honor, I know one of the
24 discussions was the hand of one, hand of all. I'm not
25 sure if the Court is inclined to give that instruction so

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1 I have an objection to that instruction.

2 THE COURT: Based on what?

3 MR. HALEY: One of the key elements of
4 lynching is the premeditation and acting in concert. If
5 you give instruction hand of one, hand of all, that
6 essentially removes the elements out of that charge.

7 THE COURT: Well, I can give that instruction
8 solely as to the offensive assault and battery with intent
9 to kill.

10 MS. SALISBURY: I would note the State's
11 objection to that particular limiting instruction. I
12 think the theory of accomplish liability applies to the
13 entire incident. I don't think it's appropriate to limit
14 it to one of the offenses.

15 THE COURT: I'll think about that. You may
16 be right about that. What about aggravated assault and
17 battery as a lesser included of assault and battery with
18 intent to kill?

19 MR. HALEY: Your Honor, I think we have no
20 problems with instructions given to the lesser included of
21 aggravated as well as simple assault and battery?

22 THE COURT: Simply assault and battery?

23 MR. HALEY: Yes.

24 THE COURT: No. He suffered serious injury.
25 I'm not going to give that charge.

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1 MR. HALEY: Your Honor, I would ask that it
2 be noted on the record that we request assault and battery
3 and that it should be a fact to be determined by the jury
4 whether or not it was a serious injury.

5 THE COURT: That's noted for the record. You
6 said you had a proposed lynching charge.

7 MR. HALEY: Judge Griffin wasn't able to give
8 it to me so I would direct the Court that the language out
9 of State v. Smith we're imposing to the elements of
10 premeditation. We would like the Court to consider that.

11 THE COURT: Give me your site.

12 MS. SALISBURY: Your Honor, I have a copy for
13 you.

14 THE COURT: Okay. Anything you want?

15 MR. HALEY: Your Honor, I'm specifically
16 referring to Page 137 of State v. Smith where it says,
17 "Mob is defined as the assemblage of two or more persons
18 without" ---

19 THE COURT: Right.

20 MR. HALEY: -- "for the premeditated purpose
21 and with the premeditated intent of the victim committing
22 and act of violence upon the person of another."

23 THE COURT: You object to that? Any
24 objections?

25 MS. SALISBURY: Your Honor, that's the

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1 language of the Statute.

2 THE COURT: Have you got copies of the
3 repealed Statute?

4 MS. SALISBURY: I do, Your Honor.

5 MR. HALEY: Your Honor, if would further add
6 in his instruction the definition of premeditation which
7 is like the next paragraph where it starts, "Premeditation
8 connotates willful deliberation and planning or conscience
9 consideration proceeding that particular act."

10 THE COURT: Okay. All right, anything else?

11 Here's what I plan on charging so y'all know,
12 multiple charges, each having to be decided independently,
13 the indictment and the arrest warrants are not evidence,
14 the credibility of the witnesses. Do you want to charge
15 on the failure of your client to testify?

16 MR. HALEY: No.

17 THE COURT: No?

18 MR. HALEY: Is that the language where it
19 says it can not be held against him?

20 THE COURT: Yes.

21 MR. HALEY: Yes.

22 THE COURT: Presumption of innocence,
23 reasonable doubt, direct and circumstantial evidence.

24 Identification, do you want that? Is that an issue? Do
25 you want an identification charge? State want it?

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1 MS. SALISBURY: No.

2 THE COURT: Okay.

3 Hand on one, assault and battery with intent
4 to kill, aggravated assault and battery, battery as a
5 lesser included and a lynching that we'll work on while we
6 take this break.

7 MR. HALEY: Your Honor, if I may, I guess
8 further argument to my objection as to the hand of one.
9 Your Honor, I think the way this case has played out that
10 if the jury comes back not guilty with lynching, then it
11 would almost necessarily come back with a not guilty as to
12 the assault and battery with the intent to kill, and my
13 argument is the hand of one, hand of all as to assault and
14 battery with intent to kill may further cause problems and
15 dilute the element that is required in lynching. If there
16 is not lynching statute then I understand the hand of one,
17 hand of all assault and battery with intent to kill, but
18 the assault and battery with intent to kill derived from
19 the lynching and part of that element is the willful
20 planning, the assemblage and the two or more people
21 partaking. It's not a hand one, hand of all type of
22 charge.

23 THE COURT: So you don't think that somebody
24 could be, let's say, talking to a group of people and go
25 we need to go beat this guy up and then three or four

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1 people go out there and beat them up, and the guy who
2 participated in the planning would not be guilty?

3 MR. HALEY: There's no evidence to support
4 that type of charge. There's no evidence of a planning.

5 THE COURT: Your objection is noted for the
6 record.

7 We're just going to be at ease to get me a
8 chance to get working on this.

9 (Whereupon, there was a recess).

10 Y'all ready to go?

11 MS. SALISBURY: Yes, sir.

12 MR. HALEY: Yes, sir.

13 THE COURT: I do just want to note for the
14 record that former Statute 16-3-240, Members of Mob Guilty
15 as Principals, "It is permissible to infer that all
16 persons present as members of a mob when an act of
17 violence is committed have aided and abetted the crime are
18 guilty as principals." So I think that addresses any
19 issue that's been raised with respect to that.

20 Okay. Anything before we bring them?

21 MS. SALISBURY: Nothing from the State, Your
22 Honor.

23 (Jury re-enters the courtroom).

24 THE COURT: All right, ladies and gentlemen,
25 thank you for your patience. I want to tell you if you

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1 remember the procedural road map I gave you yesterday
2 about the five parts of the trial, we have now completed
3 the first two parts and we are ready to engage on a third
4 part of the trial. You all have paid close attention
5 so far and I ask you to continue to do that through the
6 arguments of these two fine attorneys. Thank you very
7 much.

8 MS. SALISBURY: If it please the Court, Your
9 Honor.

10 Good morning, ladies and gentlemen, as I told
11 you yesterday, throughout the course of this trial, you
12 heard evidence that this defendant was involved in a
13 vicious attack. You heard evidence that this defendant
14 planned that attack and what I want to do to start off
15 talking this morning is walk through some of that evidence
16 about what you've heard yesterday and this morning and
17 talk about how that evidence points at exactly that, that
18 this defendant planned, executed, orchestrated, led that
19 attack on Agent Morlan, April 23rd.

20 Now, we started off with testimony from Agent
21 Morlan, himself, who told you a little bit about the
22 undercover operation was conducting in April of 2009.
23 They had a store front. They called it Joker's Wild, and
24 they went out and handed out these flyers in order to get
25 people to come into the store maybe for the purpose of

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1 selling narcotics, maybe for the purpose of selling guns
2 off paper as Agent Morlan described it, but in any event
3 generate some business for the store front. That was the
4 plan.

5 They decided that the best way to do that was
6 to go out to the community and try and meet some people
7 who might be interested in coming to the store. And
8 that's exactly what Agent Morlan did. He went out to a
9 neighborhood which happened to be Dixie Estates and he met
10 this defendant. He testified very clearly that he recalls
11 specifically meeting Kendrick Littlejohn in the
12 neighborhood.

13 He testified that Kendrick offered to sell
14 him an assault riffle and a .40 caliber handgun off paper
15 an to exchange phone numbers. Kendrick gave him his phone
16 number, Agent Morlan testified he called that phone number
17 and the two said they'd meet up later at some other point
18 to actually go through with the sale. Sure enough, a few
19 hours later, that's exactly what happened.

20 Kendrick called Agent Morlan. They spoke
21 briefly on the phone and Agent Morlan returned to Dixie
22 Estates. And if you'll remember, Agent Morlan testified
23 that it was his understanding at that point that the whole
24 reason to go back to Dixie Estates was to pick up Kendrick
25 and bring him back to the store. That was the plan.

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1 Agent Morlan said he was very clear with the defendant
2 that he did not want to be doing any sales in the
3 neighborhood. We know now the reasons for that, but at
4 the time Agent Morlan wanted the defendant to believe that
5 he didn't want to do business out in the open where he
6 could be seen by police but instead wanted to do business
7 in a secure environment of the store. Now obviously the
8 reasons for that in hindsight that the store was a lot
9 more secure and there were other officers and cameras and
10 other measures of security inside. But at the time that
11 was the plan.

12 Agent Morlan decided that the best course of
13 action was the bring Agent Stallo with him. Again, the
14 whole point of that decision was to make sure that we
15 could get these weapons and that person who wanted to sell
16 the weapons back to the store.

17 Agent Morlan testified that he recalls the
18 reason for the defendant being hesitant about driving to
19 the store himself is that he didn't want to be in the same
20 car with the guns. He didn't want to risk the chance that
21 he might be stopped with guns in the car. So they decided
22 that if they brought to separate cars that would alleviate
23 the problem. The guns could be in one car and the tow
24 truck with Agent Stallo and Kendrick could be in the car
25 with Agent Morlan and they would travel back to the store

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1 front. That was the plan. That's what everybody at least
2 on this side of the plan thought was going to happen.
3 They had no idea it was about to go sideways very quickly.

4 So after that you heard testimony that Agent
5 Morlan and Agent Stallo arrived and they immediately
6 encountered the defendant. He jumped in the car with
7 Agent Stallo. Agent Stallo and he talked briefly and the
8 defendant directed both of them to a specific point in the
9 neighborhood. He had to turn around. I believe Agent
10 Stallo testified that he turned around on Inez Lane or
11 Castello Lane, either of these streets inside Dixie
12 Estates, and they pulled to a very particular spot.

13 You can hear it on the audio. Listen back to
14 State's Exhibit 2 where you can hear the defendant say
15 pull right here, pull right here, stop right here. He's
16 directing him to a particular spot in the neighborhood.
17 And that's when things start to get a little bit strange.
18 If you remember that's when Agent Stallo testified that he
19 felt like something was unusual because the plan was very
20 quickly falling apart. It became apparent that the
21 defendant was resistant to getting in the car and actually
22 traveling as they discussed. But instead he seemed to
23 become insistent that he wanted to do business in the back
24 corner of this trailer where they had stopped the car.

25 Agent Stallo pointed out this back area as it

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1 was getting darker and a storm was coming over, it was
2 very dark and he noticed there was several people back in
3 the shadows and that made him feel uncomfortable. That
4 made him feel like something was amidst, that there was a
5 reason that the defendant was reluctant to actual go
6 through with everything they discussed, and now the plan
7 had become -- to go through with the plan back in this
8 shady corner of the park.

9 Now, what Agent Morlan testified to after
10 that is measured, of course, by the fact that he suffered
11 some pretty substantial injury, and he says he remembers
12 talking to a group of individuals and you can hear it on
13 the tape how that conversation went. Some people ask how
14 much tattoos might be, some people asked why they were
15 going and Agent Morlan is talking to all of them
16 generally. Yes, we can do that tattoo; how much would it
17 be; I don't know, it depends on what it would look like.
18 It's a conversation among a group of people and then all
19 of a sudden you can hear it. You can hear a hit. He says
20 come on, I didn't do anything, come on. And you hear the
21 beating, the kicking.

22 You can listen to it. You can listen to how
23 long it lasts until Agent Stallo is able to intervene, but
24 that's the most Agent Morlan was able to remember. After
25 that first hit, his memory is shaken.

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1 Now, Agent Stallo testified that after that,
2 fortunately, he was within earshot of that conversation
3 and he was able to see everything that was going on. He
4 heard the conversation. He heard the defendant asking
5 Agent Morlan to go back. Come back in here. Come inside
6 the trailer. Go back into this corner, and he remember
7 thinking to himself, please don't go back there because
8 this is going to get a whole lot worse if you do that.
9 Just stay where you are. He said at some point that he
10 pulled out his weapon. He was so uncomfortable with what
11 was happening that he went ahead and withdrew his weapon
12 just in case things started to break loose so to speak.

13 So Agent Stallo says that at that moment that
14 he's watching the conversation and he's asking why are
15 they asking to go back in the shadows, what's happening,
16 he notices this group of individuals and then all of a
17 sudden someone catches his attention at the window. And
18 someone says, hey, or something, I don't think he
19 remembers specifically what this person said but caught
20 his attention, hey, look over here. In that split second
21 that Agent Stallo turned his attention, his partner was on
22 the ground. That's all it took for him to be distracted
23 for a moment for that attack to actual follow through.

24 Ladies and gentlemen, I think the evidence in
25 this case has shown it was planned precisely that way so

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1 it could be executed in exactly the way it happened, that
2 distraction to make sure that Agent Morlan was isolated,
3 that Agent Stallo wasn't able to intervene as quickly as
4 he was.

5 Now, fortunately, when he did look back he
6 got out of the car, but by the time he got out of the car,
7 there had been several seconds and I believe the testimony
8 was that it was at least 10 seconds of stomping and
9 kicking and punching in his face and in Agent Morlan's
10 head. And that duration of the attack had already
11 transpired by the time Agent Stallo was able to get out
12 and actual draw the weapon and have everyone flea.

13 He mentioned that a few people sort of
14 stopped, deer in headlights, but that generally everyone
15 took off.

16 And what I think is so important about Agent
17 Stallo's testimony is that he tells you he specifically
18 remembers this defendant throwing punches, stomping with
19 his feet. He remembers the defendants hair flopping and
20 moving during those motions. He is confident that this
21 defendant was actively participating.

22 Now, was Agent Stall candid with you because
23 of the truck and the bumper and everything that was
24 happened that he didn't see fist to face, foot to face?
25 He told he didn't see that. He could have easily said

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1 that. He could have easily testified I saw every hit. I
2 saw every punch, every single hand and foot lay on Agent
3 Morlan, but he didn't do that. He was honest with you.
4 He said, no, I didn't see it. But is it reasonable to
5 think that this defendant was stomping the ground next to
6 Agent Morlan? Is it reasonable to think he was punching
7 the air with that force? I think it's far more plausible
8 and we know that the defendant was actually making
9 contact. I'm going to get to that in just a few minutes.
10 Hold on to that image and we're going to talk about when
11 we start talking about the actual crime.

12 Now, after that Agent Stallo told you that in
13 an effort to figure out who may have been involved, the
14 actual identity of these people who attacked his partner,
15 he contacted Investigator Brown at the Sheriff's Office.
16 He told you the reason he did that was he knew
17 Investigator Brown was familiar with the area and you
18 heard from Investigator Brown. He works in the area, he
19 was routinely out on the streets interacting with members
20 of the communities. So he knows. They believe he may be
21 the source of some information to help target exactly the
22 identity of this person or those people, the whole group.

23 Agent Stallo testified that he got one
24 picture, that very first picture that he got on his e-mail
25 it was tall, light-skinned, black male with dreads. He

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1 said that's not him. He could have easily said, that's
2 definitely the guy. He's got dreadlocks, but that's not
3 what he said. He said, I'm sorry Investigator Brown
4 that's not the guy, please keep looking. And that's what
5 they did. Investigator Brown went back out to the
6 neighborhood the next day, talked with members of the
7 community and maybe get some information.

8 And what he came up with when this defendant
9 pulled up in a vehicle with four other people Investigator
10 Brown said that guy matches the description. He was out
11 in the community the next day and said this might be a
12 good possible suspect. So he passes that information
13 along and then sure enough Agent Stallo was able to look
14 at this photograph, his DMV photograph, and say, that's
15 the guy. That's the person, that's the person I saw
16 attack my partner. I'm sure of it. I'm confident. He
17 testified he's certain that's the guy. He pointed to him
18 in the courtroom and said that's the same man that he saw
19 hitting and kicking his partner.

20 Now, you heard some medical testimony too,
21 and to the extent that Agent Morlan suffered some memory
22 loss -- some extended memory loss. He testified about
23 that. We know that, but the doctor also described what
24 Dr. Mitchell also referred to as a complex concussion.
25 Now, I don't know what that means in the medical scheme of

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1 things, but he described some of the long lasting effects
2 and some of the concerns that a doctor might have for a
3 person who suffers that kind of injury.

4 What I think is important for each of you to
5 remember is not that Agent Morlan suffered a life
6 threatening concussion because that's not what this case
7 is about. This case is about what could have happened.
8 What injuries could have happened, and the Judge is going
9 to instruct you on the law in just a few minutes and I'm
10 going to talk about the law in a minute too, but that's
11 something to keep in mind. This case is not about whether
12 he came close to dying as a result of that concussion.
13 It's not what could have happened. That's what the law
14 requires the State to prove.

15 Now, you've heard a little bit of testimony
16 just this morning from Ms. Sloviak who works at Verizon
17 and her roll was just to talk about the phone number that
18 the defendant gave Agent Morlan. That the records
19 according to Alltel's business records were that a
20 Kendrick Little, according to this record -- she said the
21 name had been cut off -- subscribed to that very same
22 phone number that the defendant gave to Agent Morlan.
23 That's that final connection and that's the end of it.

24 I told you at the beginning of this trial we
25 would be straight forward. There's eyewitness testimony.

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1 There's testimony from individuals who were there at the
2 scene who had an integral part. There's not a whole lot
3 of reasoning to be done. Those are the facts as they
4 happened.

5 Now, with all that in mind really one
6 question remains. We know the attack happened. We know
7 that it happened in generally the way the officer said it
8 did in a sense it started out with a discussion of gun
9 sale, that it ended up taking place inside Dixie Estates,
10 and that several people attack Agent Morlan. So the only
11 question left for you to answer collectively, is did this
12 defendant participate in the attack? That's the question
13 for you to resolve.

14 Now, as you think through that question, you
15 will arrive at the answer as to whether the defendant is
16 guilty of either or both of these crimes.

17 The first one I'll talk about is assault and
18 battery with intent to kill. Now, I told you at the
19 beginning of this trial that the State is required to
20 prove two things to prove the defendant is guilty of
21 assault and battery with intent to kill. The first of
22 those is that he committed a battery, which is an injury.
23 The law characterizes it as an offensive touching. It's
24 an injury, and that an injury is accompanied by
25 circumstances of malice. The law defines malice as an

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1 ill-will, a wickedness, a reckless disregard for the life
2 of another person.

3 The offense is called assault and battery
4 with intent to kill. I want to be clear and the Judge
5 will instruct you in just a few moments, but the State is
6 not required to prove that the defendant intended to kill
7 the victim. That's not what's required of the State. The
8 State is required to prove that with malice, with that
9 injury, the defendant -- excuse me -- the victim could
10 have died. Now, think about what you heard on that tape.
11 We heard about 10 seconds of sustained kicking, punching
12 and stomping. How much longer would it have taken for it
13 to do more damage than it did? Forty seconds? Five?
14 Another fifteen? How much longer until Agent Morlan was
15 deceased?

16 More than that, ladies and gentlemen, when
17 would they have stopped? It was only Agent Stallo
18 retrieving his weapon and pointing it at all of them and
19 everyone ran, what would have stopped them if Agent Stallo
20 hadn't been there? Would that have waited until he was
21 dead? In short, when you're thinking about whether the
22 defendant is guilty of assault and battery with intent to
23 kill, ask yourself this: If Agent Morlan had died, would
24 it have been murder? And if the answer to that question
25 is, yes, then the defendant is guilty of assault and

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1 battery with intent to kill.

2 I want to talk a little bit about lynching.

3 Lynching is a bizarre word and it's something that our
4 Statute has kept around. It's not something we deal with
5 in our daily vocabulary, but the law defines it very
6 simply actually. It's a group of two or more people who
7 combine for the purpose of committing and act of a violent
8 injury and that actually commit a violent injury. Those
9 are the elements of it; that they combine for that
10 purpose; that the group acts together.

11 Now, the Judge is going to instruct you about
12 the component of that acting together, that combining for
13 a purpose and it's what the law, what the Statute
14 describes as a premeditated intent. And what the law
15 means by that is that is at some point the group has
16 agreed to do the same action, to join in the same action,
17 to intend to do the same thing together. That
18 premeditated intent does not have to last for any extended
19 duration. It's not necessary for a group of people to
20 meet before and plan an attack and talk about each of
21 their rolls and what everyone is going to do. That
22 premeditation can occur during the attack.

23 It's only important for each of you to
24 determine whether this defendant combined with a group of
25 people. We know from the testimony that it's at least

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1 four and as many as seven. We know it was more than two,
2 but he combined with a group of people for that purpose.

3 Now, I think there is some very specific
4 testimony that I wanted to point out to you that points to
5 evidence of that precise planning, that front end
6 premeditation. I think the first of that is what you hear
7 on the audio tape when you can hear the defendant say,
8 "I'm only going to do business with you. I just want to
9 let you know I want to do business with you." And Agent
10 Morlan says, "That's fine, no problem." He sort of played
11 it cool. Of course you're only doing business with me.
12 No big deal. But the logical end to that is the defendant
13 was trying to isolate Agent Morlan. When Agent Morlan
14 showed up at Dixie Estates and Agent Morlan wasn't with
15 him, maybe the defendant wasn't expecting that. And in an
16 effort to isolate Agent Morlan so Agent Stallo wouldn't
17 interfere with that plan he begins to say things: I'm only
18 going to do this with you. I'm only dealing with you.

19 That isolation points to some premeditation
20 in the defendant's mind that the attack is what was going
21 to happen, not the gun sale.

22 It's also important to remember that the
23 component of Agent Stallo's testimony when he talks about
24 this group gathering and to an extent Agent Morlan
25 testified to the same thing. There's a group of

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1 individuals who are waiting in a very dark corner of this
2 area of the trailer, that they are standing. Some of
3 thing are listening, some of them are participating in a
4 conversations but others are standing in the shadows. And
5 as the defendant encourages Agent Morlan to go back in the
6 corner, let's come back here, come inside the trailer,
7 come back here, that points to the fact that he knew what
8 was going to happen in the shadows. That's why he was
9 trying to get Agent Morlan to go back there was to get
10 this attack out of the street and put it in the shadows.
11 It more easily to effect whatever the goal was. Whether
12 it was to try and draw Agent Morlan for the money they
13 thought that he may have to buy the weapon or whether it
14 was to simply for the sake of beating him.

15 Whatever it was, the object was to get Agent
16 Morlan to the back corner, the shadowy corner of the
17 trailer. That's evidence of the fact that everyone in the
18 group knew what was going on. They knew what was about to
19 happen.

20 Now, I think it's also important to keep in
21 mind that up until the Agent's arrived at Dixie Estates,
22 the plan was to return to the store front to sell the
23 weapon, and the fact that all of a sudden the defendant
24 became unwilling to do that as soon as the agents arrived
25 at Dixie Estates suggests that he had other plans in mind

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1 because he expressed willingness to go to the shop as long
2 as the gun was in the car, but all of sudden once they got
3 there that story became different; that position became
4 different. No, I don't want to go to the store, I want to
5 do this transaction right here, right now. And as a
6 matter of fact, come in here to the shadows and we'll do
7 it in the shadows, that's evidence of the fact that it was
8 planned; that the people in the group knew what was going
9 to happen, the fact that the defendant selects a specific
10 location in the neighborhood.

11 It's not good enough that they meet where the
12 agents say they saw him when they first pulled into the
13 neighborhood, he tells them to turn around and go back out
14 Loop Lane, to go to a very specific location inside the
15 neighborhood. That was a selective location because he
16 knew that there was a group waiting to help. He knew what
17 was going to happen. They knew what was going to happen.
18 It was a shared objective.

19 I think the most telling piece of event that
20 the people who participated in this attack knew about it,
21 planned it, anticipated what was going to happen, knew
22 each of their rolls, was this man that distracted Agent
23 Stallo, that he came to his window and he says, hey, look
24 right here, look over here and you have to look away from
25 your partner, and in that split second that's when the

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1 group decides to attack. That's an extraordinary
2 coincidence if it was. It's much more likely and much
3 more plausible that that was calculated, that that man was
4 playing a roll in the attack, to distract the partner, to
5 keep the two separate, to isolate Agent Morlan. That was
6 a measure taken, a calculated planned measure taken to
7 effect the actual attack.

8 Now, the other, I think, fair piece of
9 evidence is more logical that if the defendant were in
10 this alone, that he had planned to do this by himself, if
11 it had occurred to him in a split second to abandon all
12 discussions of actually selling the weapon, forego getting
13 in the car and going to the shop to sell the weapon, if in
14 the very split second he decided never mind I'm just going
15 to beat this man, he wouldn't have taken on two people by
16 himself. He knew that there were two grown men there in
17 the neighborhood. He wouldn't have taken on both of them
18 unless he knew he had support, unless he knew that that
19 group, the group in the shadows, the group that was
20 participating in the conversation, unless he knew that
21 those people were going to join in and were prepared to
22 join in, he wouldn't have taken on an enterprise where
23 he's fighting two grown men. Who knows what would have
24 happened. The fact that he elected to go ahead and go
25 through with it, he knew had the support of those people.

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1 And, finally, ladies and gentlemen, I think
2 that it's particularly noteworthy that the defendant fled
3 with those same group of people. When Agent Stallo drew
4 his weapon and finally got out of the car and stopped what
5 was happening, the group fled together. If he was not
6 associated with this group, not acting with the group, not
7 sharing the same plan as the group, why leave with them.
8 All of those pieces of evidence points to the fact that
9 this defendant knew what was going to happen. He
10 participated in it actively and the rest of those
11 gentlemen knew exactly what was going to happen.

12 Now, the Judge is going to instruct you on a
13 concept in the law called the hand of one is the hand of
14 all, and that concept basically says that when you share
15 in a crime with another person, you are guilty for all the
16 consequences of that crime that flow naturally and
17 reasonably from it.

18 For example, if you and some other people are
19 going to rob a bank and you're driving the get away car
20 and your only role throughout the entire bank robbery is
21 to drive the getaway car, you're guilty for the bank
22 robbery if the rest of the people follow through with it
23 because you shared in the objectives of it. So there's
24 been some discussion throughout the course of this trial
25 that maybe the defendant is not the one who threw the

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1 first punch. Maybe the defendant was not actually
2 striking Agent Morlan. Maybe the defendant simply wasn't
3 there. The fact that they shared the common objective of
4 going through with this attack means that everyone in the
5 group is responsible for the consequences of that
6 objective.

7 If we can identify who the other people who
8 participated in the attack, they would be equally
9 responsible. Everyone in the group is responsible in the
10 outcome because they each participated in the same plan,
11 the same objective. That's the concept. That's what it
12 means the hand of one, the hand of all.

13 It doesn't matter if you believe the
14 defendant threw the first punch because Agent Morlan can't
15 say who threw the first punch and neither can Agent
16 Stallo. He was distracted. It doesn't matter if that
17 first punch effected the complex concussion or simply a
18 bruise on his face. The only relevant part for you to
19 keep in mind is that these individuals acted together to
20 go through with this attack. Each of them is responsible
21 for the consequences of that attack, and in this case, the
22 fact that the defendant acted with that malice that I
23 discussed and that he committed the battery, participated
24 in the battery, that means that he is guilty for the
25 consequences of it. He is guilty for both of those crimes

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1 as a result.

2 Now, through the course of this trial
3 Mr. Haley has asked the witnesses a couple of questions
4 that stuck out in my mind. I was thinking about what I
5 was going to say to y'all this morning and I was thinking
6 about how Mr. Haley asked Agent Morlan you went into these
7 neighborhoods to solicit criminal activity. And he asked
8 Agent Stallo you were there to be his back up and when you
9 got distracted you sort of loss the ability to do that
10 job, to be Agent Morlan's back up. And what stuck out to
11 me about those questions is that the insinuation is that
12 these agents somehow deserved what happened or that they
13 had it coming. And I thought as members of this community
14 we ask the police to do a couple of things. We ask them
15 to arrest people who commit crimes and we ask them to keep
16 us safe generally. When the ATF was trying to do what the
17 AFT does which is try to get illegal weapons off the
18 street, they reached out to where they thought that they
19 could find some targets.

20 They found this defendant in an otherwise
21 decent community. The testimony is that this defendant
22 doesn't live there. He was in this community selling or
23 attempting to sell weapons, an assault riffle, to these
24 officers and their job is to do exactly that. We ask
25 where do criminals get weapons? Where do they come from?

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1 This is how it happens. This is how weapons get on the
2 street and this is what we ask the ATF to do and that's to
3 stop it, to get those weapons off the street, and that's
4 exactly what they tried to do here before it went so
5 dangerously different.

6 At the end of it, Agent Morlan has memory
7 loss. A large chunk of time from that day he can't
8 remember. There's no testimony he was in the hospital for
9 weeks and weeks or he was in a coma or near death but I
10 remind you that when you're deliberating the relevant
11 questions for you to ask are did the defendant and this
12 group of individuals act together in a shared plan, a
13 shared objective? There's plenty of evidence that they
14 did. And could Agent Morlan have died from these
15 injuries? Dr. Mitchell said that complex concussions can
16 often manifest in various ways and result in somebody's
17 death, but more than that, could the kicking, the
18 stomping, the punching, and the beating of a person by
19 grown men in someone's head, body, and face, kill them.
20 We know in 10 seconds it didn't kill Agent Morlan, but as
21 I said how much longer would it have taken and when would
22 this group have stopped? What would have been enough?

23 I ask you to consider all the evidence,
24 consider the elements of the law as the Judge instructs
25 you and ask you to return a verdict that defendant is

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1 guilty of lynching in the second degree and assault and
2 battery with intent to kill. Thank you.

3 MR. HALEY: If it please the Court, Your
4 Honor.

5 THE COURT: Yes, sir.

6 MR. HALEY: What I have just heard is
7 absolutely unbelievable. At no point in time in this case
8 did anyone say that the attack on this agent was deserved.
9 Unbelievable. But I guess that's the theory for this
10 case. Unbelievable. What I did ask was you just
11 voluntarily walked to a certain neighborhood and handed
12 out a flyer and say, do you deal drugs, do you sell guns,
13 do you deal drugs on taxpayer's money, that's unbelievable
14 as well. I asked how did they pick that neighborhood.
15 And, yes, that offended me and yes, that's unbelievable.
16 That was my question.

17 What this case is about is the evidence that
18 came from that box or a better way to put it is a lack of
19 evidence.

20 Here's what they want you to do use one of
21 the smallest words in the dictionary to come up with the
22 largest conclusions. "If." If this, if that, therefore
23 this must have happened, if. If I spank my son and send
24 him to the room for being disrespectful, if I spank him
25 continuously for 34, 48 hours, which is unlikely, almost

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1 physically impossible, but if I do that, he will die. But
2 if I go, get your butt in the room, if, if.

3 And here's what's funny, scary even, there is
4 a tape of conversation and a 10, 12, 14 second stomping.
5 We all heard the tape. Now, here's that lack of evidence
6 and I will go through that. Nobody said who was saying
7 what on the tape. The solicitor said Mr. Littlejohn said,
8 but she doesn't give evidence because she wasn't there.
9 Agent Morlan, Agent Stallo never said, stop right there,
10 that's the defendant. Nobody said that. They want you to
11 assume he was on the tape.

12 But, now, again, this tape was in Agent
13 Morlan's pocket but yet it supposed to have taped the
14 conversation that took place between Mr. Littlejohn and
15 Agent Stallo when he jumped into the wrong truck. How do
16 you do that? Unbelievable. A tape in his pocket and I'm
17 sitting over here and it's going to record?

18 See sometimes if you don't stretch it might
19 be believable. If you don't stretch, it might be
20 believable.

21 Here's something else that's unbelievable,
22 the agents. I never question their credentials. I never
23 questioned how long they had been in their job. These are
24 not rookies. State police, GBI prior to AFT. In the AFT
25 you don't just jump out of high school, graduate from

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1 college and go to the AFT. You have to have some
2 experience as they had experience.

3 Now, they had a plan we going to go here,
4 we're going to drive here, you drive this truck, I drive
5 that truck, you watch, you do what, here's what we're
6 going to do and this is how we're going to move
7 everything; we're going to get this person to do this and
8 do that. They had a plan. They planned it, but the
9 State's theory is they see some guy standing there.
10 Somebody's standing here just hanging out, talking, doing
11 whatever, but all of a sudden they have a plan. They must
12 have planned to all be somewhere and not only did they
13 have a plan, because they had a plan, their plan didn't
14 work from the experts. The people with experience. The
15 people who do this for a living, but they want you to
16 believe that just these guys all of a sudden can
17 synchronize and attack randomly in three second intervals.
18 We need to send them to the CIA to Lybia or Afghanistan if
19 they can synchronize and attack that precisely. That's
20 unbelievable.

21 You going to have a guy come knock on the
22 window and they going to time when that punch happened?
23 Absolutely unbelievable.

24 That's what they want you to believe.
25 Because somebody said something over here, they must have

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1 planned and they must have planned how to do it.

2 Unbelievable.

3 The solicitor said Agent Stallo was very
4 candid. I beg to differ if you recall the line of
5 questioning. On direct examination he said I'm 100
6 percent certain this is what I saw and Mr. Littlejohn was
7 hitting and punching Agent Morlan. Did you see? Well,
8 no. There is no testimony from anyone that saw Kendrick
9 Littlejohn touch Agent Morlan. He said he saw somebody
10 swinging and hitting. That's what he saw.

11 The injury that Doctor said was a concussion
12 could -- the nurse practitioner and the Doctor said it
13 could have come from the punch to the side of the head
14 that Agent Morlan testified happened not by Kendrick
15 Littlejohn but, again, this grand plan and scheme they
16 want you to believe not only was somebody making a noise
17 15, 20 feet away on the side of the punch, somebody else
18 was going to take the punch and then everybody else was
19 going to jump on him. That's what they want you to
20 believe that was so precisely planned. Unbelievable.

21 And they say they had a common plan or
22 agenda. What was it? When was it determined? Who
23 decided what the plan was? Who decided what the objective
24 was? All they see are two young white guys in a
25 neighborhood talking about buying guns and drugs. That's

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1 all they see. What was their objective? Where was it?
2 Who said what the objective was? It didn't come from that
3 box.

4 You know the good thing about being a juror
5 is the same job as being the judge. You are the triers of
6 the facts and what you bring to this setting is your
7 lifelong experience and common sense. Now, we all laugh
8 and say common sense, isn't that common, but if it is, and
9 that's that word if, common sense will say, come on guys,
10 come on.

11 This hand of, hand of all, that's one of
12 those if I get four numbers right on the lottery and not
13 all six, do I get something because I didn't get it right.
14 I'm reaching and stretching and hoping and assuming. What
15 that means is if you're sitting beside somebody and
16 there's an argument taking place and they get to fighting
17 and you know your friend was going to fight him because
18 he's a hothead, and you watch, what you do wrong?

19 Suppose you try to swing and hit the other
20 guy and miss, what you do wrong?

21 Suppose you were running to the fight to grab
22 him and somebody grab you and you didn't get there, what
23 you do wrong?

24 You know the first person they sent to the
25 agent wasn't him. I wonder how long it took before he

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1 decided it wasn't him? So then they find somebody else
2 whose brown skinned, or light skinned, or black, slim and
3 dreads and then they said there were others that fit that
4 description. Unbelievable.

5 You know the law is the law is the law is the
6 law. Sometimes you want to hear something, sometimes you
7 want somebody to say something that doesn't happen. You
8 can't bring that in because it's just not believable.

9 Lynching requires that the State show and
10 that was the word I said in my opening that they would
11 show that a mob, which is two or more people, form
12 unlawfully for the premeditated intent to commit an act of
13 violence. Premeditation means a willful deliberation and
14 planning or a conscience consideration. Why is that
15 important? Because if a group of people are standing
16 around and something just happened and a fight breaks out,
17 that is not lynching because there's no premeditation.

18 See what can not happen is on one side you
19 have premeditation and on the other side you have
20 spontaneous. Can't happen. Can not happen. Legally
21 impossible. So if you decide there was a fight and
22 Mr. Littlejohn was involved and it just happened, that's
23 not lynching because it requires and demands that the
24 element to be proved by the State is premeditation.
25 Spontaneous makes that disappear.

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1 The assault and battery with intent to kill,
2 violent injury to a person with malice of afterthought and
3 the State said if you could have died. Well, I guess if
4 you cough enough, you can bust a blood vessel in your
5 brain, have an aneurism and die. You could fall down the
6 steps, twist your ankle, go to the hospital, get a pain
7 shot, get an infection in that spot and die. Run across
8 East North Street, four to six lanes of cars, trip on the
9 curb, hit your head, get dizzy, go home and die. All that
10 is unbelievable but it could happen.

11 But in criminal court we have a standard of
12 law and the judge will instruct you in that standard of
13 law, reasonable doubt. Reasonable doubt that makes a
14 reasonable person hesitate to act. It's that you think or
15 you assume this is what happened or as the agent used, my
16 theory is. My theory is reasonable doubt. That means I
17 don't know, but this is what I think may have happened and
18 if I could put this to that, this to that, then I can make
19 this happen. Reasonable doubt.

20 It's not something we take lightly. It's not
21 no if it's more likely than not or I may be possibly,
22 could have, I guess. No, we don't guess. We don't
23 theorize. We don't hypothesis. We don't do any other
24 "ises." We get it right. I'm very meticulous and
25 articulate when i ask the questions, did you see; well, I

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1 -- no, no, did you see? Let's get it right. Let's not
2 get close, let's get it right.

3 And the reason why reasonable doubt is such a
4 high standard is because ones life and liberty is at
5 stake. There's no other pressure gift than liberty. So
6 we don't guess, we get it right. And if you are not
7 convinced beyond reasonable doubt, then we got our heart
8 out the way and we use our head. That's what the law says
9 we must do. We get it right.

10 The Judge will instruct that it must be
11 unanimous. That means all 12. One's no more important
12 than the other. Everybody, everybody.

13 Remember I talked about that machine in the
14 corner and the machine doesn't come out of the corner and
15 everybody has to go to the machine. It's been a lot of
16 casino games but that one slot machine in the corner says
17 I take on all comers. You see that's the defense's
18 position. We did not have to prove we did not do
19 anything, they have to prove we did. This is the best you
20 have. It's not going to get better today, tomorrow, this
21 is the best you have. I think therefore they must. Well,
22 if he did this therefore he did that. I bet they planned
23 it, they coordinated it, they orchestrated it.

24 They want you to believe some guys get
25 together and say we're going to orchestrate this and this

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1 is how we're going to plan it and this is how we're going
2 to execute it. We can not plan, orchestrate, or execute a
3 family reunion or cookout or get the kids ready to go to
4 bed but we're going to plan, orchestrate and execute this.
5 Unbelievable.

6 Nobody saw Mr. Littlejohn come into physical
7 contact with nobody. Somebody was there that was black
8 and head dreadlocks. Somebody was there. They want you
9 to assume what I said was on the table they want you to
10 assume. And what's interesting when the agent pulled out
11 his gun and said everybody ran, it's dark outside or maybe
12 it's dusk or maybe it's getting dark or may the storm was
13 coming or maybe the lamp post illuminated it, I hadn't
14 figured out what it was. Either it was real dark coming
15 in or real dark coming out, were these the agents plan, I
16 have no idea. But what I do know at the point this
17 happened it was dark and you see somebody black or white
18 get out the car and pull a gun, the people that run from
19 the gun get to tell the story about the gun. The ones who
20 get there judgment and their courage confused, people talk
21 about them. How logical is somebody pull a gun and you
22 running whether they going to shoot your friend or
23 somebody you don't know, gun come, I'm gone. That's
24 believable. That's common sense somebody see a gun and
25 I'm gone.

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1 You know what assume means, we all do. When
2 somebody assumes -- you see you thought I was going to say
3 something else. You can't assume that. You saw me
4 kicking and punching and can you assume I knocked my water
5 over. You can't assume that. Thank you.

6 THE COURT: All right, Mr. Foreman, ladies
7 and gentlemen of the jury, during this trial you and I had
8 a certain duties to perform. As the trial judge it is my
9 responsibility to preside over the trial of the case and
10 rule on admissibility of the evidence that's offered
11 during the trial. It is also my duty to charge you the
12 law that's applicable to the case. It is your duty as
13 jurors to accept and apply the law as I now state it to
14 you. If you think you have any ideas as to what the law
15 is or what the law ought to be and it does not agree with
16 what I tell you the law it, you must forget your own idea
17 because you have sworn an oath to accept and follow the
18 law precisely as I explain it to you.

19 I will again remind you that in every case
20 tried in the court before a jury, you the jurors are the
21 sole and exclusive judges of the facts. The law does not
22 allow a trial judge to have an opinion on the facts, so
23 please don't think anything I may have said or done
24 throughout the course of the trial that I have such an
25 opinion because I do not and the law does not allow it.

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1 I will again instruct you that the fact that
2 the defendant was arrested and charged and indicted in
3 this case is not evidence of guilt, nor does it create any
4 presumption or inference of guilt. The documents are
5 simply the formal written instruments which contain the
6 charges against the defendant and they serve as formal
7 documents by which a case is brought into court for final
8 resolution.

9 There are two indictments in this case and
10 they are for lynching in the second degree and assault and
11 battery with intent to kill. Each indictment is a
12 separate and distinct offense and you must decide each
13 indictment separately on the evidence and the law
14 applicable to it uninfluenced to your decision in any
15 other indictment.

16 The defendant may be convicted or acquitted
17 on any or all of the indictments charge and you will be
18 asked to write a separate verdict of guilty or not guilty
19 for each indictment.

20 And necessarily you must determine the
21 credibility or believability of the witnesses who have
22 testified in the case and it becomes your duty as jurors
23 to evaluate the evidence and determine which evidence
24 convinces you that it is true. And in determining the
25 believability of the witness, you may believe one witness

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1 over several or several over one. You may believe a part
2 of the testimony of a witness and reject the remaining
3 part.

4 You may believe the testimony of a witness in
5 it's entirety or reject that same testimony in it's
6 entirety. You may consider whether the witness has an
7 interest in the result of the trial, whether the witness
8 is prejudice towards either the State or the defendant,
9 the opportunity for the witness to have seen the matters
10 and things about which the witness has testified and the
11 way the witness acts on the witness stand in what we call
12 a witness's demeanor.

13 Now, I instruct you and emphasize that the
14 fact that the defendant did not testify is not a factor to
15 be considered by you in any way in your deliberations on
16 the question of the guilt or innocence of the defendant.
17 It must not be considered by you in any manner whatsoever.
18 Every citizen has the Constitutional right to remain
19 silent and the assertion of this right must not be
20 considered by you in your deliberations.

21 The defendant has pled not guilty to these
22 indictments and that puts the burden on the State to prove
23 the defendant guilty. A person charged with committing a
24 criminal offense in South Carolina is never required to
25 prove themselves innocent and I charge you that it is a

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1 cardinal and important of the law that the defendant in a
2 criminal trial will always be presumed to be innocent for
3 the crime in which the indictment was issued unless and
4 until guilt has been proven by evidence satisfying you of
5 guilt beyond a reasonable doubt.

6 Now, a reasonable doubt is the kind of doubt
7 which would cause a reasonable person to hesitate to act.
8 Reasonable doubt may arise from the evidence which is in
9 the case or for the lack or absence of evidence in the
10 case, and you the jury must determine whether or not
11 reasonable doubt exists as to the guilt of the defendant.

12 I remind you that the State has the burden of
13 proving each and every element of a crime beyond a
14 reasonable doubt and any reasonable doubt that you may
15 have in your deliberations should be resolved in favor of
16 the defendant.

17 Now, there are two types of evidence which
18 are generally presented at a trial, direct evidence and
19 circumstantial evidence. Direct evidence is the testimony
20 of a person who claims to have actual knowledge of the
21 event such as an eyewitness. It is evidence which
22 immediately establishes the main fact to be proved.

23 Circumstantial evidence is proof of a chain
24 of facts and circumstances indicating the existence of a
25 fact. It is evidence which immediately establishes

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1 collateral facts from which the main fact may be inferred.
2 Circumstantial evidence is based on inference and not on
3 personal knowledge or observation.

4 I tell you that the law makes absolutely no
5 distinction between the weight or value to be given to
6 either direct or circumstantial evidence nor is a greater
7 degree of certainty required of circumstantial evidence
8 than of direct evidence.

9 If a crime has been committed by two or more
10 people acting together in committing a crime, the act of
11 one is the act of all. The person who joins with another
12 to accomplish an illegal purpose is criminally responsible
13 for everything done which occurs as a natural consequence
14 in the acts done in carrying out the common plan and
15 purpose.

16 For example, two people can be guilty of
17 killing another person when only one of the two had a gun.
18 There was only one bullet and only one of the two fired
19 the shot that caused the death. If two or more people
20 were together, acting together, assisting each other in
21 committing the offense, the act of one is the act of all
22 or as it is sometimes said the hand of one is the hand of
23 all.

24 Ladies and gentlemen, the defendant has been
25 charged and indicted for assault and battery with intent

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1 to kill. The State must prove beyond a reasonable doubt
2 that the defendant committed an unlawful act of a violent
3 nature on the person of another with malice aforethought.
4 An assault occurs when a person unlawfully attempts or
5 offers to commit a violent injury to another person and
6 had the present ability to complete the attempted injury.

7 An assault is the intentional creation of a
8 reasonable fear of immediately bodily harm. It is not
9 necessary that the attempted injury or harm actual take
10 place. For example, if I walk up to you and we are within
11 arms reach, I draw back to hit you. That is an assault.

12 Now, a battery is the unlawful touching of another person
13 by the person who has committed the assault. An unlawful
14 touching can be caused by a part of the accused body or
15 with any object the accused puts in motion.

16 A battery is the completion of the assault by
17 using or applying force to another person however slight
18 in a rude, angry, or resentful manner without legal
19 justification for doing so. Using my earlier example, if
20 I carry through the assault of hitting you, that
21 constitutes a battery.

22 Now, malice is hatred, ill-will, or hostility
23 towards another person. It is the intentional doing of a
24 wrongful act without just cause or excuse and with an
25 intent to inflict an injury or under circumstances that

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1 the law will infer an evil intent.

2 Malice aforethought does not require that
3 malice exists for any particular length of time before an
4 act is committed, but malice must exist in the mind of the
5 defendant just before and at the time the act is
6 committed, therefore, there must be a combination of the
7 previous evil intent in the act.

8 Now, malice aforethought may be either
9 expressed or inferred. These terms express and inferred
10 do not mean different kinds of malice, but merely the
11 manner in which malice may be shown to exist. That is
12 either by direct evidence or by an inference from the
13 facts and circumstances which are proved.

14 Express malice is shown when a person speaks
15 words which express hatred or ill-will for another or when
16 a person prepared beforehand to do the act which was later
17 accomplished. For example, lying in wait for a person or
18 any other acts of preparation in order to show that the
19 deed was in the defendant's mind would be expressed
20 malice. Now, malice may be inferred from conduct showing
21 a total disregard for human life.

22 I would tell you, ladies and gentlemen, that
23 a hand or fist is not normally considered a deadly weapon,
24 however, under some circumstances depending on the manner
25 and means of its use, the wounds inflicted, and other

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1 relevant facts, a hand or fist may be considered a deadly
2 weapon. It is for you to decide in this case beyond a
3 reasonable doubt whether or not a hand or a fist is a
4 deadly weapon.

5 And with respect to the determination of
6 that, I would tell you that malice maybe inferred when a
7 deed is done with a deadly weapon.

8 Now, if facts are proved beyond a reasonable
9 doubt sufficient to raise an inference of malice to your
10 satisfaction, this inference would be simply an
11 evidentiary fact to be considered by you along with all
12 the other evidence in the case and you may give it the
13 weight that you decide it should receive.

14 I will tell you that the specific intent to
15 kill is not an element of assault and battery with intent
16 to kill, but there must be a general intent to commit
17 serious bodily injury. Intent means intending the result
18 which actually occurs not accidentally or involuntarily.
19 An intent may be shown by acts and conduct of the
20 defendant and other circumstances from which you may
21 naturally and reasonably infer intent.

22 Evidence of the character of the assault, the
23 character of the instrument is used, the manner in which
24 it was used, the purpose to be accomplished and the
25 resulting wounds or injuries maybe considered in

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1 determining the intent with which the assault was
2 committed.

3 An intent may be inferred when it was
4 demonstrated that the defendant voluntarily and willfully
5 commits an act the natural tendency of which is to destroy
6 another's life.

7 Now, ladies and gentlemen, if you find that
8 the State has not proven that the defendant is guilty of
9 assault and battery with intent to kill, you must then
10 determine whether the State has proved that the defendant
11 is guilty of assault and battery of a high and aggravated
12 nature.

13 Assault and battery of a high and aggravated
14 nature includes all of the elements of assault and battery
15 with intent to kill except malice aforethought. In
16 addition, the State must prove beyond a reasonable doubt
17 an aggravating circumstance.

18 Circumstances of aggravation include the use
19 of a deadly weapon, the intent to commit a felony, the
20 infliction of serious bodily injury, great disparity
21 between the ages or physical conditions of the parties, a
22 difference in the gender of the parties, the taking of
23 indecent liberties or familiarities with a female through
24 the use of force, the purposeful inflicting of shame and
25 disgrace, the resistance of lawful authorities and these

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1 are examples of aggravation.

2 Now, the defendant is also charged with
3 lynching in the second degree and I charge you that
4 lynching in the second degree is defined as any act of
5 violence inflicted by a mob upon the body of another
6 person and from which death does not result. A mob is
7 defined as the assemblage of two or more persons without
8 color or authority of law for the premeditated purpose and
9 with the premeditated intent of committing an act of
10 violence upon the person of another.

11 Premeditation connotes willful deliberation
12 or planning or conscience consideration preceding a
13 particular act. However, the common intent to do violence
14 may be formed before or during the assemblage, and it is
15 permissible to infer that all persons present as members
16 of a mob when an act of violence is committed have aided
17 and abetted the crime and are guilty as principals.

18 Now, ladies and gentlemen, with respect to
19 the indictments against the defendant, I want to tell you
20 we have prepared a verdict form which we will send back in
21 the jury room with you. I think it is self-explanatory,
22 but I want to tell you as to these charges, there are two
23 possible verdicts. There is no importance of order in
24 which I described them to you, ones got to go first, and
25 they are guilty or not guilty.

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1 So, ladies and gentlemen, I want to tell you
2 with respect to the charge of assault and battery with
3 intent to kill if you find -- that is the first one on the
4 verdict form -- if you find the defendant guilty of that
5 charge, you stop and go to the second charge. If you find
6 the defendant not guilty of assault and battery with
7 intent to kill then before you go to lynching, you must
8 consider assault and battery of a high and aggravated
9 nature.

10 Now, ladies and gentlemen, I want to tell you
11 with respect to these verdicts, all 12 of you must agree.
12 It must be unanimous and your verdict can not be based on
13 sympathy, passion, prejudice, emotion or any other
14 consideration which is not in evidence in the case.
15 Please remember you have no enemies to punish and you have
16 no friends to reward.

17 Now, Mr. Foreperson, when you all have agreed
18 on a verdict and filled out the verdict form, we ask you
19 to sign it at the bottom and then please notify the
20 bailiffs. We will receive you back in the courtroom to
21 take your verdict. I am going to excuse you now to go back
22 to your jury room and I'm going to ask you not to begin
23 your deliberations just yet. The reason for that is I
24 have to go over my charge on the law with the attorneys to
25 make sure I did not misstate something or omit something.

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1 But when you receive the verdict form along with all the
2 evidence in the case, you may begin your deliberations.

3 So at this time I will excuse everyone with
4 the exception of Ms. Stratton.

5 (Jury exits the courtroom.)

6 Ms. Stratton, you have been just a good a
7 juror as anybody else and paid just the same amount of
8 attention and is just as qualified, but the law only
9 allows 12 to deliberate. So I can't let you go back in
10 there although I'd like to. So you are finished with your
11 service on this case and you're free to go now. Please
12 call back after 6:00. Thank you very much.

13 (Alternate excused).

14 Any exception or objection to the charge as
15 stated other than those previous enumerated?

16 MS. SALISBURY: None from the State, Your
17 Honor.

18 MR. HALEY: Your Honor, I will make exception
19 to the aiding and abetting being included in the charge of
20 lynching. I think you added that in there.

21 THE COURT: No, sir, I just corrected stated
22 the law. That is a code section. Your objection is noted
23 for the record, but I believe that is a correct statement
24 on the law.

25 MR. HALEY: Second, Judge, I think there may

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1 need to be some clarification the way you gave the charges
2 or it may needs to be stated that, one, they can consider
3 lynching first then go up to the assault and battery. I
4 think the way you said it was you can't go up -- after you
5 go from assault and battery with intent to kill, you can't
6 go to the lynching until you considered ABHAN.

7 THE COURT: No, what I said was listed on the
8 verdict form first is assault and battery with intent to
9 kill. You must consider that and determine guilty or not
10 guilty. If guilty, go to Number 2 on the verdict form.
11 And if they find not guilty, then they must consider
12 aggravated assault and battery. So I was careful to
13 enumerate what was listed on the verdict form. So your
14 objection is noted for the record and I'm not doing
15 anything else in that regard.

16 MR. HALEY: And if the Court will instruct
17 that there can be a not guilty to both assault and battery
18 with intent to kill and ABHAN.

19 THE COURT: It's clearly stated on the
20 verdict form. Y'all look at this before it goes back and
21 make sure all the evidence is there.

22 MR. HALEY: Judge, State's Exhibit No. ---

23 THE COURT: We're not sending the disc back.

24 MR. HALEY: State's Exhibit No. 7 was not
25 admitted.

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1 THE COURT: That's not an admitted exhibit?

2 MS. SALISBURY: No, it's not.

3 THE COURT: Ms. Mozzella, if you would tell
4 them if they would like to listen to the disc, we would
5 have to bring them back into the courtroom to do that.

6 Okay. We'll be at ease.

7 (Whereupon, the jury began deliberations at
8 12:20 p.m.)

9 Okay. We got a note from the jury, "We would
10 like to read or have explained again the definition
11 related to the assault and battery with intent to kill
12 versus aggravated assault and battery, signed foreperson."

13 So I would propose to submit to the jury
14 copies of my entire charge so that nothing is taken out of
15 context.

16 MS. SALISBURY: No objection.

17 MR. HALEY: No objection.

18 (Jury question marked as Court's Exhibit No.
19 3 for identification and admitted into evidence.)

20 (Jury Charge marked as Court's Exhibit No. 4
21 for identification and admitted into evidence.)

22 THE COURT: Okay. There is also a note that
23 reads, "We would also request to listen to the audio
24 recording. This is purely related to discussion on the
25 second allegation. Okay. So get it together.

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1 MS. SALISBURY: Would you like to do that
2 now?

3 THE COURT: Yes. Would y'all go and ask them
4 would they like for us to clear the courtroom? Go find
5 out because we have to listen to it in here.

6 (Jury question marked as Court's Exhibit No.
7 5 for identification and admitted into evidence.)

8 Okay. They're going to listen to that and
9 we'll going to have to clear the courtroom. They want the
10 courtroom cleared out.

11 Tell them we're getting it cued up and we'll
12 get them in a second.

13 Okay. What I'm going to do is bring them
14 back in here so if y'all would take your seats and tell
15 them that we're going to leave and if they need to adjust
16 it, we're going to have to do it because there's got some
17 stuff on another unrelated matter.

18 MS. SALISBURY: If they want to adjust the
19 volume or whatever ---

20 THE COURT: Where's the knob? On the
21 speaker?

22 MS. SALISBURY: Yes.

23 THE COURT: We're going to take the defendant
24 out of the courtroom so the jury doesn't see him taken
25 into custody.

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1 Okay. Everybody else go accept for the two
2 lawyers.

3 (Whereupon, courtroom was cleared).

4 (Jury re-enters the courtroom).

5 Ladies and gentlemen, welcome back. We will
6 all exit the courtroom but first let me just say we're
7 going to turn on the computer and start the disc. I have
8 to instruct you on not to -- you can adjust the volume on
9 the speakers, but if you need anything to be done with the
10 actual disc, please don't you all do it. And I will also
11 tell you that contained on the disc as well is some
12 unrelated material so we want to keep you within the
13 confines of what's been admitted into evidence.

14 I'm going to ask the solicitor to start it.
15 We're all going to leave and we'll be close by. If you
16 all need something, just bang on that door and someone
17 will be there.

18 (Whereupon, jury listened to audio
19 recording.)

20 (Jury exited courtroom and returned to
21 deliberations.)

22 The jury in the Littlejohn case has a
23 verdict. We don't know whose all here in that case but I
24 tell you this I will not tolerate any outbursts. I do not
25 know what the verdict will but, good, bad, or ugly, no

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1 outbursts. I will punish those accordingly.

2 (Jury enters the courtroom).

3 (Whereupon, verdict was reached at 4:35 p.m.)

4 Mr. Foreman, I understand you've reached a
5 verdict.

6 MR. FOREMAN: We have, Your Honor.

7 THE COURT: Please hand it to the bailiff.
8 Madam Clerk, would you publish that.

9 THE CLERK: Your Honor, in the case of
10 2010-GS-23-6449 and 6450, the State of South Carolina
11 versus Kendrick Littlejohn. No. 1, as to the charge of
12 assault and battery with intent to kill, we the jury find
13 the defendant guilty. As to the charge of lynching in the
14 second degree, we the jury find the defendant guilty.
15 This is signed by Michael Freeman, our foreman.

16 If you agree that these are the verdicts you
17 reached in the jury room, would you please raise your
18 right hand.

19 (Jury complies.)

20 I thank you.

21 THE COURT: Anything further for the jury?

22 MS. SALISBURY: Nothing from the State.

23 MR. HALEY: Nothing from the defense.

24 THE COURT: Ladies and gentlemen of the jury,
25 thank you for your diligent work. I wish I could say you

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1 were done for the week but I can't do that. I'll ask you
2 to call back after 6:00 tonight to determine when either
3 you call back again or report. Thank you all very much.
4 You're free to go and have a pleasant evening. Thank you.

5 (Jury exits the courtroom).

6 Any motions?

7 MR. HALEY: Your Honor, first I would like to
8 renew my motion for directed verdict as to the assault and
9 battery with intent to kill.

10 THE COURT: Motion is denied.

11 MR. HALEY: I also make a motion for a new
12 trial based upon the (inaudible) evidence in this case.

13 THE COURT: That motion is denied as well.

14 MR. HALEY: You're ready for us to come
15 forward?

16 THE COURT: Yeah, come on around.

17 Before we proceed, I'd like to know what the
18 State's position is with respect to the sentences.

19 MS. SALISBURY: Your Honor, you sat through
20 the trial in this case and you heard the evidence
21 presented ---

22 THE COURT: No, no. What are the maximum
23 possible sentences on these cases?

24 MS. SALISBURY: Assault and battery with
25 intent to kill is 20 years, Your Honor. The maximum

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1 possible sentence for lynching in the second degree is
2 also 20 years, Your Honor.

3 THE COURT: Do you agree with that based on
4 the new law?

5 MR. HALEY: Yes, sir.

6 THE COURT: I'll be happy to hear from the
7 State with respect to the sentencing, anything you want to
8 tell me.

9 -- MS. SALISBURY: Well, yes, Your Honor. You
10 sat through the trial, you presided over the trial and
11 heard all the State's evidence that this was an undercover
12 operation by police designed to eliminate illegal weapons
13 from the street. That was the basis of their operation
14 and in doing that they countered a particularly violent
15 resistance and it's the State's position that the sentence
16 should reflect the gravity of both, That violence and the
17 nature of the transactions and that type of particularly
18 violent criminal activity that was underlying that
19 incident.

20 If you would like to hear from Agent Stallo,
21 he might have some input as well as well as Agent Morlan
22 may have some input for the Court at the particular time.

23 THE COURT: I do, but let me ask you this
24 before we do that, how much credit does he get time served
25 on these charges? Do you have that computed?

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1 MS. SALISBURY: My computation is out-of-
2 date. I have some time before the defendant's current
3 incarceration. I will have that number calculated for
4 you.

5 THE COURT: Okay. Yes, sir, anything you
6 could tell me.

7 MR. STALLO: In my opinion, Your Honor, this
8 was a violent calculated ruse from the onset.
9 Mr. Littlejohn and his cohorts, that's what they wanted to
10 do, beat us and rob us. And had my fate and Agent Morlan
11 walked into that dark corner, this would not have ended as
12 well as it did considering that. Fate, grace of God, it
13 could have been a lot worse.

14 THE COURT: Okay. Thank you.

15 Agent Morlan, yes, sir.

16 MR. MORLAN: I'll refer to what he just said.

17 THE COURT: Thank you, sir.

18 Tell me his prior criminal history.

19 MS. SALISBURY: 2009 conviction for strong
20 armed robbery, Your Honor. I think it's important for the
21 Court to note that as part of that sentence, the defendant
22 was sentenced to 90 days of home incarceration with
23 probation to follow. That term of home incarceration
24 ended in April of 2009 just 15 days before this incident.

25 THE COURT: Okay. All right.

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1 What you want to tell me, Mr. Haley?

2 MR. HALEY: If it please the Court, you've
3 had an opportunity to sit through the case as the
4 solicitor has said; however, I will point out while the
5 State's position is this was a violent and egregious act,
6 there's no evidence to suggest that Mr. Littlejohn or
7 anyone else knew these were law enforcement officers. So
8 this was no a target where they thought they were law
9 enforcement officers. I'm not sure if that came across
10 that they targeted them. I just wanted to put that out
11 there that this was not an act directed upon law
12 enforcement.

13 Based upon the questions of the jury it
14 appears that there was some decision and discussion as to
15 the gravity of the injury. That was based upon the
16 question whether this was an ABWIK or ABHAN. I don't
17 argue with their reasoning on how they differentiated the
18 difference; however, the Court did hear the medical
19 results of this and while there was a concussion, there
20 was no permanent injury, no long term scarring.

21 Actually, in fact, I believe testimony that
22 the injury could have occurred from the initial punch that
23 Mr. Littlejohn, himself, did not throw. The charge
24 contained the aiding and abetting and the hand of one hand
25 of all would allow me to argue that perhaps he was found

State versus Littlejohn

1 guilty because of the hand of one hand of all that he was
2 there whether he was an active or passive participant.
3 And I say that just with relation to the gravity to the
4 injury and the attack because it is our position all along
5 that Mr. Littlejohn did not partake in the take.

6 However, for purposes of this sentencing, I
7 would also let the Court know that it's my understanding
8 that he has at least a year-and-a-half of time in. I
9 don't have the exact date, but I think it's somewhere in
10 that vicinity.

11 THE COURT: We'll make sure he gets credit
12 for the time he is entitled to.

13 MR. HALEY: If there was planning, I'm not
14 sure how detailed it was, so I would argue to the Court
15 and suggest to the Court is that this is the type of
16 defendant his only prior is a strong armed robbery and he
17 appears to have completed without any indiscretions the
18 HIP program and the probation without any violations on
19 his record. So a sentence of low to mid range of this
20 sentences, it's up to 20, we would ask the Court to look
21 at a sentence of maybe 10 years suspended after four on
22 each charge.

23 THE COURT: Did he get probation on that?

24 MS. SALISBURY: Yes, Your Honor. There was
25 probation to follow. That probation began in mid April of

State versus Littlejohn

1 2009.

2 THE COURT: So he's violated that. What's
3 hanging over him on his probation?

4 MS. SALISBURY: The sentence on that was 10
5 years suspended to 90 days home incarceration with three
6 years to follow -- three years of probation to follow.

7 THE COURT: Mr. Littlejohn, what do you want
8 to tell me?

9 DEFENDANT LITTLEJOHN: Really I wanted to
10 tell you, Your Honor, this man truly know what happened
11 out in Dixie that day. Truly indeed I was out there;
12 truly indeed he know I never put my hands on him. He know
13 that. This man know that too. He know that I ain't never
14 intentionally touch none of them, never even went near
15 them.

16 THE COURT: Well, tell me what happened out
17 there?

18 DEFENDANT LITTLEJOHN: This what happened,
19 Your Honor, true indeed we did have phone conversation on
20 the phone. He came out to Dixie. My home boys was
21 supposed to sell him a gun. I told him I didn't have no
22 guns, I know somebody who do. Okay. They get out there
23 they start talking. I wasn't even all the way up on the
24 conversation. So after like me and him talking, after
25 that, they did hit this man.

State versus Littlejohn

1 THE COURT: Who hit him? Who was it?

2 DEFENDANT LITTLEJOHN: I don't even know
3 their names. I don't know all their names, I just know
4 they hung out in Dixie and then this man pulled a gun out
5 on me. It ain't like I was at the scene when they was
6 fighting, he pulled everybody away with the gun. He know
7 I did not touch him whatsoever. I never laid a hand on
8 this agent whatsoever. I never laid a hand on him.

9 THE COURT: Well, who did?

10 DEFENDANT LITTLEJOHN: One dude did hit this
11 man. I was out there to see this man hit him. Ain't no
12 mob jump on him, ain't no two people jump on him. One man
13 hit this man. I don't know his real name but one man did
14 jump on this man and that is true. Why I took it to trial
15 because I know true indeed God knows that I didn't touch
16 this man. I know up to trial you can get over the maximum
17 of your sentence of what the sentence calls, I'm not going
18 to jeopardize my life to put all this in to go to trial
19 over something I didn't do. I would have took a plea if I
20 did this.

21 This man know one person hit him.

22 THE COURT: He don't know because he can't
23 remember. And this man testified under oath quite
24 differently from what you want to represent. This is your
25 judgment day, man. You're 23. You were, what, 21 when

State versus Littlejohn

1 this happened. You had already been convicted of strong
2 armed robbery. At some point you got to stop. You
3 weren't off your home incarceration 15 days and you're
4 talking about dealing in illegal firearms.

5 DEFENDANT LITTLEJOHN: Like I told you I
6 never sold him a firearm. I said I know some people who
7 had firearms. He ain't never asked me if I had a firearm
8 and I told him I know somebody who do have a firearm. I
9 didn't use firearms. I'm on probation so why would I sell
10 him a firearm?

11 THE COURT: That's a real good question and
12 one I have a real problem with. Anything else?

13 DEFENDANT LITTLEJOHN: Yes, Your Honor. If
14 you would show leniency on me on my case and for me to be
15 the man -- I'm sorry for what happened to you.

16 THE COURT: Well, I'm 20 years provided upon
17 the service of 14 years. The balance is suspended for
18 probation for five years; random drug and alcohol testing,
19 substance abuse counseling, \$500 to the Public Defender
20 Fund, credit for any time he's entitled, and 20 suspended
21 during probation on the other one -- I'm going to make
22 that 10 suspended during probation on the other one
23 consecutive.

24 MR. HALEY: Judge, may I ask clarification?

25 THE COURT: Yeah. He finishes his sentence

State versus Littlejohn

1 he's going to have 16 years hanging over his head,
2 probation for five.

3 MR. HALEY: The active sentence is on the
4 ABWIK and the suspended is on the lynching.

5 THE COURT: Yeah. Good luck.

6 MS. SALISBURY: Thank you, Your Honor.

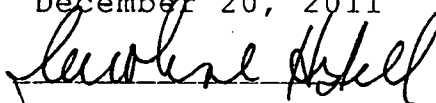
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State versus Littlejohn

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 26th day of April, 2011.

9 I do further certified that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12
13 December 20, 2011

14 

15 Caroline Hiskell
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24
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FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)KENDRICK Littlejohn)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-23-02975

APPLICATION FOR

POST-CONVICTION RELIEF

ENTERED COMPUTER

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBEL CT
2. Name and location of Court which imposed sentence GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) ABWIK 2010ES-23-6449 ①
 (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) _____
 (b) _____

Revised 3/2003

① DOES NOT CHALLENGE the conviction for LYNCHING and Degree

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MARCH 19, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2014 - UP - 118
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) _____
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) (SEE ATTACHED)
 (b) _____
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. DARRIN HALEY
- ii. DARRIN HALEY
- iii. SUSAN B. HACKETT

(b) the proceedings at which each such attorney represented you:

- i. TRIAL
- ii. SENTENCING
- iii. APPEAL

19. State clearly the relief you seek in filing this application:

ABWIK VACATED w/ Prejudice

20. Are you now under sentence from any other court that you have not challenged?

- ① 4 YEARS FOR STRONG ARM ROBBERY (CONSECUTIVE)
- ② 10 YEARS SUSPENDED TO 5 YEARS PROBATION FOR LYING SECOND DEGREE 2010 GS-23-6450

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Hardrock Littlejohn

SWORN to and subscribed before me this 17th
day of April, 2014.

Luchean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kendrick Littlejohn
Applicant

SWORN or affirmed to and subscribed before me this
17th day of April, 2014.

Quedra Bryant
Notary Public

My Commission Expires: May 26, 2020

I

1) TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL PUR. STRICKLAND V. WASHINGTON, 104 S CT 2052 (1984) AND STATE V. BELCHER, 685 SE22. 802 (SC 2009) WHEN APPLICANT, WHOM WAS ON TRIAL FOR ABWIK AND HAD RECEIVED (A REDUCED) LESSER INCLUDED OFFENSE FOR ABHAN, JURY WAS INSTRUCTED @ PG 205 L. 6-7

" I WOULD TELL YOU THAT MALICE MAY BE INFERRED WHEN DEED IS DONE WITH A DEADLY WEAPON ①

IN A CASE DECIDED TWO YEARS BEFORE APPLICANT TRIAL STATE V. BELCHER SUPRA IT WAS HELD

1 JURY CHARGE INSTRUCTING THAT MALICE MAY BE INFERRED FROM THE USE OF A DEADLY WEAPON IS NO LONGER GOOD LAW IN SOUTH CAROLINA WHERE EVIDENCE IS PRESENTED THAT WOULD REDUCE, MITIGATE OR EXCUSE OR JUSTIFY THE HOMICIDE (OR ABWIK) "

CLEARLY, IN THIS CASE EVIDENCE WAS PRESENTED THAT WOULD REDUCE, MITIGATE OR EXCUSE THE ABWIK AS EVIDENCED FROM THE LESSER INCLUDED OFFENSE BEING CHARGED TO JURY (TO REDUCE ABWIK) (PG 206 LINE 7-17)

AT 206 LINE 13 " ABHAN INCLUDES ALL THE ELEMENTS OF ASSAULT AND BATTERY WITH INTENT TO KILL EXCEPT MALICE AFORETHOUGHT,

THEREFORE, ~~IF~~ YOU SUBTRACT THE ERRORS

① IN THIS CASE JURY WAS INSTRUCTED " HAND OR FIST MAY BE CONSIDERED A DEADLY WEAPON "

Belcher INSTRUCTION THAT MALICE CAN BE INFERRED FROM USE OF A DEADLY WEAPON < IN THIS CASE A HAND > THEN IT IS AXIOMATIC APPLICANT COULD HAVE BEEN FOUND GUILTY OF ABHAW (10 YEARS) RATHER THAN ABWIK (20 yrs (85%))
51%

COUNSEL FAILURE TO OBJECT AS A MATTER OF LAW TO A ERRONEOUS 'BURDEN SHIFTING INSTRUCTION' AND BECAUSE EVIDENCE PRESENTED A JURY QUESTION ON ABHAW < AS IS LAW OF THE CASE > AS A LESSEN INCLUDED OFFENSE CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL. ESPECIALLY AS STATE MEDICAL EXPERT TESTIMONY TESTIFIED VICTIM SUSTAINED MILD HEAD TRAUMA @ PG 134 L. 6 AND FACT VICTIM WAS SEEN, DISCHARGED AND RELEASED FROM EMERGENCY ROOM @ P. 129 L. 20. IT CANNOT BE SAID THIS ERROR WAS HARMLESS, OR THAT IT WASN'T PREJUDICIAL WITHOUT THE BURDEN SHIFTING INSTRUCTION BASED UPON THE MILD HEAD TRAUMA TESTIMONY APPLICANT COULD HAVE BEEN CHARGED WITH ABHAW
CONVICTED

II

ALSO COUNSEL FAILED TO OBJECT TO NUMEROUS REFERENCES TO OTHER CRIMES AND DRUGS PG 66 (L. 5-6) 67 (L. 8, 10) 68 (L. 13-17) 79 (L. 2) 89 (L. 20), WHEN APPLICANT WAS NOT ON TRIAL FOR DRUGS AND WAS HIGHLY PREJUDICIAL AS IT BROUGHT THE DEFENDANT'S CHARACTER INTO QUESTION RULE 404(b) AND COUNSEL COULD HAVE EASILY MOVED TO EXCLUDE THOSE COMMENTS IN LIMINE SEE LINE 150 (L. 11)

III

COUNSEL FAILED TO ENGAGE THE SERVICES OF MEDICAL EXPERTS TO SHOW THAT SINCE VICTIM WAS ABLE TO RETURN AND DRIVE HIS VEHICLE AWAY FROM DIXIE ESTATES PG 102 L. 1 THAT HIS INJURIES WERE NOT THAT SERIOUS AND HE MAY WELL HAVE BEEN MANGERING TO UPGRADE THE OFFENSE FROM ABHANI TO ABWIK AKE U. OKLAHOMA S.C.T.

STATE U. BAILEY S.C.T.

WHICH WOULD HAVE SUPPORTED A SIMPLE ASSAULT INSTRUCTION. VICTIM WAS NOT EVEN GIVEN A X-RAY, OR C.A.T SCAN AND ONLY EVIDENCE OF A SERIOUS INJURY WAS HIS SELF-SERVING TESTIMONY HE SUFFERED FROM MEMORY LOSS -

IV

APPLICANT WHO DOES NOT CHALLENGE HIS CONVICTION FOR LYNCHING SECOND DEGREE ASSENTS HIS TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE TO DISMISS THE ABWIK BASED UPON DOUBLE JEOPARDY - BLACK BURGEN TEST AS THE ELEMENTS AND FACTS SHOW APPLICANT SHOULD NOT HAVE BEEN PROSECUTED FOR BOTH ACTS -

V FINALLY, APPLICANT, PUR. TO COURT ORDER @ PG 222 L. 20 WAS NOT GIVEN JAIL TIME CREDITS OF 18 MONTHS TO START HIS SENTENCE IN OCTOBER 2009.

Relief

ABWIK VACATED w/ PREJUDICE
AND OR JAIL CREDITS

CA/ 2011-2414 (open)

10143054 235

ATTORNEY GENERAL'S OFFICE

RECEIVED 5-20-14

ADMINISTRATIVE INSTRUCTIONS

☒ FILE ☒ OPEN ☐ END

☐ HAVE ☐ COPIES MADE

☐ ROUTE TO ☐

☒ ORDER ☐ TRANSCRIPT

☐ PEN RECORDS ☐ CLERK RECORDS

☒ OTHER: once CA file

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file room

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S/21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-2475
COUNTY OF GREENVILLE	)	
	)	
Kendrick D. Littlejohn,	)	
S.C.D.C. No. 346082,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed May 2, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the August 2010 term of General Sessions for assault and battery with intent to kill (ABWIK) (2010-GS-23-6449) and second-degree lynching (2010-GS-23-6450). Darren Haley, Esquire represented the Applicant.

After the States called the case to trial, the Applicant was found guilty. On April 26, 2011, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of 20 years suspended upon service of 14 years and 5 years probation for ABWIK and 10 years suspended during probation for second-degree lynching.

A notice of appeal was filed at the South Carolina Court of Appeals. Susan B. Hackett, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences.

State v. Littlejohn, Op. No. 2014-UP-118 (S.C. Ct. App. filed March 19, 2014). The Remittitur was sent on April 4, 2014.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant states on page 1 that he is not challenging his conviction for second-degree lynching. With respect to the conviction for ABWIK, however, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to object to a burden-shifting malice instruction.
 - b. Failure to object "to numerous references to other crimes and drugs."
 - c. Failure to obtain independent medical experts "to show that since victim was able to return and drive his vehicle away . . . that his injuries were not that serious and he may well have been malingering to upgrade the offense from ABHAN to ABWIK."
 - d. Failure to move to dismiss the ABWIK indictment based upon double jeopardy.
2. Was not given credit for time-served.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

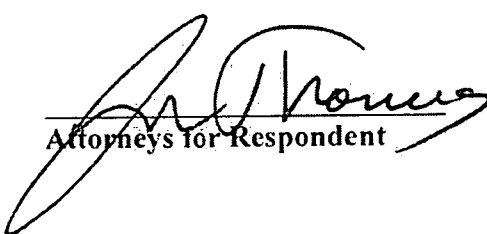
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

October 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

KENDRICK D. LITTLEJOHN, 346082

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

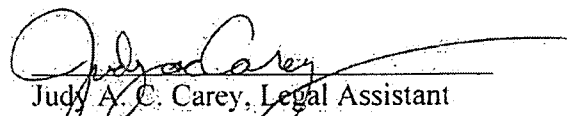
2014-CP-23-2475

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kendrick D. Littlejohn, 346082
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 21st day of October, 2014.


 Judy A. C. Carey, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

3
4 KENDRICK D. LITTLEJOHN)
5 PETITIONER,) TRANSCRIPT OF RECORD
6 -vs-) 201R-GS-23-02475
7 STATE OF SOUTH) FEBRUARY 17, 2015
8 CAROLINA,) GREENVILLE, SOUTH CAROLINA
9 RESPONDENT.)

10
11 B E F O R E:

12 THE HONORABLE DANIEL D. HALL, JUDGE.
13
14

15 A P P E A R A N C E S:

16 R. MILLS ARIAIL, JR., ESQUIRE
17 ATTORNEY FOR THE PETITIONER

18 KAREN C. RATIGAN, ASSISTANT ATTORNEY GENERAL
19 ATTORNEY FOR THE RESPONDENT

20
21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

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EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
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3	P-1	WRITTEN MEMORANDUM		8
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1 (PROCEEDINGS FEBRUARY 17, 2015)

2 THE COURT: The court is ready.

3 MS. RATIGAN: Thank you, Your Honor.

4 May it please the court, this is the case of
5 Kendrick Littlejohn versus the State of South Carolina. The
6 docket number is 2014-CP-23-2475.

7 Mr. Littlejohn was indicted for assault and
8 battery with intent to kill and second degree lynching. He
9 was represented on these charges by Mr. Haley.

10 Applicant was brought to trial in April of 2011.
11 Mr. Littlejohn was found guilty.

12 On April 26th, 2011, Judge Miller sentenced him in
13 concurrent terms of 20 years, suspended on the service of 14
14 years and five years probation for assault and battery with
15 intent to kill, and 10 years suspended during probation for
16 second degree lynching.

17 Mr. Littlejohn did file an appeal. His
18 convictions and sentences were affirmed by the Court of
19 Appeals on March 19th of 2014.

20 This application was timely filed.

21 The State is ready to proceed.

22 THE COURT: All right. Defense?

23 MR. ARIAIL: Yes, Your Honor, we are ready to
24 proceed.

25 THE COURT: All right. You may call your first

1 witness.

2 MR. ARIAIL: Yes, Your Honor.

3 I call Mr. Littlejohn to the stand.

4 KENDRICK D. LITTLEJOHN, having been first duly
5 sworn, testified as follows:

6 THE CLERK: Please state your full name for the
7 record.

8 THE WITNESS: Kendrick Littlejohn.

9 THE CLERK: Thank you. You may be seated.

10 DIRECT EXAMINATION BY MR. ARIAIL:

11 Q. Mr. Littlejohn, how are you doing today?

12 A. Doing all right.

13 Q. Good.

14 And this is your PCR hearing in regards to this, and
15 before this hearing we have had some discussions and you
16 have provided me a document, which I'm going to submit,
17 after you go through it as evidence in this case.

18 I want to just take it back a little step before that
19 and just get a little bit of understanding of what happened
20 in this case.

21 You went to trial in this matter, is that correct?

22 A. Yes, sir.

23 Q. And you were represented by Darren Haley in this
24 matter?

25 A. Yes, sir.

1 Q. Okay. And you were sentenced, actually convicted of an
2 ABWIK and a second degree lynching, is that right?

3 A. Yes, sir.

4 Q. Now, I have got your PCR application. I want to make
5 sure of one thing as part of that. You have said in your
6 application you are not contesting the second degree
7 lynching. Is that my understanding, or is there --

8 A. Yeah, I said that, but I'm also going to challenge it,
9 because I have been going over some more research. That's
10 why I admitted one of the exhibits into the record.

11 Q. So -- and I will admit that into the record, but I'm
12 trying to figure out. Are you saying that Mr. Haley was
13 ineffective in the second degree lynching, or just -- or in
14 both of them?

15 A. On both of them, sir.

16 Q. Okay. So you are withdrawing what you put in your
17 application and wanting to forward on both of those grounds?

18 A. Yes, sir.

19 Q. Okay. Now, I have got your application and you had it,
20 I believe -- you have added to it some. There were several
21 grounds that were listed in the back of this that were in
22 handwriting that you have indicated were issues that you
23 want to raise?

24 A. Yes, sir.

25 Q. Okay. And I know as part of this, I want to kind of --

1 I want to kind of break it down as to the items that you
2 were contesting Mr. Haley was ineffective in, okay?

3 I know that you have got a document that you said that
4 you wanted to read in this. What I'm trying to do is
5 summarize kind of the points so we can concentrate on them.

6 Do you have a summary of those points or items that you
7 would like to address?

8 A. Yes, they -- they -- they are inside this right here
9 where I would like to read them to the court.

10 Q. Okay. So -- and as part of this -- so you want to read
11 this document. And I have told you, if I could, I can
12 submit that into evidence and you can testify as to your
13 points. Do you want to -- instead of testifying, do you
14 want to -- I guess part of your testimony is you want to
15 read this document?

16 A. Yes.

17 Q. Okay.

18 MS. RATIGAN: Your Honor, I would object. It's
19 actually an eight page document. The objection is reading
20 it in. It can obviously be put in as an exhibit and Mr.
21 Ariail can question about it. I don't know that him
22 reciting a written document would be proper.

23 THE COURT: All right. Yeah, I'm going to sustain
24 the objection.

25 Mr. Littlejohn, it appears that you are, in

1 essence, just wanting to read what you have written in the
2 document.

3 THE WITNESS: No, sir, it's --

4 THE COURT: Well, here is what I'm going to do.
5 We are going to admit the document in and then your lawyer
6 can ask you whatever questions he needs to ask you.

7 MR. ARIAIL: And I have got a copy and gave him
8 the original.

9 (Written Document marked and admitted into
10 evidence as Petitioner's Exhibit No. 1)

11 BY MR. ARIAIL:

12 Q. And Mr. Littlejohn, the judge will have this to review.
13 I want to go through and just give me the key points that I
14 want to -- that you want to address that we can concentrate
15 on in regards to Mr. Haley's representation of you. Can
16 we -- can you go through and just tell me what those items
17 are?

18 A. Yeah. Like I was saying, in my brief that I wanted to
19 read it's raising these issues to Mr. Darren Haley. That's
20 why I would like to read -- like to read this, if you don't
21 mind, judge.

22 THE COURT: Go ahead, Mr. Ariail.

23 BY MR. ARIAIL:

24 Q. What I'm getting at -- and I know you are saying that
25 you have raised certain things for him. What things did you

1 raise with Mr. Haley that he did not do for you?

2 I don't want to go through all of the -- read the whole
3 document. I just need to know were there things --

4 For instance, in this case I know you have had concerns
5 about, you know, the jury charge and certain things that you
6 had requested with him.

7 Also, you know, some of the elements -- and I can go
8 through and take you through that. There are specific
9 things that you want to address.

10 A. Like on -- one of the issues that he didn't object to
11 when the judge been given out a list of included offense, he
12 did not object to it. And part of the evidence of my case
13 in the narrative event, if he would have went and let the
14 judge read through the narrative event, I would have been
15 able to get a lesser charge including offense of assault and
16 battery of intent to kill.

17 Q. So you wanted an ABHAN is what you were asking for at
18 that time, I guess?

19 A. Yes.

20 Q. Okay. So did he -- did he -- what discussions did you
21 have with him in regards to that?

22 A. Well, when the jury came out, they had a debate on it
23 and they had -- they had -- I don't know how you say it, had
24 a recess, and they were -- and they had brought it to his
25 attention on it could be a lesser included offense, but they

1 never -- he never addressed the matter to the court.

2 Q. Okay. So you are saying he never asked for an ABHAN
3 plea of any plea -- or ABHAN charge at any time?

4 A. Yeah.

5 Q. Okay. You are also saying as part of this too that he
6 did not -- he failed to object to other crimes and drug
7 charges, I guess, that were put in regarding you that
8 prejudiced during this trial. Is that one of your grounds?

9 A. Yes.

10 Q. Okay. What do you -- what do you mean by that? What
11 was the issue?

12 A. On -- one issue is I -- are -- may I have a recess with
13 you? Could I have a recess with him to speak to somebody,
14 because I -- I ain't never had a chance to speak to him in
15 like how these questions was going to go. I thought it was
16 going to be something different and I ain't had enough time
17 to sit down and speak with my lawyer or anything.

18 THE COURT: All right. Have you had time to talk
19 with him?

20 MR. ARIAIL: I talked with him. We talked on the
21 telephone. We have talked about this beforehand and I was
22 going to go through and he wanted me to put together this --
23 I mean, go through this list, so I think we have --

24 THE WITNESS: The only thing I spoke to my lawyer
25 is one time last week. And when I spoke with him, I asked

1 him had he received a copy of my motion or the transcript.

2 THE COURT: We will do this. Let's do this. I
3 will give you -- let's take ten minutes. You talk with Mr.
4 Ariail and then we will start back in ten minutes.

5 THE WITNESS: Okay.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: Mr. Littlejohn, if you will take your
9 chair again.

10 Mr. Littlejohn, just let me give you a little bit
11 of instruction from the court. The way the rules of court
12 are is you talk to your lawyer and he represents you and he
13 submits documents to court and decisions will be based on
14 those documents and whatever other testimony comes out
15 today. Now, this has been scheduled for today. We are
16 ready to go forward today and we are going to go forward
17 today. You need to answer your lawyer's questions and he
18 has to follow the rules. And so -- you hadn't been to law
19 school, have you?

20 THE WITNESS: No.

21 THE COURT: All right. Well, he knows the rules
22 and so he will -- you work with him, but he asks the
23 questions and then he'll submit the documents, but we are
24 going to go forward, okay?

25 THE WITNESS: All right. Well, I have a question.

1 THE COURT: All right.

2 THE WITNESS: Like I spoke to my lawyer last week
3 for the first time. And when I spoke to him, I asked him
4 have you received a copy of my transcript and my motion
5 detailing. He --

6 THE COURT: You don't need to start telling me
7 what your lawyer said or didn't say.

8 Let me -- you don't want to go forward today?

9 THE WITNESS: No, I'm asking for a continuance.

10 THE COURT: Well, I'm going to grant a
11 continuance, so are you ready to go forward?

12 THE WITNESS: I guess so.

13 THE COURT: All right. Mr. Ariail.

14 MR. ARIAIL: Thank you, Your Honor.

15 BY MR. ARIAIL:

16 Q. And let's just go back. Maybe we can --

17 You have got this document we just submitted as
18 evidence. Let's go through a little bit of your background
19 in regards with Mr. Haley.

20 When he -- was he retained or appointed for you?

21 A. He was appointed.

22 Q. Okay. And how long when you were -- when he was
23 appointed for you, were you in the law enforcement center?

24 A. Yes.

25 Q. Did you stay in there? Were you on a bond, or did you

1 get out at any time?

2 A. Yeah, I was on a bond, but I had made bond.

3 Q. Okay. So you made bond. He was appointed to represent
4 you.

5 How many conversations did you have with him until you
6 went to trial?

7 A. Well, when I -- when I got arrested back again, my only
8 ever -- they had -- they had me as Chris Posey as my
9 attorney. Then they got him off my case and then they
10 appointed me Mr. Haley when I had got back re-arrested. So
11 when I got back re-arrested, he came -- he came and talked
12 to me one time and he tell me I'm on the trial docket. I
13 never received no plea.

14 Q. Okay. So you never got a plea offer.

15 Okay. I guess two stages you kind of brought up right
16 there. You said at one point in time you were out on bond
17 and then you were re-arrested on another charge and then
18 back in?

19 A. No, I had -- I had made bond and missed court. So when
20 I had got caught, they arrested me and I have been in the
21 county for like seven or eight months, back in the detention
22 center about seven or eight months. And he came and seen me
23 probably like my sixth or seventh month and he tell me I'm
24 on the trial docket and we will be going to court this week.
25 And I went to court and I was on the trial docket. I never

1 received any pleas from Chris Posey or Darren Haley. I
2 never came out with a plea.

3 Q. Okay. So let me just go back.

4 So he was appointed. So you were in the, I guess, the
5 law enforcement center six or seven months before he came
6 and spoke with you for the first time, is that right?

7 A. Yes, sir.

8 Q. Did he have an investigator come and talk to you or
9 anybody with the public defender's office?

10 A. No, sir.

11 Q. Did Mr. Posey come and talk to you at any point in
12 time?

13 A. Yes, he just came and gave me my motion of discovery.

14 Q. Okay.

15 A. He received my notice of discovery.

16 Q. So you had a copy of your discovery in this matter for
17 the ABWIK and for the lynching charge, is that right?

18 A. Right.

19 Q. Okay. So how long did you have that information?

20 A. When I was -- you see, when I had got arrested, I
21 stayed in the detention center for about a year and he
22 received -- Mr. Chris Posey received my motion of discovery
23 to me like six months that I was in there.

24 Q. Okay. So during that time when Mr. Haley came to see
25 you, did you discuss with him the discovery, or the

1 elements, or, you know, factual issues in the case?

2 A. No, we wasn't -- we wasn't able to sit down and go over
3 my case, period, because when I got re-arrested, I -- I had
4 called his office. He had sent me a new -- a new motion of
5 discovery, but we never -- I received that in the mail, but
6 we never sat down and talked about my case. We just -- when
7 it was time for trial, he just let me know like a couple
8 days before trial and we went that next couple of days for
9 trial.

10 Q. So I'm just -- I'm trying to understand. Did you ever
11 talk with him at any time before trial about your case?

12 A. No, sir.

13 Q. Okay. So you never sat down and said "hey, it didn't
14 happen the way they are saying it happened in there. I did
15 not have any involvement in this?"

16 A. No, we never sat down.

17 Q. So did you tell him at any time "hey, here is my view
18 of the facts of this case?"

19 A. He was basically -- I could actually say he was
20 basically asking for a continuance because he wasn't ready
21 for my case, but they went along with it because the docket
22 was getting old. The trial docket was getting old.

23 Q. Okay.

24 A. But he did ask for a continuance but it wasn't granted.
25 It wasn't granted by -- by -- because the docket -- my case

1 was getting old.

2 Q. Okay. So let me just -- and I want to summarize kind
3 of what the facts as I understand the case were.

4 Apparently an ATF officer was assaulted by a group of
5 individuals in Dixie Estates, is that right?

6 A. Yes, sir.

7 Q. Were you -- what was your defense or what did you argue
8 or Mr. Haley argue at trial?

9 A. Argued was that Mr. Littlejohn never assaulted an
10 agent, an agent in Dixie Estates.

11 Q. Okay.

12 A. And then my next argument was that they said he had
13 been lynched. And when they say he had been lynched, he
14 went to the hospital and they said they just gave him some
15 Tylenol. He went to the hospital for like 45 minutes. They
16 released him. He never went back to the hospital, was
17 nothing wrong with him, and he even drove away from the
18 scene -- drove away from the crime scene and all what
19 happened.

20 Q. Okay. Did Mr. Haley explain to you at any time what
21 the elements were of an assault and battery with intent to
22 kill or second degree lynching?

23 A. At trial what he was saying to the trial, he had broken
24 down to me at trial when it was time to go to trial, the day
25 of trial.

1 Q. So he -- I mean -- and I'm trying to figure. So at
2 some point in time he explained to you what those elements
3 were?

4 A. Like listening to him during trial like, but just
5 sitting down having a conference with me, no, we never even
6 broke down what assault and battery with intent to kill is
7 or second degree lynching is. We never -- we never sat down
8 and did that, period.

9 Q. Okay. So you weren't denying that you were there? You
10 are just saying "I didn't assault and I didn't lynch this
11 individual," is that right?

12 A. Right. That's correct.

13 Q. Did he explain to you what the theory of hand of one
14 hand of all is, any of that?

15 A. No, sir.

16 Q. Did he explain to you -- and I'm going back and just
17 reviewing it. There was some allegation that you were the
18 one that had the contact with the ATF officer and came with
19 him to Dixie -- or got him to come to Dixie Estates, is that
20 correct?

21 A. Correct.

22 Q. What was your position on that?

23 A. You see, we were offering to buy guns from the ATF. We
24 never knew it was an officer, period. So him and a guy that
25 was out there had a confrontation. And after that, that's

1 all this first group right then and there.

2 Q. Okay. So I guess the theory was that even though they
3 came to buy the guns, you didn't know the ATF officer or
4 someone else started the incident and you weren't involved
5 in that, is that correct?

6 A. Correct.

7 Q. Okay. Did he -- I guess -- so y'all -- did y'all
8 discuss that defense before you went in, your theory of
9 that?

10 A. He had made his own theory, like they -- he was saying
11 like just because -- well, he made the theory like, he said
12 just because this cup of water right here and he walked by,
13 that don't mean it spilled. He had made his own theory
14 about how the crime scene was, but he never said I did this,
15 I did that, just like the agent didn't either.

16 Q. So I guess what I'm getting at, and I'm trying to
17 figure this out, so you are saying that Mr. Haley made a
18 decision to go forward with a defense that he never
19 discussed with you? Is that what you are saying?

20 A. Correct.

21 Q. Okay. What would you have done or what do you believe
22 he's done that's ineffective in regards to how he has argued
23 your case or presented it to the jury?

24 A. If he would have -- if he would have just objected to
25 some of the questions of the judge and the solicitor was

1 asking and he would have seen that like -- like the victim
2 went to the hospital and his case that this wasn't a very --
3 he just -- the victim was not really sincerely injured.

4 Q. Okay. And maybe I didn't raise that the right way.

5 What I was trying to do is concentrate on the defense.

6 What are you saying -- are you saying that was not the
7 proper defense and that he was ineffective in how he argued
8 the case, just in the defense?

9 A. Yeah, correct.

10 Q. Okay. What -- did you tell him a defense that you
11 wanted, or a --

12 A. Like I tell you again, I never sat down and spoke to
13 Mr. Haley, period, about my case, period, but the day of
14 trial when he came to me and say "they got you on the trial
15 docket for this week."

16 And I asked -- I said "is it -- "do they have a plea
17 for me?"

18 He said "not no plea. You are on the trial docket."

19 I never received no plea, period, since I have been in
20 the county for a year and some change. And when I went down
21 the road, I never received my jail credits either.

22 Q. Okay. Let's go -- two things here.

23 Are you saying you have received a plea and he has not
24 relayed it to you, or that you never got a plea?

25 A. Never had a -- never got a plea.

1 Q. Okay. And are you -- you understand that's not -- I
2 mean, that's the solicitor's office --

3 A. Yes.

4 Q. -- can either offer it or not?

5 A. Yes.

6 Q. So you are not claiming he was ineffective in not
7 getting that?

8 A. Right.

9 Q. Okay. Did you -- when you got to trial, were there
10 things that you asked him to do that he did not do?

11 A. Yes, I -- they said they had a confidential informant
12 said I was bragging out there about I did this and I asked
13 him could he subpoena them to court, subpoena the
14 confidential informant to court, and I never received -- I
15 never received nobody pointing me out but this -- but this
16 agent.

17 Q. Okay.

18 A. I asked him could he subpoena the confidential
19 informant that said I was out there bragging and talking
20 about this robbery.

21 Q. Okay. And the CI -- was the CI going to testify and
22 tell me about the ABWIK charge, the lynching, or what
23 happened at the Dixie Estates that night?

24 A. Yes, that's who -- that was who was supposed to say
25 they seen me out there and --

1 Q. Okay. But, again, I hear --

2 A. The CI -- the confidential informant, that's who was
3 supposed to point me out and say I did this, but they never
4 brought him to court. I had wanted him to be in court.

5 Q. Okay. So -- but I guess my question to you would be
6 how is that beneficial to you to bring him to trial to point
7 you out? I mean, how --

8 A. Because he could have showed him that I never assaulted
9 this individual who said that got assaulted.

10 Q. Okay. So the CI, from your understanding, was going to
11 say Mr. Littlejohn did not assault this individual?

12 A. Correct.

13 Q. Okay. Did y'all explain that even though you don't
14 assault the individual, based on someone else's part of the
15 group assaulting him might rise to the level that you could
16 get convicted for that? Did you ever discuss that with Mr.
17 Haley?

18 A. No, sir.

19 Q. So he never said "hey, look, so you might not have hit
20 him, but someone else, if they hit him and you lured him
21 there, that was enough to get a conviction for you?"

22 A. No.

23 Q. Okay. Were there any, I guess, motions, or objections,
24 or things that during the trial you say he should have done
25 that specifically you can remember?

1 A. Not at this time, no, I don't remember.

2 Q. Okay.

3 A. I know I did speak to him about there was a gang --
4 gang -- gang force officer, Mr. Brandon Brown. I asked him
5 could he not object to letting him speak about my case
6 because he didn't have nothing to do with my case and they
7 let him testify on me and he's not even a part of my case.

8 Q. But did he object to that?

9 A. I'm not sure.

10 Q. Okay.

11 A. I believe he did, though, so I'm not sure.

12 Q. Okay. Is there anything -- and what I'm getting at, is
13 there anything, in like cross-examination, where you are
14 saying "hey, he didn't do that, or he didn't object to some
15 witness coming in," anything that you remember during the
16 trial that you are saying you believe is ineffective?

17 A. Like in the part that I tell you that -- that the agent
18 said I struck him and then like 30 minutes later he said no,
19 he did not never see me kick him or punch him. I didn't see
20 no objections to that right then and there.

21 Q. But he did cross-examine that witness in regards to how
22 the incident happened, correct?

23 A. Correct.

24 Q. Okay. So even though he didn't object, you can't
25 testify about that, he came back and tried to cross-examine

1 him in regards to that, right?

2 A. Correct.

3 Q. Okay. Are there any other items -- and I know you have
4 got this as a part of your record, but are there any other
5 items that come out that you want to address or bring up
6 that you feel are necessary?

7 A. Yeah, I just want to -- I just want an exhibit -- an
8 exhibit -- my transcript and the appeal brief into the
9 record.

10 Q. And I'll let -- the court can -- the judge can instruct
11 you on that. That is already a part of the evidence. Your
12 transcript and your appellate briefs, the initial brief, all
13 those things have already been made. They don't have to be
14 read into the record to be a part of that.

15 A. Even summary of events?

16 Q. And the summary of events that you are talking about
17 that you want to make sure that this document that you put
18 as Exhibit 1?

19 A. That's -- Exhibit A is the transcript. Exhibit B is
20 the narrative.

21 Q. Okay. So let me make sure I am correct on this. You
22 put this document you want me to put as an exhibit. Exhibit
23 1 we did today, correct?

24 A. Exhibit 1 is the transcript.

25 Q. Hold it. This is the exhibit that's a court exhibit

1 today. This is this document that you want me to present,
2 correct?

3 A. Correct.

4 Q. And then as part of that there is an Exhibit A that's
5 in that document is a trial transcript?

6 A. Correct.

7 Q. Okay. And that's the one that's already an exhibit.

8 The summary of event is the one that is the one that's
9 attached to this document.

10 A. Correct.

11 Q. And then Exhibit C is your initial brief of appellant?

12 A. Correct.

13 Q. Now, all those are a part of this record the judge is
14 going to review. So you are good. That's all a part of the
15 record.

16 MR. ARIAIL: Your Honor, I have no further
17 questions.

18 THE COURT: Ms. Ratigan.

19 MS. RATIGAN: Thank you, Your Honor.

20 CROSS EXAMINATION BY MS. RATIGAN:

21 Q. So Mr. Posey was appointed after you were arrested?

22 A. No, he was appointed when I was arrested, when I first
23 come into the detention center.

24 Q. Okay. And do you remember when that was?

25 A. 2009.

1 Q. Okay. And when were you released on bond, do you
2 remember?

3 A. I believe I say like right at 11 months.

4 Q. Okay.

5 A. Right at 11 months.

6 Q. Okay. And then Mr. Haley was appointed when you were
7 arrested on the bench warrant?

8 A. I had made bond.

9 Q. Uh-huh.

10 A. I had made bond. And, yes, he -- when I come back --
11 when I got re-arrested, then he appointed me.

12 Q. Okay. And that was right before the trial?

13 A. Correct.

14 Well, I apologize.

15 Q. Okay.

16 A. He was -- he was appointed to me when I was out on
17 bond. He was already appointed to me when I was out on
18 bond.

19 Q. Uh-huh.

20 A. But when I got back to the county, I didn't never see
21 him until a week from trial.

22 Q. Okay. And did you ever go and meet with Mr. Haley
23 while you were on bond?

24 A. No, ma'am.

25 Q. Why is that?

1 A. I -- I was too busy trying to get up enough money to
2 get me a paid lawyer --

3 Q. Okay.

4 A. -- to work on it.

5 Q. Okay. So you only had the one meeting with Mr. Haley
6 is your testimony?

7 A. Yes, ma'am.

8 Q. And what did you talk about during that one meeting?

9 A. We just sat down and he was like -- he goes -- no, he
10 was -- how do you say it? He said "well, they got you on
11 the trial docket to go to court this week coming up." So he
12 was like -- he was going to try to ask for a continuance,
13 because he didn't -- he was trying to receive a better
14 understanding of the law on my second degree lynching, so he
15 was -- so we went from there, but they didn't give him a
16 continuance, but we went from there and I had court that
17 next week.

18 Q. Okay. Let me just back you up a little bit.

19 So during that one meeting you had with him, the only
20 thing that you discussed was the fact that you were on the
21 trial docket and that Mr. Haley was going to ask for a
22 continuance?

23 A. Yes, ma'am.

24 Q. You never told him your version of what happened?

25 A. No, ma'am.

1 Q. You didn't review the State's evidence at all?

2 A. No, ma'am.

3 Q. You didn't talk about what your defense would be?

4 A. No, ma'am.

5 Q. You didn't even tell him "I never hit the man?" You
6 never even said that?

7 A. I would tell him that here at the courthouse. And he
8 said he had a copy of my motion already and he already went
9 over my motion of discovery.

10 Q. And your testimony is you never saw any of the State's
11 evidence at all?

12 A. What -- what State evidence, like?

13 Q. Incident reports, medical reports, any report from the
14 State?

15 A. Yeah, I seen that when Chris Posey -- Chris Posey gave
16 it to me. And he did send me a copy of my motion, Mr. Haley
17 did.

18 Q. Mr. Haley did, okay.

19 So Mr. Posey had given you a copy and then Mr. Haley
20 had also made you a copy?

21 A. Yes.

22 Q. But you never sat down and talked about it with Mr.
23 Haley?

24 A. No.

25 Q. All right. And he never explained to you prior to the

1 trial, you know, what the charges were, what the State was
2 going to have to prove? He never talked to you about any of
3 that?

4 A. No, ma'am.

5 Q. Okay. So when you went to court that day, you had
6 never talked about the case?

7 A. Not to Mr. Haley.

8 Q. Why didn't you tell the judge that you were
9 uncomfortable going forward with Mr. Haley, if you never
10 talked about the case with him?

11 A. Why then? Because I -- I really was shaky about going
12 all the way with it, all the way to the trial with it,
13 because I didn't know what trial was or anything. It just
14 had a feeling at the time like he say, the only thing I can
15 do is just go along with it, because I'm on the trial
16 docket. I was like -- I asked him, I was like "any pleas?"
17 He was like "you on the trial docket for next week. So the
18 only thing I knew is you are going to trial."

19 Q. Okay. But you didn't think that morning you could tell
20 the judge that you weren't ready?

21 A. He said -- he said he was going to ask for a
22 continuance.

23 Q. Okay, that's not what I'm asking.

24 I'm asking you, you didn't feel like since -- you know,
25 these are very serious charges, you didn't feel like you

1 could tell the judge you weren't ready?

2 A. No, ma'am.

3 Q. Okay. What about at the end of trial, you didn't think
4 you could tell the judge at that point you felt like you had
5 been rushed into this and didn't have enough time to
6 prepare?

7 A. It didn't matter because when we sat down, they
8 weren't -- when he said the trial is beginning, they start
9 picking the jury.

10 Q. So you just went along?

11 A. Yes, ma'am.

12 Q. Okay.

13 A. True indeed, though, I would -- I would have went to
14 trial regardless anyway. Even if they would have came back
15 with a plea, I would have went to trial regardless.

16 Q. Why is that?

17 A. Because I never laid hands on this agent.

18 Q. Now, you testified that you had asked Mr. Haley to
19 subpoena a confidential informant?

20 A. Yes, ma'am.

21 Q. When did you ask him about that?

22 A. When we were sitting down right here in the trial --
23 the trial chair the day of trial.

24 Q. Okay. And when you mentioned that to Mr. Haley, what
25 did he say?

1 A. He was saying that he was going along with the trial.
2 He never -- he never got back with me. He went along with
3 the trial, because he said he probably -- they probably
4 wouldn't be subpoenaing him to court.

5 Q. Okay.

6 A. But I did want him to be here to identify me.

7 Q. Do you know the name of the confidential informant?

8 A. No, it was just on the narrated -- on the summary of
9 events say that I was bragging into a confidential informant
10 and say a confidential informant called Brandon Brown. And
11 I had wanted this confidential informant to show me that's
12 me and testify that was me that I was bragging through.

13 Q. Okay. You testified that you wanted Mr. Haley to
14 object to some of the questions at trial?

15 A. Yes, ma'am.

16 Q. Could you be more specific? What did you want him to
17 object to?

18 A. I wanted -- I really wanted him to object. Like when
19 they were asking him going back and forth -- I was like when
20 they -- I think they had a recess for me going to -- because
21 the jury wasn't -- the jury didn't know where I was guilty
22 or not, so they had a long recess, so I was wanting him to
23 object to when they came out and said drop something
24 about -- something being mentioned to a lesser included
25 offense. And when they was talking about it, he didn't

1 object to it.

2 Q. So the jury sent out a note at one point asking
3 basically for the judge to tell them about the law again
4 about assault and battery with intent to kill and assault
5 and battery of a high and aggravated nature, right?

6 A. Correct.

7 Q. Now, why did you want this -- why did you want Mr.
8 Haley to object?

9 A. I wanted him to get a lesser included offense all the
10 way to simple assault --

11 Q. Okay.

12 A. -- so I wouldn't be charged with no assault and battery
13 with intent to kill, or the whole matter, period.

14 Q. Well, didn't Mr. Haley ask for a jury charge of assault
15 and battery, simple assault and battery? Do you remember?

16 A. I don't know.

17 Q. Okay.

18 A. This trial was so confusing with me, like I really -- I
19 really wasn't focused or ready to go to trial anyway,
20 because I haven't sit down and talked to Mr. Haley about it
21 and he was telling me he wasn't ready anyway.

22 Q. And your testimony today was that you were not the
23 individual who talked to the ATF agent to get him to come
24 out to Dixie Estates?

25 A. No, that's not what I said. I said I did. I spoke

1 with him. I did actually talk on the phone to the agent.

2 Q. Okay. So you had him come out to Dixie Estates, but
3 your testimony is that you never touched him?

4 A. Yes.

5 Q. Okay. Were you with that group while the assault was
6 happening?

7 A. Not that group.

8 Q. Okay.

9 A. It was a lot of people out there in Dixie Estates.

10 Q. Okay.

11 A. And the group that he was talking to wasn't even a part
12 of the group that I was in. He just started making
13 conversation with a lot of people about tattoos and he was
14 supposed to be coming out there buying guns.

15 Q. Okay. Did you see what happened to the agent or not?

16 A. Uh-huh. Yeah, I did see.

17 Q. And did you have a chance to tell all of this to Mr.
18 Haley?

19 A. At -- at one point, but not -- I just explained to him
20 that at the day of trial in the holding cell, when I was in
21 the holding cell, that I never laid hands on this agent and
22 all I -- all I had seen was the agent pull out a gun on me
23 and we all disbursed.

24 Q. Okay. And the victim testified at trial that he didn't
25 see who hit him at all, right?

1 A. Yeah, he -- he did testify. He said a guy to the left
2 of me punched him and that's all he remembered. He said he
3 never seen me put hands on him, period.

4 Q. Okay. Can you think of anything else that you wanted
5 Mr. Haley to do that he did not do for you for the trial?

6 A. That's it.

7 Q. Okay.

8 MS. RATIGAN: That's all I have, Your Honor.

9 THE COURT: Thank you.

10 Mr. Ariail?

11 MR. ARIAIL: Nothing further, Your Honor.

12 THE COURT: All right, Mr. Littlejohn, you can
13 step down.

14 Call your next witness.

15 MR. ARIAIL: That's our case, Your Honor.

16 THE COURT: All right.

17 MS. RATIGAN: Your Honor, the State would call Mr.
18 Haley.

19 THE COURT: All right.

20 DARREN S. HALEY, ESQUIRE, having been first duly
21 sworn, testified as follows:

22 THE CLERK: Thank you.

23 Please state your full name for the record.

24 THE WITNESS: Darren Scott Haley.

25 THE CLERK: Thank you.

1 DIRECT EXAMINATION BY MS. RATIGAN:

2 Q. Mr. Haley, do you recall representing Mr. Littlejohn on
3 these charges?

4 A. I do.

5 Q. And were you, in fact, the second attorney on this
6 case?

7 A. Yes.

8 Q. Okay. At what point did you get appointed, do you
9 recall?

10 A. I just looked at the appointment order and it was
11 sometime it looks like August of 2010.

12 Q. And did you file discovery, or had that already been
13 filed in this case?

14 A. It had been filed. I believe I filed it as well, and
15 it was provided to me as well.

16 Q. Did you review those materials?

17 A. I did.

18 Q. Did you send a copy of the discovery materials to Mr.
19 Littlejohn?

20 A. Yes.

21 Q. Did you ever have a chance to meet with Mr. --
22 Well, let me back that up.

23 Was Mr. Littlejohn on bond when you were appointed?

24 A. Yes.

25 Q. Did you ever have any meetings with him while he was on

1 bond?

2 A. No, ma'am. According to my file, on September 7th of
3 2010, we sent a letter to Mr. Littlejohn advising him that
4 we had been appointed to represent him and for him to
5 contact my office and that I had also been extended a plea
6 offer, but I needed to speak with him so we could discuss
7 that.

8 On October 13th there was a followup letter where it
9 says "I made a few arrangements to meet with you but each
10 time you failed to show for your appointments. Please
11 contact me, because your case is going to be the November
12 2010 term of court."

13 On October 18th we sent a letter advising him that he
14 did not appear for his Wednesday, October 13th appointment
15 at 9:30.

16 And it further goes into "I have made several attempts
17 to get you to come by the office to review your file. I
18 have explained the plea offer to you," so I must have
19 explained it to him on the phone, and it goes into detail
20 where it says "it involves dismissing some of the charges in
21 exchange for entering a plea to remaining charges with no
22 recommendation for a sentence. You have advised me that you
23 do not intend to accept a plea and you want to go to trial."

24 It then says "it's my opinion that this case will be on
25 the trial docket as early as November and every month after

1 that until the case is tried." That was on October 18th.

2 On October 22nd we sent out another letter that
3 basically says "per your conversation with my paralegal you
4 advised him you were hiring an attorney next week. Whether
5 you hire an attorney or not you will be on the court's trial
6 docket for the week of November 8th. Please contact me."

7 On October 27th the letter reads "per our conversation
8 you advised me that you had hired attorney Cameron Boggs to
9 represent you. I will release your file to him once I'm
10 contacted. Please be advised that you are scheduled for
11 trial on November 9th, 2010, and no more continuances will
12 be granted."

13 On October 29th I sent a letter that basically says
14 "I'm writing to inform you I have received additional
15 information pending the charges. I hope we can set up an
16 agreeable time to go over the discovery."

17 And there was no further contact with him.

18 And then on December 22nd I got a letter from Ms.
19 Salsbury from the solicitor's office advising me that Mr.
20 Littlejohn had returned to Greenville County detention
21 center after he elected to waive extradition from Asheville.
22 So sometime from November to I guess December he was in the
23 Asheville jail there.

24 That's the record of our initial conversation and
25 trying to review the file.

1 Q. And when did you receive that plea offer from the
2 State?

3 A. I do not see the original letter, but it was in -- it
4 must have come in the original package when I was appointed
5 to them and they forwarded to me all the discovery. That is
6 the practice of the solicitor's office of this jurisdiction
7 is when they send you discovery, they will also extend an
8 offer. So sometime prior to September 7th when I sent him
9 the letter advising of my representation.

10 Q. And what was the offer again?

11 A. I don't have the specifics, but it looks like it was
12 going to be to dismiss some of the charges and then do a
13 straight plea to whatever the charges remaining.

14 Q. Okay.

15 A. So it may have been reduced the -- dismiss the ABWIK
16 and plead to the lynching, or vice versa.

17 Q. Once Mr. Littlejohn was back in the detention center,
18 did you ever have an opportunity to meet with him there?

19 A. I did. According to my file I met with him sometime in
20 January, because on January 18th he had me file a motion to
21 set bond on some other charges.

22 Q. Okay. Did you ever have an opportunity to sit down
23 with him and discuss the discovery materials prior to trial?

24 A. Yes, I met with Mr. Littlejohn a couple of times to go
25 over the trial and he just kept telling me it wasn't him, he

1 didn't do it. That's kind of how we ended up at trial.

2 Q. Okay.

3 A. And I did meet with Mr. Littlejohn I think either the
4 day before trial at that time. An associate that worked at
5 my Virginia office also accompanied me to that meeting.
6 That would have been prior the night before going to trial
7 when we did our last preparation.

8 Q. Did you explain to him, even in laymen's terms, the
9 elements of the charges and what the State would have to
10 prove?

11 A. I did.

12 Q. Did you explain to him the concept of the hand of one
13 is the hand of all?

14 A. I know we discussed it. I'm not sure of the detail I
15 went into explaining it, but that if he was found to be a
16 part of the group of common scheme, the jury could still
17 find him culpable, but I'm not sure of the exact terms that
18 we discussed that.

19 Q. But you at least discussed the concept, the overall
20 concept with him?

21 A. That's correct, but his position all along was he
22 wasn't there, it wasn't him, he wasn't involved with it. So
23 our defense was predicated on him telling me that wasn't
24 him, he wasn't there, he wasn't a part of the group of guys
25 who were involved in that fight.

1 Q. Now, on the day of trial the transcript indicates that
2 you requested a continuance. Do you recall why it is that
3 you would have asked for a continuance at that time?

4 A. Probably after talking with Mr. Littlejohn, I'm not
5 sure he was ready to go to trial or if he wanted me to do
6 something else.

7 Q. Okay. But were you ready to go to trial?

8 A. Yes.

9 And actually in hindsight the continuance may have also
10 been as a basis because the State filed notice of intent to
11 use gang material. That may have been why I asked for the
12 continuance initially. That would have come in a day or so
13 before trial, before the term of court.

14 Q. Okay. Mr. Littlejohn has stated that there was a CI in
15 the case that had said that he, Mr. Littlejohn, had bragged
16 about the crime. Do you recall that from any of the
17 discovery materials, there being a CI?

18 A. I don't, but it's possible it's in there. It's been a
19 while since I have gone through the discovery.

20 Q. Do you recall Mr. Littlejohn ever asking you to try and
21 get that CI into court?

22 A. I -- I don't recall that conversation. I probably
23 would have advised against him bringing in anybody who may
24 have identified him as being remotely close to this event.

25 Q. Do you recall Mr. Littlejohn ever asking you to do

1 anything for him in terms of locating witnesses, or
2 gathering evidence, or anything like that?

3 A. No, ma'am.

4 Q. Obviously this is kind of a Monday morning quarterback
5 question, but can you think of anything else in retrospect
6 that you could have done to prepare the case for trial?

7 A. Other than have Mr. Littlejohn document our meetings.
8 And I actually do that now when I meet with people prior to
9 trial. I have a prepared list of statement basically
10 stating the times we have met, what we go over.

11 Other than that, just making sure Mr. Littlejohn fully
12 understood what was going on, I'm not sure if there was
13 anything else procedurally could have been done differently.

14 I think Mr. Littlejohn had intended on hiring somebody.
15 I'm not sure whatever happened with that. And from the
16 beginning that was part of the lack of communication,
17 because he intended on hiring somebody else and I think at
18 the last minute he realized that wasn't going to happen or
19 whoever was going to think to help him didn't, so that's I
20 think how I ended up moving forward.

21 Q. Is there any doubt in your mind that you explained to
22 him kind of the risks of trial and what he could receive if
23 he did go to trial?

24 A. Correct, Mr. Littlejohn advised, and I think he just
25 said it just now, he had always intended on going to trial

1 rather than taking a plea.

2 MS. RATIGAN: I have nothing further, Your Honor.

3 THE COURT: Mr. Ariail?

4 MR. ARIAIL: Yes, Your Honor, thank you.

5 If it please the court?

6 CROSS EXAMINATION BY MR. ARIAIL:

7 Q. Mr. Haley, how are you doing today?

8 A. Fine, sir.

9 Q. Good.

10 I want to just go through real quick and tell me -- I'm
11 a little confused as to -- Chris Posey was on there for
12 awhile and then you were appointed. I guess it would have
13 been -- it appears to be pretty late, I guess sometime
14 August of 2010 is what you said, and it looked like it was
15 coming up on the trial docket sometime in November, is that
16 right?

17 A. Correct.

18 Q. Okay. And go back -- I can pull it. Do you know
19 exactly how long these charges had been pending?

20 A. I do not. I think it was a 2009 --

21 Q. 2009?

22 A. -- case, if I remember correctly.

23 Q. Do you remember speaking with Mr. Posey about him or
24 any conversation with him about the status of the case?

25 A. I may have called when I first got the appointment and

1 said "Chris, tell me about this. What's going on."

2 Q. Okay. Do you remember -- and I know you got a plea
3 offer after you took over. Do you remember Chris getting
4 any plea offers previous to that?

5 A. I don't know if what was extended to me was the same
6 offer extended to Chris. That I don't remember. And I
7 don't have anything in my file to reflect there were notes,
8 and I -- because I filed discovery, I'm not sure I requested
9 Chris' file of discovery, because I wanted to make sure I
10 had a separate and clean --

11 Q. Right.

12 A. -- discovery package.

13 Q. And normally -- I don't know if you file it, but did
14 you put as part of that request, I guess, to get any
15 previous plea offers or anything of that nature in your
16 motion for discovery?

17 A. That wasn't specifically in the discovery.

18 Q. Okay. But when you got -- you got a plea offer at some
19 point in time and it appeared to be dismissal of some
20 charges with a straight-up plea to others, is that correct?

21 A. Correct.

22 Q. Was it -- the straight-up plea, was it going to be the
23 two charges that he went to trial on?

24 A. At that time I don't think there were other charges out
25 there.

1 Q. Okay.

2 A. And the only reason I'm saying that is because I'm
3 looking at my motion to set bond and it looked like there
4 was an armed robbery, strong armed robbery, possession of
5 weapon during a violent crime and some other charges, so I
6 don't know if those charges came later, because my file also
7 reflects a letter from the solicitor's office the summer
8 after maybe -- this case was tried in April. Maybe in July
9 that they had made an offer regarding the remaining charges.

10 Q. Okay.

11 A. So whatever plea offer was extended on the ABWIK and
12 the lynching I think was just specific to those two charges.

13 Q. Okay. Did you represent him on any other charges that
14 were current at that time?

15 A. Yes, I think I was getting appointed to all of those
16 charges. I did not bring that entire file, but it looks
17 like it was set up for just the robbery charges. There were
18 several different charges.

19 Q. Okay. And I guess we get back to this other issue.
20 Did you ever discuss with him the plea offer or have an
21 opportunity to do that?

22 A. I'm sure I did, just based upon the letter I sent him
23 and the language of the followup letters, wherein I
24 reiterated "you advised me that you did not want to accept a
25 plea."

1 Q. Okay.

2 A. That tells me I discussed it in some detail with him.

3 Q. Okay. Do you have any -- some attorneys have
4 checklists of when they -- that say we have explained the
5 plea offer, or anything of that nature. Is there anything
6 that he signs off and says "I don't want to plead," or "I'm
7 not going to plead in this case?"

8 A. No, and at that time my practice was if I discussed it
9 with you, then I followed up with a letter.

10 Q. Okay.

11 A. So what I'm looking at is just the followup letter that
12 was sent to him.

13 Q. And I think you said -- I think it was the 10-18-2010
14 letter is where you explained the specifics of the plea, is
15 that -- I think there was one letter that you said in
16 there.

17 A. Yes, that's the 10-18 letter.

18 Q. Okay, the 10-18 letter.

19 And at no point in time did he come in and say "I'm
20 ready to plead. Give me the best deal that you can?"

21 A. No.

22 Q. The conversations or meetings you had with him -- I
23 know he's testified, as you have heard, didn't have any
24 meetings with you. You have indicated there were two times
25 that you had meetings with him about the discovery. I think

1 that was correct. And I'm not --

2 A. I said the meetings. I know I met with him a couple of
3 times to go over discovery. I don't have the specific
4 times. And then I said -- and these were prior to the
5 actual meeting before trial. And then according to my file,
6 it looks like we met sometime in January of -- I guess that
7 would have been January of 2011.

8 Q. Uh-huh.

9 A. That would have been after he was returned to the
10 Greenville County detention center in December, because at
11 that time I filed a motion to set bond on the robbery
12 charges and other charges.

13 Q. Right.

14 And the meetings -- and I'm just trying -- he was
15 out -- it appears from -- go back to my notes.

16 At some point in time he was out when you began your
17 representation of him, sometime August through -- I don't
18 know when he was incarcerated, but it looks like the last
19 thing you had October 29th, 2010. Then you went without any
20 communications. And then on December 27th, 2010, Ms.
21 Salsbury sends you a letter saying that he's been extradited
22 from Asheville.

23 Were there meetings that were held outside of -- I
24 guess outside of the law enforcement center with you at your
25 office, or anywhere else?

1 A. No, my -- my first time physically meeting with
2 Littlejohn was at the detention center.

3 Q. Okay. So then you would -- the meetings you are
4 indicating would have been you had gone down while he was
5 incarcerated there because he didn't make bond, from my
6 understanding?

7 A. That's correct.

8 Q. So two, three meetings that you had. I think it was a
9 couple times you met on discovery, one time possibly about
10 his bond, and then another time he met with an investigator
11 or somebody that works in your office, is that correct?

12 A. The night before the -- a couple days before another
13 attorney who was coming to assist me in the trial met with
14 us as well.

15 Q. Okay. And you -- at that point in time I think went
16 through -- did he give you any indication or did y'all talk
17 about a defense or how you want to present this? Were there
18 any discussions with that?

19 A. His position with me had always been "it wasn't me. I
20 didn't touch anybody. I wasn't a part of that group."

21 Q. Okay. And I --

22 A. And as we talked about that, it was like "that wasn't
23 me. I wasn't a part of the group. I don't know anything
24 about that."

25 Q. Okay. And there are two different -- and I heard him

1 testify here now, might have seen them at Dixie Estates, but
2 wasn't part of that group. Do you remember recalling
3 anything about that?

4 A. I don't remember that distinction. I think there may
5 have been some conversation that he may have talked to on
6 the phone, but he wasn't there.

7 Q. Okay.

8 A. And I think that was our defense kind of lined up, that
9 "you didn't see him. He wasn't there. Nobody places him
10 there" type of -- we tried to remove him completely from
11 that entire incident.

12 Q. Right.

13 So -- and tell me if this is correct. The ATF officer
14 said he receives a call I think from Mr. Littlejohn?

15 A. Correct.

16 Q. But he doesn't place him --

17 Well, what was the testimony in regards to the ATF
18 officer about him meeting Mr. Littlejohn or seeing him there
19 at the scene?

20 A. I would have to go to the transcripts to read it. I
21 don't remember the ATF agent ever saying that Mr. Littlejohn
22 was -- that he saw him there the night or at the time that
23 the incident took place.

24 Q. Okay.

25 A. And without specifically going to the transcripts, I

1 don't remember how they linked him to that location being a
2 part of that right now.

3 Q. Okay. I guess the question -- and did you raise with
4 him that even though they might not place you at the scene,
5 that if I initiated the scheme, or called him in, or did
6 whatever that led to the assault, that could be a reason for
7 a conviction?

8 A. We talked about that and how all played together and --

9 Q. Right.

10 A. -- again, he was like "I wasn't trying to set him up.
11 I didn't have anything to do with that. I don't know what
12 happened. That wasn't me."

13 Q. Okay.

14 A. And that's kind of what I had to work with.

15 Q. Were there any witnesses that you had that would
16 specifically say he wasn't the one that did the assault? I
17 mean, line up along or anybody that you had found that would
18 line up with what he was saying?

19 A. No, sir.

20 Q. That CI -- I think you had testified, and correct me if
21 I'm wrong, you weren't aware of anybody -- or were you aware
22 of that CI and providing any type of help in this case?

23 A. I -- until he said it just now, without going to the
24 discovery, I don't remember us talking about we need to
25 subpoena somebody who is going to say he was bragging.

1 Q. Okay.

2 A. It never came up that there could have been a mistaken
3 identity, that this was somebody else doing this and that
4 Mr. Littlejohn, they got the wrong person.

5 Q. Okay. Going through this, do you think he was aware
6 and had knowledge of the elements, the potential sentences,
7 you know, all the issues that I guess you normally face on
8 cases before you went to trial?

9 A. Yes, he was well aware of what he was facing if he was
10 found guilty.

11 And I usually say if the jury -- if the jury believes
12 the facts as the State is and you are found guilty, this is
13 what you are looking at, based upon these facts.

14 I explained to him the judge's tendencies that we had
15 as the trial judge, his likelihood of a maximum sentence
16 versus a more moderate sentence. We went through all of
17 that.

18 Q. Okay. I know he's raised this one issue and I'm trying
19 to understand it. Was there any -- I guess -- he said there
20 was some medical evidence that showed that the ATF officer
21 that was assaulted was not seriously hurt. Did that play in
22 your -- I mean, how were you going to use that during trial
23 or did that impact your opinion in this case?

24 A. I think we discussed the severity of the injury, but it
25 put us in an alternative type of defense when we went there,

1 because initially our whole case was "it wasn't me. I
2 wasn't there."

3 Then I had to argue "but if it was me, it wasn't really
4 a serious injury. It was more of a scratch, or whatever."

5 Again, without going specifically to the transcripts, I
6 have glanced at them, I remembered an issue whether or not a
7 concussion or a head injury was a serious injury and I think
8 that was kind of --

9 Q. Right. And that's -- and I think you got a charge for
10 assault and battery -- well, you got a lesser included
11 offense on that, correct?

12 A. Correct.

13 Q. Okay. And that was -- was that part of the argument,
14 is that the severity the injury and how you got to --

15 A. And if I remember it correctly, I may have even argued
16 against initially the lesser included charge, because we
17 were on an all or nothing type of --

18 Q. Okay.

19 A. He didn't want to give them a lesser option.

20 Q. Right.

21 A. He wanted to go home.

22 Q. Yeah. It was either we were trying -- they had the
23 intent to kill him or it was --

24 A. Nothing, correct.

25 Q. So that was a strategy.

1 And then eventually that changed up and you made a
2 decision to go a different route, I guess, to get the lesser
3 included?

4 A. I think the judge -- when the charges were argued, I
5 think the evidence bore that that was an appropriate charge
6 as well.

7 Q. Okay. So the judge made the decision in regards to
8 that?

9 A. Correct.

10 Q. Okay.

11 MR. ARIAIL: I have no further questions, Your
12 Honor.

13 MS. RATIGAN: Very briefly, Your Honor.

14 REDIRECT EXAMINATION BY MS. RATIGAN:

15 Q. While the ATF agent who was injured could not identify
16 your client, was there anyone else, do you recall, that did
17 identify him?

18 A. Yes, I think they had identified they had had previous
19 dealings with Mr. Littlejohn.

20 Q. Was there another ATF agent out at Dixie Estates that
21 night, do you recall?

22 A. Yes, I think it was -- it was two others -- it was
23 partners that worked together and one was outside of the
24 vehicle, and I think the other one was in the vehicle and
25 jumped out when the incident occurred.

1 MS. RATIGAN: That's all I have, Your Honor.

2 And the State would rest at this time.

3 THE COURT: All right. Thank you.

4 You can step down.

5 Anything else?

6 MR. ARIAIL: No, Your Honor.

7 THE COURT: I'll take this under advisement.

8 MR. ARIAIL: Thank you, Your Honor.

9 MS. RATIGAN: Thank you, Your Honor.

10 (END OF REQUESTED TRANSCRIPT OF RECORD)

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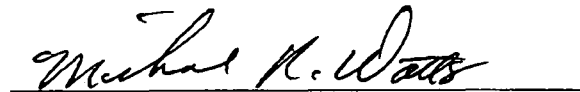
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for GREENVILLE County, South Carolina, on the 17TH day of February, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 21, 2015

A handwritten signature in cursive script, reading "Michael R. Watts", is written over a horizontal line.

Michael R. Watts
Circuit Court Reporter

YOUR HONOR: Pursuant to: "Frasier v. State", 351 SC. 385, 389, 570 SE.2d. 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.")

YOUR HONOR: Pursuant to: "Staubes v. City of Folly Beach", 339 SC. 406, 412, 529 SE.2d. 343, 346 (2000) ("It is Well-Settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial Court to be preserved for appellate review.")

YOUR HONOR: Each arguments before this Court has been raised before the trial Judge, and preserved for this Court review

YOUR HONOR: Applicant will raise Ineffective Assistance of Counsel, due to his trial Counsel Mr. Darren Haley, Ineffectiveness which did prejudice applicant of an fair trial guaranteed by the Sixth Amendment. Such Prejudice of Counsel did prejudiced the defense, that there is a reasonable probability that, but for Counsel Ineffectiveness, the result of the trial would have been different.

YOUR HONOR: Pursuant to: "Cherry v. State", 300 SC. at. 117-18, 386 SE.2d. at. 623 ("Holding that in order to prove prejudice, an applicant must show "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different")

Your Honor, this standard is governed under the two prong test under: "Strickland v. Washington", 466 U.S. 668, 104 S.Ct. 2052 U.S. (1984).

Applicant would also make an finding that trial Judge Edward Miller, abused his discretion in overruling objections to testimony and directed verdict, including to instruct jury of lesser-included offense of simple assault and battery; with this Court.

YOUR HONOR: Pursuant to the: Federal Rules of Evidence Rule 201(a); applicant would enter into the record of an complete trial hearing transcript of: "April-26th through April-27th 2011; as sworn testimonys, of witnesses and Judge Miller, including Counsel's.

Your Honor, applicant enters as: (Exhibit (A)), Trial Transcript, of Said Conviction of: (Second-degree lynching and Assault and Battery with Intent To Kill).

YOUR HONOR: IF it please the Court; Applicant Was Convicted of "Lynching in the Second degree and assault and Battery With Intent to Kill"; Upon Agent Mr. Matt Morlan, in the Season of April of 2009; and Was Sentenced and Convicted by Judge Miller, on April-27th 2011, to Serve (20) years Suspended to (14) years, Following (3) years Probation; With an Consecutive (10) years Suspended to (3) years Probation for Lynching, by Jury Trial...

On: April-23rd 2009; With-in Greenville South Carolina; Special Agent's Mr. Shawn Stallo and Special Agent Mr. Matt Morlan, Was acting under cover for the - "Bureau of Alcohol, Tobacco, Firearms and Explosives" - in their Capacity.

Your Honor, applicant Would enter into the record (Exhibit (B)), as each Agents "Narrative and Summary of Event".

Your Honor, applicant asserts that the state relied on exclusive Circumstantial Evidence for the charge of lynching, that applicant acted in "Concert" With others in an "Premeditated" act. See: Tr.p. 24 line (13-25); Tr.p. 25 line (1-25) and Tr.p. 26 line (1)...

With-in the State Opening argument; An Element of lynching Would be - "Two or more people Conspired to Commit a Violent act, and that it Was Premeditated". See: Tr.p. 58 line (11-17)...

Agent Mr. Morlan, as the Victim; did testify that an Guy to his left, did punch him, as he remembered nothing else from that point forth. See: Tr.p. 72 line (23-25) and Tr.p. 73 line (1)...

Formerly Stated by the State; The state asserted that applicant "Premeditated" the lynching... Applicant Shows for the record, Once Mr. Morlan, felt uneasy, applicant Complied to follow Mr. Morlan, demands see: Tr.p. 73 line (2-15)...

Agent Mr. Morlan, also atested that applicant did not assault him. See: Tr.p. 77 line (1-5).

Agent Mr. Morlan, also atested that applicant did not advise any of the parties to attack him. See: Tr.p. 79 line (19-25), and Tr.p. 80 line (1-18)...

Applicant asserts, each individual was only there for applicant protection, not for any "premeditated" crime. See: Tr.p. 89 Line (14-25) and Tr.p. 90 Line (1-11)...

The State used Agent Mr. Stallo, testimony to demonstrate that Mr. Stallo was "distracted", to formulate that the alleged lynching was "premeditated". See: Tr.p. 95 Line (6-23) and Tr.p. 96 Line (1-22)...

Applicant do show the Court, that the "distracted" was not an "premeditated" act, to distract Agent Mr. Stallo, from the scope of Agent Mr. Morlan... The alleged "distracted" was not of an "premeditated" act; But of one to be drawn by Agent Mr. Stallo, own swift movements in displaying his weapon... That act and motioning of Mr. Stallo, "removing his weapon"; Caused that unknown individual, to only question Agent Mr. Stallo, "What are you doing over here?" - See: Tr.p. 95 Line (20-25) and Tr.p. 96 Line (1-3)...

Applicant do show the Court, that by applicant assembling with each unknown parties, and by Agent Mr. Stallo, own testimony; that neither parties displayed arguing nor physical confrontation toward Agent Mr. Morlan, or Mr. Morlan, toward applicant and opposing parties. See: Tr.p. 115 Line (8-23)...

YOUR HONOR: Applicant do show the Court, that this crime of an "premeditated" lynching; was not "premeditated", nor was it planned... The State solely used Agent Mr. Stallo, testimony of being "distracted" as an "premeditated" element...

YOUR HONOR: By Agent own swift movements to display his weapon, Caused that unknown individual to question Mr. Stallo, of his movement... This act alone abolish the element of "premeditation", to plan an lynching, as Agent Mr. Stallo, asserted that he was willfully distracted....

YOUR HONOR: As Agent Mr. Stallo, being under oath; he 100% assured that applicant did strike Agent Mr. Morlan. See: Tr.p. 115 Line (24-25) also Tr.p. 116 Line (1)...

As shown, by applicant to this Court, Agent Mr. Stallo, did by Cross-Examination Commit Perjury pursuant to: "U.S. v. Jimenez", 282 F.3d 597 (8th Cir. 2002), under Oath, as Agent Mr. Stallo, did state that he did not see applicant punching, hitting and stomping Agent Mr. Morlan. see: Tr.p.*116 Line (1-25) also Tr.p.*117 Line (1-25) also Tr.p.*118 Line (1-20).

HONORABLE: Applicant asserts that Agent Mr. Stallo, did view Mr. Morlan, "Relaxed" with applicant and joining parties. Mr. Stallo, also stated that he did not know if his claimed distraction was "intentional" or not; but asserted his own guess. See: Tr.p.*122 Line (3-25) and Tr.p.*123 Line (1-9)...

HONORABLE: This clearly shows that this act was not an "premeditated" act, nor was it planned... The only bruise that was shown on Agent Mr. Morlan, was the initial punch to Agent Mr. Morlan, head by the initial punch. No blood was scraped, no bones was broken, and from Agent Mr. Stallo, view, Agent Mr. Morlan, was fine. See: Tr.p.*124 Line (1-24)...

HONORABLE: Even by the record as exhibited, Agent Mr. Stallo, did state that the bruise to Agent Mr. Morlan, head, would have come from the initial blow... See: Tr.p.*124 Line (25) and Tr.p.*125 Line (1-11); This would also be an showing that that blow did not come from applicant, but from the event of Agent Mr. Stallo, displaying his weapon, that caused unknown parties to Agent Mr. Morlan, left, to view the sudden movements between Agent Mr. Stallo, and other parties, to strike Agent Mr. Morlan, which would not be an "planned" or "premeditated" act.

HONORABLE: During the State offering Ms. Evelyn Joy Vess, Nurse Practitioner, did assert that Agent Mr. Morlan, was struck by her. Notations was noted that Mr. Morlan, sustained a concussion. Agent Mr. Morlan, was also noted to be fine and left the same night never returning. see: Tr.p.*126 Line (1-25) also Tr.p.*127 Line (1-25) also Tr.p.*128 Line (1-25) also Tr.p.*129 Line (1-25) and Tr.p.*130 Line (1-12)...

YOUR HONOR: To furtherly assert by the State Witness Nurse Vless, The initial blow to the head would have cause the mild Concussion. See: Trop.*130 Line (16-25), Which did not come from applicant...

YOUR HONOR: The State has also provided Dr. Mitchell, Whom also treated Agent Mr. Morlan... Dr. Mitchell, also stated that Agent Mr. Morlan, Sustained an "Mild-Head-Trauma". See: Trop.*13 Line (4-25) and Trop.*134 Line (1-6)...

Applicant States from the record of Dr. Mitchell; and of the Examination from Nurse Vless; That Agent Mr. Morlan, Sustained an "Simple Concussion". This was classed as Mr. Morlan, left the same night, as Classified. Any thing beyond (10) days will be classed as "Complex Concussion". See: Trop.*134 Line (18-25) and Trop.*135 Line (1-8)...

The Doctor, had also stated that from the issue at hand Agent Mr. Morlan, Could not have suffered death from the mild or minor blow to his head. See Trop.*136 Line (11-23)... Doctor Mitchell, Furtherly Stated, that one blow to the head could cause such minor event as stated on Mr. Morlan, - See: Trop.*138 Line (9-14)....

YOUR HONOR: With the Exhibiting of Applicant Exhibit (A), And by the Preponderance of the evidence; Applicant would state that the trial judge Abused his Discretion in denying the defense Directed Verdict of the Charge for lynching... lynching require the elements in full of the said premeditation... Agent Mr. Stallo, Was not 100% Sure... Mr. Stallo, in fact by the record Was not sure at all if the said distraction Was intentional or not... That along with Agent Stallo, Accuracy in Degree, Was Contrary to Judge Miller, assertion. See: "State v. McCord", 362 S.E.2d. 689 (Sc. App. 2002), also "Neil v. Biggers", 409 U.S. 188 (1972)... For this Cause, this Court Should reverse the trial judge Denial of applicant Directed Verdict. See: "State v. Foster", 349 S.C. 543, 555, 364 S.E.2d. 879 (2002). See: Trop.*137 Line (20-25) also Trop.*138 Line (1-12)...

YOUR HONOR: Applicant asserts that the trial judge Miller, Abused his Discretion in failure to Direct an Verdict to the applicant for the charge of Assault and battery With intent to Kill... There Was Evidence that applicant displayed No style of "Intent"... There Was Evidence that applicant displayed No style of "Malice"... There Was Evidence that applicant displayed No Deadly Force... There is Evidence that applicant used No "Weapon" or his "body members" to imply "deadly force"...

Your Honor, the Force that the State displayed through Agent Mr. Stallo; Agent Mr. Morlan; Nurse Vless and Doctor Mitchell Was the blow from an unknown person Punch... For this Cause, Judge Miller, Should have directed an Verdict. see: Tr.p.*158 Line (13-25) also Tr.p.*159 Line (1-25) and Tr.p.*160 Line (1-20).. see: "State v. Robinson", 310 SC. 835, 538, 426 SE.2d. 317, 319 (1992), also "State v. Bekker", 385 SC. 597, 685 SE.2d. 802 (SC 2009)...

Your Honor; In light; There Were no mutual connection to Concert the existing of premeditation between either parties. see: "State v. Cole", 13 SC. 2 (2 McCord) 117, 120 (1888)... This Conviction did Violate Statute "16-3-220" also Statute "16-3-230" and applicant Sixth and Fourteenth Amendments to an Fair trial as Guaranteed By the Due process of Law. see: "State v. McDonald", 343 SC 319, 325, 540 SE.2d. 464, 467 (2002)... Which prejudiced applicant Defense as the out come Would have been different, if such Abuse of Discretion Was not made.

For this Cause your Honor, Judge Miller, Should have gave an jury instruction of - "Simple: Assault and Battery", As the State Failed to Prove All elements of: "Assault and Battery With intent to Kill". see: Tr.p.*163 Line (2-25) also Tr.p.*164 Line (1-3)...

Your HONOR: Applicant Would Just Note for the record, that the trial judge did abuse his Discretion for making an instruction to add for jury instruction of The Hands of one is the Hands of all, When Applicant had No Co-Defendants. see: Tr.p.*162 Line (18-25) also Tr.p.*163 Line (1-25) also Tr.p.*164 Line (1-25) also Tr.p.*165 Line (1-25) also Tr.p.*166 Line (1-25) and

Trop* 167 Line (1-19); As the (Accomplish Liability) does not apply to Statute 16-3-240; due to there were no act of an Premeditated Planning...

YOUR HONOR: By the State instructing the jury of the (Accomplish Liability), this did prejudice applicant, as the out come would have been different, if the judge did not allow such instruction to be stated. See: Trop* 183 Line (12-17)...

Lastly; Judge Miller, had again asserted the Hands of one is the hands of all. See: Trop* 202 Line (9-23)... This again was violative to applicant right to an fair trial Guaranteed by the Sixth and Fourteenth Amendment; also See: "South Carolina Code of Laws Section 17-27-20(a)(1)(2)(4)(5) and (6)"...

For this cause; applicant is held in custody unlawfully and against the Constitution, as sentenced and convicted by Judge Miller, by such abuse of discretion. See: Trop* 221 Line (22-23) and Trop* 222 Line (1-23) and Trop* 223 Line (1-3)

-YOUR HONOR: In short, Applicant would make his claim of Ineffective Assistance of Counsel on Mr. Darren Haley;

YOUR HONOR: At The beginning of this hearing, the applicant did issue into the Record titled as (Exhibit (B))..

As listed within that Narrative, Page: (2) of (3); Last Language; it states as follows: ("Once out of Dixie Heights, SA Markin informed SA Stallo, that his ATF issued telephone and personal Black Berry telephone was inside SA Markin's, pick-up truck.")

YOUR HONOR; If Attorney Haley, was functioning as the Sixth Amendment govern, Mr. Haley, would have prepared the court and jury with this evidence to show that Mr. Markin injury was mild and minor, or to no effect to cause an lasting deterioration... This would have also allowed for the honorable Judge Miller, to give an instruction to the jury of: Simple Assault and Battery; As evidence exist...

This Weight Would have shown Positive to the asserted Statement from Nurse Vless, and Doctor Mitchell; that Agent Morlan, Sustained only an "minor" and "mild" head Concussion, Which Would not result in death...

YOUR HONOR: This material Facts Would have shown Mr. Morlan, groomed mind estate of memory, along with his own testimony that he Went in ~~into~~ just an "check-up" and left the same day from the hospital...

YOUR HONOR: Applicant has shown in short, that his Trial Counsel Performance Was Deficient for his Failure to exhibit material Facts into the record of Mr. Morlan, memory... This error did prejudice the defense, as it would have "shown" light, to No injuries Sustained to the jury and judge... This Would have provided Applicant an jury instructions to Assault and Battery, than of Hurt, to Assault and Battery With Intent to Kill... This Was an error of prejudice, and if the Sound evidence Was entered, the out come Would have been different...

For this Cause; Counsel Haley, Was Ineffective Pursuant to: "Strickland v. Washington", 466 U.S. 668 (1984) also "Roseboro v. State", 317 S.C. 292 (1995) and "The Sixth and Fourteenth Amendment"...

YOUR HONOR: Lastly; Applicant Would in short state that Applicant direct appeal Counsel Was Ineffective under the same standard, as the Ineffectiveness under "Strickland", for failing to argue the same Claims see: (Exhibit (C))...

Your Honor, applicant asserted his claims, and request for vacation of his Sentence and Conviction, to be Warranted an New Trial to issue an Directed Verdict on the stated Charges for Demand and referral.

STATE OF SOUTH CAROLINA
COUNTY OF "Greenville".....

Hendrich Little John #346082,
Applicant,

v.

State of South Carolina,
Respondent,

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-23-02475

-"MEMORANDUM OF LAW
IN OPPOSITION OF
STATE SUMMARY
JUDGMENT OR DISMISSAL"-

(1) (PCR) Attachment OF INDEX and Arguments.

- a). Exhibit (A) Trial Transcript.
- b). Exhibit (B) Summary OF Event.
- c). Exhibit (C) Initial Brief OF Appellant.

Respectfully
Submitted;

#346082

Hendrich Little John #346082

122-CI-Smo-North #82

990 Wilsachy Hwy

Bishopville, SC, 21010

Dated: / /20 .

Title of Investigation: Operation: Jokers Wild (G&R)	Investigation Number: 763055-08-0204	Report Number: 114

SUMMARY OF EVENT:

On Thursday, May 21, 2009, Special Agent Shawn Stallo interviewed Greenville County Sheriff's Office Gang Investigator Brandon Brown in Greenville, SC. Inv. Brown supplied information in reference to the assault of ATF Special Agent Matt Morlan on April 23, 2009.

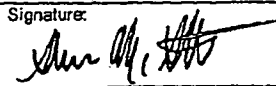
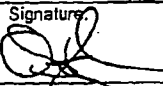
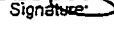
NARRATIVE:

In response to the interview with SA Stallo, Inv. Brown stated essentially the following: On April 24, 2009, Inv. Brown conducted interviews with documented Blood gang members from the Dixie Estate Trailer Park. Inv. Brown made contact with Kendrick LITTLEJOHN, who was riding with Anthony VALENTINE, aka: "Big Ant"; BM, DOB: [REDACTED], SSN: [REDACTED]. Inv. Brown questioned LITTLEJOHN and VALENTINE in reference to the assault of SA Morlan on April 23, 2009. Both LITTLEJOHN and VALENTINE denied any involvement.

Later that night, Inv. Brown made contact with a reliable confidential informant (CI). The CI informed Inv. Brown that LITTLEJOHN was boasting that he attempted to rob two white men in the Dixie Estates Trailer Park on April 23, 2009. Inv. Brown provided SA Stallo with a GCSO supplemental report in reference to his investigative actions.

Inv. Brown showed SA Stallo and SA Matt Morlan seven photographs of document blood members that frequent the Dixie Estate Trailer Park and could be involved in the assault of SA Morlan. SA Stallo was able to identify VALENTINE as one of the individual who was present when SA Morlan was assaulted. While Inv. Brown was displaying the photographs from his lap top computer, SA Morlan immediately recognized LITTLEJOHN as the individual who he met earlier in the day on April 23, 2009. SA Morlan specifically recalled LITTLEJOHN providing him with his cellular telephone number, (864)-361-[REDACTED]. SA Morlan has no memory of the assault or the hours following the event. SA Stallo will attach the photographs that SA Morlan viewed prior to identifying LITTLEJOHN.

On May 21, 2009, SA Stallo queried NCIC for a criminal history in reference to VALENTINE. The computer revealed previous felony arrests for grand larceny, possession of a stolen pistol, possession of a weapon during

Prepared by: Shawn M. Stallo	Title: Special Agent, Greenville Field Office	Signature: 	Date: 5/26/09
Authorized by: Christopher J. Hyman	Title: Resident Agent in Charge, Greenville Field Office	Signature: 	Date: 06/05/09
Second level reviewer (optional): Zebedee T. Graham	Title: Special Agent in Charge, Charlotte Field Division	Signature: 	Date:

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Report of Investigation

Title of Investigation: Operation: Jokers Wild (G&R)	Investigation Number: 763055-08-0204	Report Number: 374

SUMMARY OF EVENT:

On Wednesday, April 28, 2010, Special Agent Shawn Stallo and SLED Special Agent Ashley Asbill interviewed suspect Kendrick LITTLEJOHN at the Greenville County Detention Center in Greenville, SC. LITTLEJOHN denied any involvement in the assault of ATF Special Agent Matt Morlan on April 23, 2009.

NARRATIVE:

On Wednesday, April 28, 2010, SLED Special Agent Ashley Asbill executed an arrest warrant on suspect Kendrick LITTLEJOHN for the crime of Assault and Battery with the Intent to Kill. LITTLEJOHN was incarcerated in the Greenville County Detention Center on unrelated charges.

SA Asbill served the arrest warrant and verbally informed LITTLEJOHN of his Miranda rights. LITTLEJOHN agreed to speak with SA Asbill in reference to the assault of ATF Special Agent Matt Morlan on April 23, 2009.

SA Asbill explained that SA Stallo had witnessed LITTLEJOHN and several of his associates assault SA Morlan on April 23, 2009 in the Dixie Estates trailer park in Greenville, SC. LITTLEJOHN denied any responsibility and stated he wanted to speak with SA Stallo.

SA Stallo entered the detention center and spoke with LITTLEJOHN. SA Stallo explained that he personally witnessed LITTLEJOHN and several of his associates beat SA Morlan on April 23, 2009. SA Stallo further explained that SA Morlan received a concussion from his assault. LITTLEJOHN denied any responsibility and became belligerent with SA Stallo. SA Stallo and SA Asbill ended the interview.

Prepared by: Shawn M. Stallo	Title: Special Agent, Greenville Field Office	Signature:	Date:
Authorized by: Christopher J. Hyman	Title: Resident Agent in Charge, Greenville Field Office	Signature:	Date:
Second level reviewer (optional): Zebedee T. Graham	Title: Special Agent in Charge, Charlotte Field Division	Signature:	Date:

Title of Investigation: Operation: Jokers Wild (G&R)	Investigation Number: 763055-08-0204	Report Number: 58

SUMMARY OF EVENT:

On Thursday, April 23, 2009, Special Agent's Shawn Stallo and Matt Morlan, acting in an undercover capacity, met FNU LNU aka "KJ", at Dixie Heights trailer park in Greenville, SC. Following a discussion of narcotics and firearms, "KJ" and four to seven of his associates began beating SA Morlan. KJ has been identified as Kendrick LITTLEJOHN: BM, DOB: [REDACTED] 1987 [REDACTED]

NARRATIVE:

On Thursday, April 23, 2009, at approximately 2:00PM, SA Stallo spoke with SA Morlan via telephone. SA Morlan stated that he was at Dixie Heights Trailer Park in Greenville, SC distributing Jokers Wild Tobacco & More (storefront location) flyers. While distributing flyers, LITTLEJOHN, who identified himself as "KJ", asked SA Morlan if he was selling firearms at his place of business. SA Morlan stated that he was not selling firearms, yet would purchase firearms with no paperwork required. LITTLEJOHN told SA Morlan that he was about to go to prison and would be interested in selling SA Morlan an SKS assault rifle and a .40 caliber handgun. LITTLEJOHN added that he had other firearms he may be interested in selling at a later date.

During the conversation, LITTLEJOHN asked SA Morlan if he would give him a ride to the local basketball courts. SA Morlan agreed and drove LITTLEJOHN a few blocks to a basketball court. SA Morlan informed SA Stallo that once at the basketball court LITTLEJOHN began flashing gang signs to his associates. While at the basketball courts, LITTLEJOHN told SA Morlan that he would contact him in a few hours to discuss the sale of firearms. LITTLEJOHN wanted \$300.00 for the SKS assault rifle and did not tell SA Morlan how much money he wanted for the .40 caliber handgun. LITTLEJOHN provided SA Morlan with telephone number (864)-361-[REDACTED] and stated that he did not like to conduct business after dark. SA Morlan was leaving the basketball court when LITTLEJOHN asked SA Morlan if he would drive his brother to a local restaurant. SA Morlan agreed and drove LITTLEJOHN'S brother to a local eatery. SA Morlan did not provide SA Stallo with the name of LITTLEJOHN'S brother or the restaurant where he was driven.

At approximately 7:00pm, SA Stallo and SA Morlan were at the storefront location. LITTLEJOHN telephoned SA Morlan's undercover cellular telephone; (864)-905-[REDACTED]. LITTLEJOHN stated the he would sell the firearms, but would not travel with them to the storefront location. SA Morlan offered for SA Stallo to accompany SA Morlan in a separate vehicle. LITTLEJOHN would place the firearms into SA Stallo's vehicle and LITTLEJOHN could ride to the

Prepared by: Shawn M. Stallo	Title: Special Agent, Greenville Field Office	Signature: 	Date: 5/6/09
Authorized by: Christopher J. Hyman	Title: Resident Agent in Charge, Greenville Field Office	Signature: 	Date: 5/6/09
Second level reviewer (optional): Zebedee T. Graham	Title: Special Agent in Charge, Charlotte Field Division	Signature: 	Date:

storefront with SA Morlan. Once at the storefront, SA Morlan would pay LITTLEJOHN for the firearms. SA Morlan made it clear that he would not purchase the firearms from LITTLEJOHN at his residence. LITTLEJOHN agreed and instructed SA Morlan to meet him at Dixie Heights Trailer Park.

At approximately 8:30pm, SA Stallo and SA Morlan, in two separate vehicles, drove to Dixie Heights Trailer Park. Once at Dixie Heights, LITTLEJOHN entered SA Stallo's vehicle. LITTLEJOHN immediately stated that the four to seven black males in the area were his friends and only there to make sure SA Morlan and SA Stallo were "straight". LITTLEJOHN then stated that he could provide crack, marijuana, and powder cocaine to SA Stallo. SA Stallo told LITTLEJOHN to come to the shop and they would discuss business. SA Stallo then informed LITTLEJOHN that he needed to place the firearms in SA Stallo's vehicle and ride to the storefront with SA Morlan. LITTLEJOHN instructed SA Stallo to drive a few hundred yards and pull in front of his trailer and he would retrieve the firearms. SA Stallo pulled directly behind SA Morlan's pick-up truck and LITTLEJOHN exited the vehicle.

Both SA Stallo and SA Morlan were inside their vehicles, when LITTLEJOHN asked SA Morlan to get out and come towards his trailer. SA Stallo witnessed several unidentified men standing between two trailers. SA Morlan exited his vehicle and engaged in a conversation with LITTLEJOHN in the street in front of LITTLEJOHN'S trailer. It should be noted that SA Morlan was a few feet from SA Stallo and SA Stallo could hear the conversation between SA Morlan and LITTLEJOHN. LITTLEJOHN asked SA Morlan to come inside the trailer to view the firearms. SA Morlan told LITTLEJOHN that he did not feel comfortable going inside a trailer and told LITTLEJOHN to bring the firearms to SA Stallo's vehicle. LITTLEJOHN persisted and stated he did not want to be in possession of the firearms. Again, SA Morlan told LITTLEJOHN that he would not go inside the trailer and to bring the firearms to SA Stallo's vehicle.

Agent's Note: SA Stallo felt that LITTLEJOHN and his associates may attempt to assault SA Morlan. SA Stallo thus removed this ATF issued firearm from his waist and placed it into his hand.

SA Morlan then began walking towards SA Stallo's passenger side window. Suddenly a black male began talking to SA Stallo at his driver side window. SA Stallo felt that this was an intentional measure in order to distract SA Stallo. The black male then ran towards SA Morlan. SA Stallo looked towards the front of his vehicle and could not see SA Morlan, however witnessed four to seven black males, including LITTLEJOHN, hitting and kicking towards the ground. A black male appeared at SA Stallo's passenger side window and began waving his hands and telling SA Stallo to stay in the vehicle, stating that everything was fine.

SA Stallo immediately exited his vehicle towards the rear and heard someone yell that SA Stallo had a firearm. SA Stallo witnessed several men running and two or three standing near SA Morlan. SA Stallo pointed his firearm at the men, stating that he would fire if necessary. The remaining assailants quickly fled the scene. SA Stallo ran towards SA Morlan, who was kneeling on the ground. SA Morlan appeared to be lucid and not seriously injured. SA Stallo assisted SA Morlan into SA Stallo's vehicle and left the area.

Once out of Dixie Heights, SA Morlan informed SA Stallo that his ATF issued telephone and personal Blackberry telephone was inside SA Morlan's pick-up truck. SA Stallo telephoned 911 and requested assistance in order to retrieve SA Morlan's telephones and vehicle. A few minutes later, the Greenville County Sheriff's Office (GCSO) arrived and assisted SA Stallo and SA Morlan in retrieving the items. SA Morlan was able to locate his pick-up truck and personal blackberry, however was unable to locate his ATF issued cellular telephone nor his ATF undercover telephone. It should be noted that hours following the assault, GCSO Master Deputy Lyle Kirian informed SA Stallo that someone with phone number MD Kirian whose number was programmed into SA Morlan's undercover telephone. The person asked why someone using SA Morlan's telephone continued to call his telephone and hang up. SA Morlan later told SA Stallo that it was his standard practice to lock his ATF cellular telephone while conducting an undercover operation and it is likely that anyone would know that the telephone was possessed by someone in law enforcement.

Stallo next notified his immediate supervisor, RAC C.J. Hyman, that SA Morlan had been assaulted. RAC Hyman stated that he was en route to SA Stallo's location. Approximately thirty minutes later, RAC Hyman met with SA Stallo and SA Morlan. SA Morlan had an obvious injury to the left side of his face and began repeating himself to SA Stallo and RAC Hyman. RAC Hyman drove SA Morlan to St. Francis Hospital in Greenville, SC. SA Stallo was later informed that SA Morlan suffered a major concussion and was being released from the hospital. SA Stallo will obtain photographs of SA Morlan's injuries and medical records of the event and attach them to this case file.

After SA Morlan was released from the hospital, RAC Hyman provided SA Stallo with a digital recorder that was in the possession of SA Morlan. SA Stallo reviewed the recorder and became aware that SA Morlan had recorded the meeting and assault. SA Stallo placed the audio recording onto compact disc and entered it into ATF evidence; E-00065.

On Friday, April 24, 2009, SA Stallo spoke with GCSO Gang Investigator Brandon Brown via telephone. Inv. Brown informed SA Stallo that an extremely reliable confidential informant notified Inv. Brown that Kendrick LITTLEJOHN was boasting that he and his associates attempted to rob two white men in Dixie Heights Trailer Park the prior evening. Inv. Brown stated that LITTLEJOHN is the second highest ranking member of the Sex Money Murder Bloods street gang. LITTLEJOHN is identified on NCIC as a member of a violent street gang. SA Stallo will conduct a more formal interview with Inv. Brown at a later date.

Based on Inv. Brown's information, SA Stallo queried the South Carolina Department of Motor Vehicle's (SCDMV) database for a photograph of LITTLEJOHN. SA Stallo obtained a 2008 South Carolina drivers license photograph of LITTLEJOHN. SA Stallo is certain that LITTLEJOHN is the person who he met on April 23, 2009, and later assaulted SA Morlan. A query of the NCIC database revealed that LITTLEJOHN has previous arrests for unlawful carrying of a deadly weapon, armed robbery with a deadly weapon, and criminal conspiracy.

On Monday, April 27, 2009, ATF Intelligence Analyst Desra Fraser informed SA Stallo that the telephone number LITTLEJOHN provided SA Morlan was registered to LITTLEJOHN through Alltel communications.

Attachment(s):

SCDMV Photo of Littlejohn
Criminal History re: Littlejohn
Alltel Communications Query

PETITIONER'S
EXHIBIT

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Kendrick D. Littlejohn,)
S.C.D.C. No. 346082,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-23-2475

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAR 19 PM 1 37

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 2, 2014. The Respondent made its return on October 21, 2014. An evidentiary hearing was held on February 17, 2015 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Darren Haley, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the August 2010 term of the Greenville County Grand Jury for assault and battery with intent to kill (ABWIK) (2010-GS-23-6449) and second-degree lynching (2010-GS-23-6450). He was represented by Darren Haley, Esquire.

After the State called the case to trial, the Applicant was found guilty. On April 26, 2011, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of 20 years suspended upon service of 14 years and 5 years probation for ABWIK and 10 years suspended during probation for second-degree lynching.

A notice of appeal was filed at the South Carolina Court of Appeals. Susan B. Hackett, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Littlejohn, Op. No. 2014-UP-118 (S.C. Ct. App. filed March 19, 2014). The Remittitur was sent on April 4, 2014.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to object to a burden-shifting malice instruction.
 - b. Failure to object "to numerous references to other crimes and drugs."
 - c. Failure to obtain independent medical experts "to show that since victim was able to return and drive his vehicle away . . . that his injuries were not that serious and he may well have been malingering to upgrade the offense from ABHAN to ABWIK."
 - d. Failure to move to dismiss the ABWIK indictment based upon double jeopardy.
2. Was not given credit for time-served.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he only had one meeting with trial counsel, who told him the case was on the trial docket. The Applicant stated he and trial counsel did not discuss the following prior to trial: the State's evidence, the elements of the charges, his version of events, possible defenses, the concept of "the hand of one is the hand of all," or plea offers.¹ The Applicant stated he did not hit the victim and told trial counsel this on the day of trial. The Applicant stated he asked trial counsel to subpoena the confidential informant (whose name he did not do), but

¹ This Court notes that, even if he had received a plea offer, he would have still gone to trial.

that counsel did not do so. The Applicant stated trial counsel should have objected during jury deliberations when the trial judge explained ABWIK and assault and battery of a high and aggravated nature (ABHAN).

Trial counsel testified he was the Applicant's second attorney and was appointed in August 2010. Trial counsel testified discovery motions had already been filed, but he filed his own set of discovery motions. Trial counsel testified he received the discovery materials, reviewed them, and sent a copy to the Applicant. Trial counsel testified he was appointed to this case while the Applicant was on bond and that the Applicant never came to his office to discuss his case. Trial counsel testified he had copies of several letters in his file indicating the Applicant had missed meetings. Trial counsel testified there was a plea offer in place when he was appointed, that he conveyed such to the Applicant, and that the Applicant rejected the offer. Trial counsel testified this was confirmed in an October 18, 2010 letter he sent to the Applicant. Trial counsel testified he met with the Applicant at the detention center after he waived extradition from North Carolina. Trial counsel testified they reviewed the discovery materials, the Applicant's story, the elements of the charges, and the concept of "the hand of one is the hand of all" before trial. Trial counsel testified the defense was predicated upon the Applicant's contention that he did not hit the victim but admitted there were no witnesses to support this story. Trial counsel testified he did not recall the Applicant asking him about a confidential informant but that he would have advised against calling any witness.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately meet with him and prepare for trial. Trial counsel testified he sent a copy of the discovery materials to the Applicant and also reviewed those materials with him. Trial counsel testified they also discussed the Applicant's version of events, the elements of the charges, and

the doctrine of accomplice liability. Trial counsel also testified the Applicant missed numerous appointments or meetings. This Court finds trial counsel's testimony is credible and notes trial counsel was able to reference notes and letters from his file during his testimony. This Court further finds the Applicant failed to articulate what more he wanted trial counsel to do in order to prepare his case for trial. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not convey a plea offer in this case. Trial counsel testified the plea offer in this case was in place when he was appointed. Trial counsel produced a copy of a letter dated October 18, 2010 that he sent to the Applicant in which he noted he had explained the offer to the Applicant and that it was rejected. This Court finds trial counsel's testimony is credible and notes trial counsel was able to reference notes and letters from his file during his testimony. This Court finds trial counsel fulfilled his obligation to convey and explain the plea offer to his client. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have subpoenaed a confidential informant. The Applicant stated he told trial counsel to subpoena this person but admitted he did not know their name. Trial counsel testified he did not recall discussing a confidential informant with the Applicant but that he would have advised against putting up any witness at trial. Trial counsel testified there were no witnesses who corroborated the Applicant's story (that he did not hit the victim). This Court finds trial counsel's testimony is credible. This Court finds trial counsel articulated a valid trial strategy

(not putting up a defense case) in order to explain why he would have advised against calling a confidential informant as a witness. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Regardless, as the Applicant was unable to produce this alleged witness at the PCR hearing – or provide any information about this individual – this Court cannot speculate as to whether this witness would have had an impact upon the defense case. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”) (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the judge re-charging the jury on ABWIK and ABHAN. During deliberations, the jury sent out the following note, “We would like to read or have explained again the definition related to the assault and battery with intent to kill versus aggravated assault and battery.” (Trial transcript, p.211, lines 9-12). The trial judge proposed sending the jury “copies of [his] entire charge so that nothing is taken out of context” and the parties had no objection. (Trial transcript, p.211, lines 13-17). This Court finds the Applicant has failed to provide a cognizable reason for trial counsel to have objected. Without such, the Applicant failed to meet his burden of proof. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding a PCR applicant bears the burden of proving the allegations in their application).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under

prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

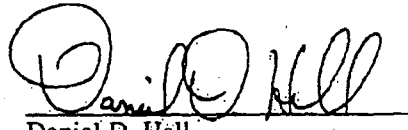
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7th day of March, 2015.



Daniel D. Hall
Presiding Judge
Thirteenth Judicial Circuit

York, South Carolina.

DOCKET NO. 2010-GS-23-
KBS

006449

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2010

August

THE STATE

GUILTY vs.

KENDRICK D. LITTLEJOHN

Indictment for

0014

ASSAULT AND BATTERY WITH INTENT TO
KILL

VIOLATION § 16-03-0620

WITNESSES

B. Lynn

Greenville County Sheriffs Office

4/28/2010

ARREST WARRANT NUMBER

1371709

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury Date:

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY WITH INTENT TO KILL

At a Court of General Sessions, convened on

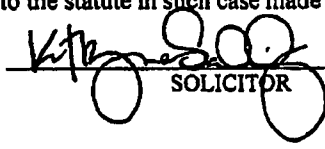
AUG 24 2010

the Grand Jurors of Greenville

County present upon their oath:

That KENDRICK D. LITTLEJOHN did in Greenville County, on or about the 23rd day of April 2009, willfully, unlawfully and with malice aforethought, either express or implied, commit an assault and battery upon MATTHEW MORLAN. This is in violation of §16-3-620 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

006450

DOCKET NO. 2010-GS-23-
KBS
The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS

TERM 2010

August

THE STATE

vs.

GUILTY

KENDRICK D. LITTLEJOHN

WITNESSES

B. Lynn

Greenville County Sheriffs Office

4/28/2010

ARREST WARRANT NUMBER

1371710

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0313

LYNCHING SECOND DEGREE

VIOLATION § 16-03-0220

Foreperson of Petit Jury

Date:

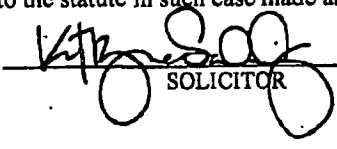
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LYNCHING SECOND DEGREE

At a Court of General Sessions, convened on **AUG 24 2010** the Grand Jurors of Greenville
County present upon their oath:

That KENDRICK D. LITTLEJOHN did in Greenville County, on or about the 23rd day of April 2009, willfully
and unlawfully participate as part of a mob that inflicted an act of violence upon the body of MATTHEW
MORLAN that did not result in his death. This is in violation of §16-3-220 of the South Carolina Code of Laws
(1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR