

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Sumter County

Honorable Brian M. Gibbons, Circuit Court Judge

MICKEY MARKELL JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001292

SUPPLEMENTAL APPENDIX

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PETITION IN SUPPORT OF POST- CONVICTION RELIEF 1

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STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
State of South Carolina,)
Respondent.)
against)
Mickey Johnson,)
Petitioner.)

IN THE COURT OF GENERAL SESSIONS
CASE NO: 2014-CP-43-01491
IN REGARDS TO CASE NO.: 2012-GS-47-03
PETITION IN SUPPORT OF
POST-CONVICTION RELIEF PURSUANT TO
S.C. CODE ANN. § 17-27-20

COMES NOW, Petitioner MICKEY JOHNSON ("Mr. Johnson"), by and through undersigned counsel, and pursuant to S.C. Code Ann. § 17-27-20, the Uniform Post-Conviction Procedure Act, and in support of the application (Form 5) previously filed by Mr. Johnson, hereby moves this Honorable Court to set aside the judgment of conviction in this matter. The bases for this Petition include the denial to Petitioner of his rights to effective assistance of counsel, due process of law, and a fair trial, protected by the United States and South Carolina Constitutions. In support of the instant Petition, and in further support of the Form 5 previously filed by Mr. Johnson by his mailing of same on or before July 17, 2014, Mr. Johnson states the following:

PRELIMINARY STATEMENT

Pursuant to S.C. Code Ann. § 17-27-20, this Court has jurisdiction over this matter. Mr. Johnson was tried before a jury in this Court from July 16, 2013, through July 18, 2013 before the Hon. William Seals, Third Judicial Circuit, Sumter County, South Carolina, Case Nos. 2012-GS-47-02 through 47-04. The jury found Mr. Johnson guilty of accessory before the fact, murder, criminal conspiracy, pointing and presenting a firearm, and unlawful possession of a firearm. The jury found Mr. Johnson not guilty of accessory after the fact, murder. He was sentenced to a term of life in prison.

Mr. Johnson's trial counsel filed a notice of appeal on August 16, 2013. That appeal was denied by remittitur from the South Carolina Court of Appeals on November 22, 2013, as untimely filed. Efforts on behalf of Mr. Johnson to secure a belated appeal were also rejected. Mr. Johnson files the instant Petition seeking relief within one year of the date of the appellate court's remittitur.¹

STATEMENT OF FACTS

The State's theory of its case was that Mr. Johnson, the alleged head of the Sumter affiliate of a gang known as 135 Piru (part of the Blood gang which has its roots in California), ordered a retaliation hit on the evening of March 22, 2011, that resulted in the death of Adrian Davis at the [REDACTED] Apartments in Sumter, South Carolina. Rasheed Brandon fired a single shot from a handgun and killed Adrian Davis inside Apartment 50, where Adrian Davis lived with his girlfriend. It is undisputed that Mr. Johnson was not the shooter, was not the lookout, was not the get-away driver, and was not present when Mr. Davis was murdered. See T.R. 119-120.² No shell casings were found at the scene and no weapon was ever recovered. *Id.*, at 113-114.

The State failed to offer independent evidence to corroborate the testimony of the indicted co-defendants. All were given plea deals to testify against Mr. Johnson. *Id.*, at 126-127.

¹ This Petition is filed timely pursuant to S.C. Code Ann. § 17-27-20, *et. seq.* The remittitur from the South Carolina Court of Appeals denying Mr. Johnson his right to direct review was transmitted November 22, 2013, such that Mr. Johnson's petition is timely filed up and until November 22, 2014. Moreover, Mr. Johnson transmitted his application for relief, Form 5, on or about July 17, 2014.

² References herein to the testimony at trial will be made as "T.R. X" where "T.R." is the Transcript of Record, and "X" is the page number(s). Though the transcript contains three volumes, the pages are sequentially numbered such that reference simply to page numbers will clearly identify the relevant portion of the transcript. A copy of the referenced portions of the trial transcript is attached as Exhibit "A".

In one case, a co-defendant charged with murder, Bryant Bradley, had the murder charge dismissed in exchange for his testimony against Mr. Johnson. *Id.*, at 127.

Sumter Police Detective William Lyons was the lead case agent who investigated the shooting on the evening of March 22, 2011. He testified he received training and education from several organizations related to gangs and gang investigations.³ He also explained that his dedicated role with gang investigations ended in 2010. *See* T.R. 84. He now merely tries to stay in touch with other gang investigators around the country "to stay in contact with to keep up on what's going on." T.R. 86. But that is not part of his full-time duties. *Id.* Over trial counsel's objection, *see* T.R. 89-90, Detective Lyons was accepted as an expert in gang investigations.⁴

Detective Lyons testified he was familiar with a gang called "135 Piru" as a result of his investigation into the shooting death of Mr. Davis. *See* T.R. 90.⁵ Detective Lyons had no knowledge or contact with the 135 Piru gang prior to the investigation in this case. *Id.*

Through his investigation -- meaning through interviews with the co-defendants, including the actual shooter whose murder charge was reduced -- he learned that Mr. Johnson was the alleged leader of 135 Piru in Sumter County and testified to the structure of the gang as he was able to determine. *Id.*, at 91-92. He testified members of the gang paid dues, were

³ The Sumter Police Department received a grant in 2007 from the federal Department of Justice to pay for a dedicated "gang investigator." Detective Lyons held that position until the grant ran out in 2010. The department no longer has a dedicated gang investigator but Detective Lyons is still the person contacted when there are investigations involving gangs and assistance is needed. *See* T.R. 83-86.

⁴ Trial counsel argued that because Detective Lyons was not current on the education and training related to gang investigations, never testified previously as a gang expert, and no court ever qualified him previously, Detective Lyons was unqualified and should not be proffered as an expert.

⁵ Detective Lyons testified that "135 Piru" is associated with the Blood gang that originated on the west coast. *See* T.R. 96.

required to "put in work" and "go the [REDACTED] Apartments where they operated out of." *Id.*, at 94.

Detective Lyons described how new members were initiated and the process through which new members would gain "knowledge." *See* T.R. 95. He further described the "colors" typically worn by members. *Id.*, at 96-97. Detective Lyons identified two photographs each of which depict some "self-admitted" members of 135 Piru. The two photographs were admitted subject to trial counsel's pre-trial objection. *Id.*, at 98-99.⁶

Detective Lyons identified the individuals in the photographs. He also provided his interpretation of certain hand gestures and the significance of certain people in the pictures wearing a Philadelphia Phillies baseball cap "that has the P on it for Piru." *See* T.R. 99-102. Detective Lyons testified local police called the FBI first for assistance, but, when the FBI declined the case, State Law Enforcement Division (SLED) assigned Agent Mark Berube to assist. *Id.*, at 104.

Detective Lyons testified that about a week prior to the March 22nd shooting, a 16-year-old boy was murdered near to the [REDACTED] Apartments "in an unrelated incident." *See* T.R. 1:105. The funeral was held on the morning of March 22. *Id.* After the funeral, some of the boys who attended the funeral (later identified as members of Folk Nation, an alleged rival gang) went into [REDACTED] Apartments and "an altercation had occurred between them and members of 135 to include the defendant, Mickey Johnson." *Id.*

Before the altercation, Mr. Johnson, Bryant Bradley, William Morgan, John Wesley Stamps, Jr., Rasheed Brandon, and several others were gathered outside of Apartment 9 at the

⁶ Pre-trial, Mr. Kent argued presentation of gang evidence and references to Mr. Johnson's alleged role in a gang was too prejudicial and was not admissible under the standard established in *State v. Lyle*, 125 S.C. 406 (1923). The pre-trial motion was denied.

██████ Apartments working out. *See* T.R. 110. Annesia Allen, the girlfriend of victim Davis, and Kanadja McConico, testified that at first, there were simply words being exchanged between the two groups. *Id.*, at 155-157; 199-201. The Folk Nation members then left and Mr. Johnson and the people he was hanging out with went back to what they had been doing. A short time later, the Folk Nation crew returned with more people. *Id.*, at 199-201.

William Morgan said that when the rivals returned, the two groups started walking toward each other and he grabbed a gun and put it into his pants. *See* T.R. 267-268. Morgan testified he was trying to calm everyone down but "they wasn't trying to hear me." *Id.*, at 269. At the same time, Morgan said he saw a rival member with a gun out as well. *Id.*, at 270. He said Mr. Johnson got mad at him "because I ain't shoot" and so Morgan gave the gun to Mr. Johnson. *Id.*

Morgan testified Mr. Johnson started shooting and the rivals returned fire. *See* T.R. 271-272. Everyone scattered at that point, Morgan said. *Id.*, at 272. Rasheed Brandon, identified as the shooter who killed Adrian Davis, was in the middle of the street and shouted that if anyone talked, he would kill them. *Id.*, at 173; 188. Mr. Johnson, Bradley, Brandon, and Morgan left the area shortly after the conflict and Stamps said he remained at Apartment 9 in order to protect the women who remained behind. *See* T.R.335.

Bryant Bradley, the get-away driver, testified that he was among a group of alleged 135 Piru members, including Mr. Johnson, at Rasheed Brandon's apartment nearby the ██████ Apartments. *See* T.R. 459. Bradley testified he was there for approximately 30 minutes during which time, Bradley alleged, Mr. Johnson was telling Brandon to "go get some more guns. *Id.*, at 461.

While Stamps was outside the apartment a short time later, he saw a car pull up near Apartment 50 where the women were and one of the passengers got out and ran into an apartment nearby. *See* T.R. 336. The car spun around and one of them shouted at Stamps before pulling out a gun and firing at Stamps. *Id.* Stamps then told Mr. Johnson by phone that he, Mr. Johnson, should "be careful" because someone had just taken a shot at Stamps. *Id.*, at 337. Stamps told Mr. Johnson that he saw a shot fired from another apartment in the vicinity and that he saw the shooter run into either Apartment 7 or 17. *Id.* It is unclear why counsel would not have objected to all of this hearsay testimony.⁷

Bradley testified that the phone call was "on speaker phone." *See* T.R. 466. Bradley said after the phone call, everyone left and Mr. Johnson drove to Mr. Davis' apartment. *Id.*, at 462. It was at this point that Bradley alleges Mr. Johnson "called a meeting." *Id.*, at 463. It was also at this meeting that Mr. Johnson supposedly gave instructions to Morgan, Brandon and Stamps. *Id.*, at 468. Mr. Bradley is the only witness who testified to this meeting or the alleged "instructions" from Mr. Johnson.

Stamps then said he eventually met up with Mr. Johnson, who was driving Mr. Johnson's girlfriend's car. *See* T.R. 339. In the car were Mr. Johnson, Garnett Davis in the passenger seat, and Rasheed Brandon and Bryant Bradley in the back seat. Stamps said he got in the back as well. *Id.* The five returned to [REDACTED] Apartments. *Id.* at 340. Stamps said he was intoxicated at the time and was "numb to what was going on around me." *Id.*

Stamps said he stayed in the car while all of the others got out. *See* T.R. 341. He said he heard Mr. Johnson tell Mr. Brandon to "shoot whoever comes to the door." *Id.* No other

⁷ No objection was made to Stamps hearsay testimony, which testimony only served to bolster his attempts to get a better deal for himself despite his admitted role in the murder. Hearsay is no more admissible simply because the person testifying to the out of court statement actually made the statement, unless it falls within a hearsay exception.

participant who testified at trial ever mentioned this statement. Brandon attempted to find the person who had shot at Stamps earlier but no one answered the doors when he knocked at Apartment 7 and Apartment 17. *Id.*, at 345. Brandon proceeded to Apartment 50 where Stamps said he knocked on the door and pulled out his gun and that is when Mr. Stamps starts walking away. *Id.*

Adrian Davis returned from work a short time beforehand and was seated at his computer next to the apartment door. *See* T.R. 165. At the door, Brandon was met by Allen, at which time Brandon raised a handgun and fired a fatal shot at Davis. *Id.*, at 168. Brandon then ran from the scene and met up with Stamps, who was also running, got into a waiting car and took off. *See* T.R. 346. The three – Morgan, Brandon, and Stamps – went and met up with Garnett Davis at his house along with others including Mr. Johnson. *Id.*, at 347.

Following the shooting, Morgan, Brandon and Bradley returned to Mr. Davis' apartment where Mr. Johnson and Mr. Davis eventually arrived. *See* T.R. 474. When they arrived, there was a meeting called and allegedly Mr. Johnson "gave ranks out." *Id.* Mr. Johnson did not testify and his trial counsel presented no witnesses. *Id.*, at 556.

The defense "case" rested entirely on casting doubt on the credibility of the main witnesses for the State, Bradley and Stamps. Both were given plea deals to lesser charges in exchange for testifying against Mr. Johnson and importantly, each gave stark, inconsistent statements at trial and before trial to police investigators, such that each admitted to lying about their own involvement. Mr. Brandon, the shooter and the person Annesia Allen identified as the one who warned that if anyone talked about the confrontation earlier that day that he would kill them, never testified because at the time of Mr. Johnson's trial he was undergoing a competency examination to determine if he was fit to stand trial.

At the close of the Government's case-in-chief, trial counsel moved for a directed verdict of not guilty arguing insufficiency of the evidence. The motion was denied, re-asserted after the defense rested, and again denied. Mr. Johnson was convicted of assessor before the fact, murder, conspiracy, and the lesser charges of pointing and presenting and unlawful possession of a firearm. In his opening statement, counsel for Mr. Johnson admitted Johnson was guilty of these lesser offenses. Following the verdict, there was a motion made for a new trial that was denied and Mr. Johnson was then sentenced to life in prison, all the while maintaining he was innocent.

Despite Mr. Johnson's instructions to counsel, Mr. Johnson's trial counsel did not file a notice of appeal until August 16, 2013, well past the ten (10) days for filing for direct review. The South Carolina Court of Appeals entered an order denying Mr. Johnson's appeal as untimely on November 13, 2013. Mr. Johnson's attempts at filing a belated appeal, through new counsel, were also denied.

ARGUMENT

It is axiomatic that both the United States Constitution and South Carolina law guarantee each defendant in a criminal prosecution the right to the effective assistance of counsel. U.S. Const. Amend. VI, §1; S.C. Code Ann. §17-3-10. The fundamental right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive due process of law in an adversarial system of justice. *See United States v. Cronin*, 466 U.S. 648, 658 (1984).

"The right to counsel is a fundamental right of criminal defendants; it assures the fairness, and thus legitimacy, of our adversary process." *See Kimmelman v. Morrison*, 477 U.S. 365, 374 (1986). Further, the Supreme Court has held that "the right to counsel is the right to effective assistance of counsel." *See McMann v. Richardson*, 397 U.S. 759, 771 (1970).

“The benchmark of judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial [court] cannot be relied on having produced a just result.” *See Strickland v. Washington*, 466 U.S. 668, 686 (1984). “A convicted defendant’s claim that counsel’s assistance was so defective as to require reversal of a conviction ... has two components.” *See Walker v. State*, 407 S.C. 400, 405 (2014) *citing Strickland*, 466 U.S. at 687.

Under the *Strickland* standard, ineffective assistance of counsel is established when the defendant shows that (1) trial counsel’s performance was deficient, i.e., counsel’s performance “fell below an objective standard of reasonableness” (*see Franklin v. Catoe*, 346 S.C. 563, 570–71 (2001)); and (2) the deficient performance prejudiced the defendant enough to deprive him of due process of law. *See Strickland*, 466 U.S. at 687. Specifically, “an applicant must show there is a reasonable probability that but for counsel’s deficient performance, the result of the proceeding would have been different.” *See Franklin*, 346 S.C. at 571. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *See Strickland*, 466 U.S. at 690.

A convicted defendant making a claim of ineffective assistance must identify the particular acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. In turn,

The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.

See Strickland, 466 U.S. at 690.

I. MR. JOHNSON RECEIVED CONSTITUTIONALLY DEFICIENT ASSISTANCE OF COUNSEL WHERE TRIAL COUNSEL FAILED TIMELY TO FILE AN APPEAL OF MR. JOHNSON'S CONVICTION AND SENTENCE THUS ENTITLING MR. JOHNSON TO AN AUSTIN APPEAL.

After the client is convicted and sentenced, trial counsel in all cases has a duty to make certain that the client is fully aware of the right to appeal, and if the client is indigent, assist the client in filing an appeal. *See Walker v. State*, 407 S.C. 400, 405 (2014) (citing *In re Anonymous Member of the Bar*, 303 S.C. 306, 307, 400 S.E.2d 483 (1991)); *see also Anders v. California*, 386 U.S. 738 (1967).

Following Mr. Johnson's conviction and sentence on July 18, 2013, he instructed his trial lawyer to file a notice of intent to appeal. Trial counsel never filed an appeal and did not provide any explanation to Mr. Johnson. Mr. Johnson then hired appellate counsel to file and serve the notice of appeal, which was done on August 16, 2013, well past the ten (10) days during which an appeal must be filed. *See* Rule 203(2), SCACR. By remittitur issued November 22, 2013, to the lower court, the South Carolina Court of Appeals dismissed the notice of appeal as untimely filed. As a result of trial counsel's failure, Mr. Johnson was denied the right to present his case for direct review.

The following issues, while not exhaustive, would have been presented on direct appeal:

1. The trial court erred in permitting Agent Berube to testify as an expert in gang investigations. Agent Berube was never qualified as an expert previous to this trial and never previously testified as an expert in any court. His past work with gangs ended in 2012, after just four years, and he was not presently working in the gang intelligence unit. *See* T.R. 530. Moreover, he had no prior knowledge of the 135 Piru gang's presence in Sumter. *See* T.R. 535. And, his testimony was admittedly based on what he "perceived" happened earlier on the 22nd: "I believe that the leader

of this gang was disrespected by two rival – what we perceived to be rival gang members in his territory...” T.R. 543. His testimony was cumulative and added nothing to the jury understanding the case facts. *See* Rule 702, SCRE (Expert testimony is proper if it will assist the trier of fact in understanding the evidence.).

2. The trial court erred in qualifying Detective Lyons as an expert in gang investigations as his testimony did not meet the standard for admission under the *Lyle* framework. His testimony was not based on specialized knowledge or specific facts that were needed for the jury to understand the case. Indeed, his own “expert” testimony on the structure of 135 Piru included speculation. Describing the position of one of the alleged gang members above Mr. Johnson in rank, this “expert” testified, “[h]e is the I guess OG of South Carolina, so to speak.” T.R. 92. The state’s two main witnesses, both indicted co-defendants testifying in exchange for plea deals, testified to the same facts about gang culture, rank structure, etc., that Detective Lyons gave as his “expert” testimony. The only reason for Detective Lyons’ “expert” testimony was to pre-emptively and unfairly bolster the testimony of witnesses whose credibility was highly suspect and to create bias against Mr. Johnson.
3. Related to the erroneous qualification of Detective Lyons and Agent Berube as expert witnesses, the bulk of their testimony came, not from personal knowledge or expert opinions, but from third parties. This testimony was inadmissible hearsay. The fact that the prosecutor phrased the questions as what the witnesses “learned” or “determined” from their investigations did not alter the fact that the admitted bases for the knowledge was not first hand knowledge, or even expertise as neither expert had direct experience with the Sumter 135 Piru gang, but rather reliance on hearsay.

They relied and essentially testified to not only hearsay, but hearsay from the very co-defendants who actually committed the murder at issue. "As evidence derived immediately through a person who has no direct knowledge of the facts to which he testifies, hearsay is inferior to evidence derived immediately through one who testifies from personal knowledge and observation." *SCDSS v. Doe*, 292 S.C. 211, 355 S.E.2d 543 (Ct. App. 1987). The South Carolina Supreme Court addressed this admissibility issue with "gang experts" in *State v. Price*, 368 S.C. 494, 629 S.E.2d 363 (2006).⁸ In *Price*, the trial court qualified the investigator as an expert in gangs and gang activity. Despite being qualified as an expert, a decision that apparently was not appealed, the Court determined that testimony about facts that the investigator only learned from informants was inadmissible hearsay and not part of the investigator's expert opinions. Here, it is clear both law enforcement officials relied upon the statements of the co-defendants and other witnesses for their conclusions as to Mr. Johnson's involvement with 135 Piru and the shooting. Just as in *Price*, the investigators here admitted their knowledge came from the hearsay statements of others:

- Q: . . . We're talking about a murder and why a murder happened and the allegations are that Mickey Johnson ordered somebody to kill somebody?
- A: Correct.
- Q: The gravamen of that came from the co-defendants?
- A: That is correct.
- Q: So the extent of our "through our investigation" came from people who were also charged with the same crimes that Mr. Johnson is charged with?
- A: Exactly.

⁸In *Price*, the Court concluded the evidentiary error was harmless due to the defendant's having taken the stand himself and, though denying his membership with the gang, he admitted he was affiliated with them and that he did shoot the victim, albeit he claimed self defense. *Price*, 368 S.C. at 497. Here, Mr. Johnson's claimed affiliation with the gang by these law enforcement witnesses was not harmless error.

T.R. 118 (Testimony of Det. Lyons); *see also* T.R. 548 (similar testimony of Agent Berube). Qualification as an expert, whether correct or erroneous, does not entitle a witness to bypass the hearsay exclusion rules by testifying solely to facts gleaned from other persons through their out of court statements. As the South Carolina Supreme Court explained in *Price*, the officers “did not testify to [their] expert opinion[s], but rather relayed information from informants.” *Price*, 365, 498. That, the Court concluded, was improperly admitted hearsay; just as the same testimony was improperly admitted in this case.

4. The trial court erred in denying Mr. Johnson’s motion for directed verdict and new trial where the State failed to meet its burden of proof establishing every element of the crimes charged beyond a reasonable doubt. The State’s case against Mr. Johnson rested upon the testimony of one witness who testified to events that no other witness reported hearing, the witness had already admitted he lied to police and to the jury in his testimony, was testifying for the State in exchange for a plea deal, and who was at best, marginally credible. The State’s case was entirely circumstantial and based upon the statements of a single indicted co-defendant alone, which is insufficient to prove Mr. Johnson’s guilt. *See State v. Odems*, 395 S.C. 582, 586 (2011) (“When a case is built wholly on circumstantial evidence, if the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, he is entitled to a directed verdict.”).

“A defendant has the procedural right to one fair bite at the apple. That is, every defendant has a right to file a direct appeal and one PCR application.” *See Wilson*, 348 S.C. at 582-83. In this case, Mr. Johnson has not had “one bite of the apple” since his trial counsel did

not timely file a notice of intent to appeal. *See Poston v. State*, 339 S.C. 37 (2000). “When, pursuant to a review of a PCR application, we determine that a petitioner has been denied his right to a direct appeal, we can address the direct appeal issues.” *See White v. State*, 263 S.C. 110 (1974); *see also* Rule 227, SCACR.

Where, as here, trial counsel failed to timely file a notice of intent to appeal, despite express instructions from Mr. Johnson, trial counsel’s performance fell below the reasonable standard required of constitutionally effective assistance of counsel. *See Frasier v. State*, 306 S.C. 158, 161 (1991)(“All defendants who have been found guilty of a crime have a right to be informed of the possibility of appeal and the method for taking an appeal.”).

Retained counsel possesses the express duty to assist their clients to properly perfect their appeals. *See* Rule 51(E)(4). Sup.Ct.Rules; Rule 602(E)(4), SCACR. Mr. Johnson was prepared to argue several substantive issues on direct appeal, each of which would, if accepted, result in vacatur of the conviction and sentence and the grant of a new trial. Here, Mr. Johnson did not waive his right to appeal. Trial counsel simply dropped the ball, and, but for trial counsel’s deficient performance, Mr. Johnson would have taken a direct appeal.

II. MR. JOHNSON WAS DENIED HIS CONSTITUTIONAL RIGHT TO DUE PROCESS WHERE THE STATE OF SOUTH CAROLINA FAILED TO PROVIDE EXCULPATORY EVIDENCE FAVORABLE TO THE DEFENSE TO TRIAL COUNSEL IN VIOLATION OF *BRADY V. MARYLAND*.

“The suppression by the prosecution of evidence favorable to the accused upon request violates due process.” *See Brady v. Maryland*, 373 U.S. 83, 87 (1963). The requirement to turn over evidence extends to impeachment evidence in addition to purely exculpatory evidence. *See Giglio v. United States*, 405 U.S. 150, 153-54 (1972); *see also United States v. Bagley*, 473 U.S. 667, 676 (1985).

A *Brady* claim requires the accused to show (1) the evidence was favorable to the accused; (2) it was in the possession of or known to the prosecution; (3) it was suppressed by the prosecution, and; (4) it was material to guilt or punishment. See *State v. Von Dohlen*, 322 S.C. 234, 241 (1996); see also *Kyles v. Whitley*, 514 U.S. 419 (1995); *Brady*, 373 U.S. at 87.

Trial counsel filed a *Brady* motion requesting, among other exculpatory material, copies of all statements, oral written or recorded, made by any person to the State attorney, the Grand Jury, or any law enforcement agency in connection with the case. Bryant Bradley, one of the indicted co-defendants whose testimony was critical in attempting to connect Mr. Johnson to the murder of Adrian Davis, provided two separate statements to police, but only one of those statements was turned over to the defense in discovery, the second statement that implicated Mr. Johnson and upon which his testimony was based. This second statement was only given after Mr. Bradley's proffer and plea deal discussions, such that Mr. Johnson should have had access to it in order properly to cross-examine Mr. Bradley.

In another instance, indicted co-defendant William Morgan, while in jail, received a letter from Bryant Bradley concerning the case and told detectives about the letter months later after Mr. Morgan agreed to cooperate with detectives against Mr. Johnson. Mr. Morgan gave investigators the note. In Morgan's statement, police said the contents were read into a recording but neither the recording nor the note was ever provided to trial counsel in discovery.

In a third instance, trial counsel was never informed that Annesia Allen was shown State's Exhibit 1, a photograph of several people alleged to be members of 135 Piru, and asked to identify the people who were present either at the incident earlier in the day on March 22, 2011, or at the time of the shooting. It was also learned that the photograph itself was never shown but rather it was displayed on a computer screen that was much clearer, according to Ms.

Allen's testimony. Trial counsel objected claiming non-disclosure and that as a result no objection was made to the introduction of the photograph in the first place. Trial counsel had already objected to the introduction of any so-called gang evidence, including trial testimony from Detective Lyons and Agent Berube.

The trial court erred in finding the circumstances of being shown the photograph on the computer to which Ms. Allen testified did not constitute a photo line-up. Detective Lyons testified expressly that Ms. Allen was shown a photo line-up:

Q: All right. What was your next step? Did you show any photo lineups or develop a suspect or anybody?

A: We did. As a result of -

...

A: Yes, we did. We did -- we did end up showing a photo lineup.

Q: To who?

A: To Ms. Annesia Allen.

T.R. 1:115; *see also* T.R. 178-187. The trial court dismissed trial counsel's concerns stating flatly, contrary to Detective Lyons' testimony, it was not a photo line-up. Because trial counsel was never informed that Ms. Allen was shown any photographs, much less State's Exhibit 1, trial counsel was unable to object pre-trial to the line-up and was prejudiced by the time the disclosure was made.

"The overriding theme of the *Brady* cases is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play." *See Gibson*, 334 S.C. 515, 526 (1999). In close cases, doubtful questions should resolve in favor of disclosure. Such disclosures "will serve to justify trust in the prosecutor as the representative ... of a sovereignty ... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done. And it will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen

forum for ascertaining the truth about criminal accusations.” *Id.*; see also *Kyles v. Whitley*, 514 U.S. at 438-40 (1995) (quotes omitted) citing *Berger v. United States*, 295 U.S. 78, 88 (1935).

The “overriding theme of Brady,” as expressed in *Gibson, supra.*, finds its roots in due process. In evaluating due process claims, the court inquires whether the practice “offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.” See *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). Here, the failure on the part of the State of South Carolina to turn over exculpatory evidence violated the tenets of Brady such that Mr. Johnson was incurably prejudiced and denied his right to due process and a fair trial.

III. MR. JOHNSON RECEIVED CONSTITUTIONALLY DEFECTIVE ASSISTANCE OF COUNSEL WHERE TRIAL COUNSEL FAILED TO INVESTIGATE AVAILABLE ALIBI WITNESSES THAT IF PRESENTED, WOULD HAVE PROVIDED EXCULPATORY INFORMATION TENDING TO CAST REASONABLE DOUBT ON MR. JOHNSON’S GUILT.

“[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” See *Walker v. State*, 407 S.C. 400, 405 (2014) (citing *Strickland*, 466 U.S. at 691). One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable. See *Grooms v. Solem*, 923 F.2d 88, 90 (8th Cir. 1991).

Mr. Johnson identified several alibi witnesses to trial counsel and informed trial counsel of their expected testimony. Mr. Johnson told trial counsel the witnesses, including his wife Kenteshree Johnson, and David Martin, would say that at the time he was allegedly holding the meeting where his alleged orders were given, he was with others playing cards. He did not leave

there for several hours and did not drive his wife's car back to the [REDACTED] Apartments. He also never permitted anyone else to drive his wife's car.

Trial counsel identified these witnesses to the jury during *voir dire* and when asked, none of the potential jurors knew any of them. None of these witnesses were called to testify. Each was available and willing to testify for the defense. Trial counsel told Mr. Johnson that because he chose not to take the stand himself, trial counsel could not call any of these witnesses, an affirmative misstatement that prejudiced Mr. Johnson.⁹

"The right to offer the testimony of witnesses is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." *See Washington v. Texas*, 388 U.S. 14, 19 (1967). This Sixth Amendment right "guarantee[s] that a criminal charge may be answered through the calling and interrogation of favorable witnesses." *See State v. Schmidt*, 288 S.C. 301, 303 (1986). Accordingly, a defendant has a fundamental constitutional right to offer *relevant* witness testimony. *See Washington*, 388 U.S. at 23.

Here, trial counsel abdicated his role to ensure Mr. Johnson was able to present his defense and to present relevant alibi witnesses. Mr. Johnson maintained his innocence and these alibi witnesses would have provided evidence from which the jury could have found reasonable doubt. Trial counsel failed Mr. Johnson in not presenting his alibi witnesses and failed him further when he erroneously told him those witnesses could not be presented because Mr. Johnson chose not to testify.

These failures fell below the objectively reasonable performance guaranteed to Mr. Johnson by the Sixth Amendment. As a result of these failures, Mr. Johnson was denied his

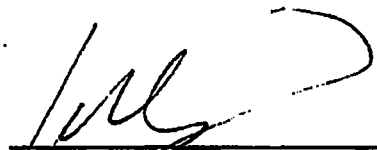
⁹ Indeed, trial counsel's statement to the trial court was as follows: "Based on the fact that he's not testifying, we will not be putting up a case at all." T.R. 556.

"fundamental constitutional right to offer relevant witness testimony." *See Washington*, 388 U.S. at 23.

CONCLUSION

Based upon the foregoing, Mr. Johnson respectfully requests this Court grant the instant petition; find trial counsel was ineffective for failing timely to file a notice of appeal; grant to Mr. Johnson permission to present an Austin appeal; and to grant such other and further relief as the Court should deem just, fair, and equitable.

Dated: August 15, 2014


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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2014, I served a copy of the foregoing, via U.S. Mail, postage paid, upon the attorneys for Respondent State of South Carolina, listed below, at the address below:

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A handwritten signature in black ink, appearing to be 'WJ Keefer', is written over a solid horizontal line.

Wendy J. Keefer

EXHIBIT A

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	CASE NO. 2012-GS-47-00002
	)	2012-GS-47-00003
	)	2012-GS-47-00004
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	(VOLUME I: DAY 1 OF 3)
	)	
MICKEY JOHNSON,	)	
	)	
Defendant.	)	
	)	

July 16-18, 2013
Sumter, South Carolina

B E F O R E:

THE HONORABLE WILLIAM SEALS, Judge; and a jury

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

CARY GOINGS, Assistant Attorney General
CURTIS PAULING, Assistant Attorney General
Attorneys for the Plaintiff

SHAUN KENT, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

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DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 trainings conducted by the State Law Enforcement Division,
2 the South Carolina Department of Corrections, the East
3 Coast Gang Investigators Association, the South Carolina
4 Gang Investigators Association. It's a variety of
5 different trainings that were offered through each of those
6 agencies, as well as some local training with some other
7 gang investigators that were already established.

8 Q: Can you approximate for the jury basically how long
9 you spent receiving these training classes from the various
10 organizations?

11 A: The training was ongoing. I went to training every
12 year, two to three classes a year. So I don't know about
13 hour-wise, but I can tell you that most of the gang
14 conferences that we went to were week-long, whether it be
15 the South Carolina Gang Investigators conference. I went
16 to the North Carolina Gang Investigators conference, the
17 East Coast Gang Investigators conference, and each one of
18 those were week-long conferences, as well as the ones that
19 the Department of Corrections put on were three to four
20 days in length as well. So over the -- over the three
21 years that we were on the ground, I was required to receive
22 training every year and I went to two to three conferences
23 a year to receive additional training.

24 Q: Okay. Now -- and we're going to get back to your
25 training and experience in gang investigations, but for

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 right now, are you currently still employed as the gang
2 investigator for Sumter Police Department?

3 A: Not technically in that capacity. I'm currently the
4 senior detective over the property crimes division. That
5 grant ran out in 2010. As a result, I was -- we don't have
6 a per se dedicated gang detective for the department. I
7 guess I am still the only one. I catch any case that has a
8 gang-related tie to it, whether it's property crimes,
9 violent crimes, narcotics. I assist all the other
10 divisions, but as of right now, we don't have to
11 particularly assigned gang detective for the department.

12 Q: And this was -- that happened in 2010?

13 A: Yes, sir. The grant was for three years.

14 Q: So 2007 to 2010, you were the designated gang
15 investigator for the Sumter Police Department?

16 A: Correct.

17 Q: As your -- when you're a road deputy, did you have the
18 chance to run into actual gang members?

19 A: We did, whether it be responding to calls for service
20 during traffic stops, deal with interviews. I've had the
21 opportunity to respond to calls where gang graffiti has
22 been spray-painted on sidewalks or on buildings or whatnot.
23 So as a road officer, many times the officers have a chance
24 to be the initial contact person involving a crime that may
25 be gang-related.

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 Q: What about your time as the detective for the
2 Neighborhood Watch program?

3 A: The Neighborhood Enforcement Team, yes. As being a
4 member of that, we concentrated our -- our efforts in high-
5 crime areas and oftentimes in the high-crime areas, gangs
6 are somewhat prevalent. The neighborhoods that they live
7 in, the individuals keep to their neighborhoods. So we
8 have an opportunity to run into a lot of different people
9 from different -- different backgrounds, from different
10 types, but they all had a similar mode or means of
11 operation for criminal activity.

12 Q: And obviously as the gang investigator from 2007 until
13 2010, I would assume that you had a -- a large number of
14 chances to investigate gang activity in Sumter County?

15 A: I did. Again, as the cases were assigned, the road
16 officer may or may not have been aware at the time that it
17 had a gang -- gang tie to it. Oftentimes, we investigated
18 cases that the individual themselves was a gang member who
19 committed a crime. Sometimes we investigated cases where a
20 group of individuals were involved, whether it be a fight
21 or an assault or a robbery or a shooting. So it -- it just
22 depended upon what was going on. We would have the
23 opportunity to investigate quite a number of cases
24 involving criminal gang activity.

25 Q: And currently in your role from 2010 to 2013, even

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 though -- although you're the senior investigator, you say
2 you still -- any case that has gang ties is most likely
3 coming to you; is that correct?

4 A: That's correct.

5 Q: Okay. Have you been keeping up with literature and,
6 you know, documentations or publications that come out
7 about gang activity? I mean do you keep yourself current?

8 A: Yes. I try to keep on top of it. I still have a good
9 working relationship with the State Law Enforcement
10 Division. Agent Mark Berube, Agent Nicole Bryan, and some
11 of the others there I still keep in contact with. I still
12 have some associates that work in other jurisdictions that
13 I try to stay in contact with to keep up on what's going
14 on. I try to keep them abreast as best I can as to what's
15 going on in Sumter County, especially in the city. But I
16 try to stay on top of it. Although it's not particularly
17 assigned my full-time duties, but I try to give it the best
18 I can to try to stay on top of what's going on now.

19 Q: Are you associated still with any of these
20 memberships? Obviously, you were explaining that the South
21 Carolina Gang Association, the East Coast Gang Association
22 put on various trainings. Were you ever a member of those?

23 A: Yes, I was. I was a member of both of those.

24 Q: All right. Are you still currently a member?

25 A: I do not believe we're -- I do not believe we paid the

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 to -- to pinpoint, but probably in excess of a hundred over
2 -- over the years.

3 Q: And how many gang members have you actually sat down
4 with do you think? Estimate for us.

5 A: Probably in excess of a hundred as well just in the
6 course of conducting investigations and interviewing
7 people.

8 Q: Have you ever testified in court about your
9 involvement in these gang-related cases?

10 A: I have, but not to the -- I've testified about the
11 criminal activity itself, but not necessarily the ---

12 Q: The overall gang ---

13 A: --- the overall gang aspect of it.

14 MR. GOINGS: Your Honor, at this time I would like to
15 introduce Detective Lyons as an expert in criminal gang
16 investigations.

17 THE COURT: Any objections?

18 MR. KENT: Yes, sir, Judge. Do you want to hear from
19 me now?

20 THE COURT: Sure.

21 MR. KENT: Judge, I know Investigator Lyons very, very
22 well, but to say that he's an expert in this field would be
23 a bit of a stretch. He hasn't testified at all, as he just
24 testified, and has never been qualified as an expert.

25 Additionally, Judge, his qualifications, if anything, were

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 three years ago. As he just testified, he hasn't dealt
2 with this gang information, he hasn't attended any current
3 CLEs, if you will, or anything that would make him
4 currently qualified as an expert in gang activity.

5 THE COURT: All right. I'm going to overrule your
6 objection. You may continue.

7 MR. GOINGS: Thank you, Your Honor.

8 Q: Detective Lyons, are you familiar with a gang known as
9 135 Piru?

10 A: I am.

11 Q: And where is that gang operating currently?

12 A: It's operating here in Sumter County, as well as eight
13 other counties in the state of South Carolina, as well as
14 North Carolina, Georgia, and up the east coast into New
15 Jersey.

16 Q: And has it -- when did you become involved in
17 investigating 135?

18 A: On March 22nd, the night Mr. Adrian Davis was killed is
19 the night we came into I guess per se contact with 135
20 Piru. The beginning of that investigation was as the -- as
21 the result of Mr. Adrian Davis' death.

22 Q: And that started this investigation that eventually
23 led to these charges and why we're here today; is that
24 correct?

25 A: That is correct.

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 Q: Now, can you approximate for the jury just in Sumter
2 how many members of 135 there are?

3 A: Let me refer to my notes. I believe -- I believe I
4 have a number here on this sheet of paper. Approximately
5 sixteen that have been identified.

6 Q: That have been identified? And how did you identify
7 these individuals?

8 A: Many -- many of these individuals were identified
9 through self-admission and as a result of that self-
10 admission, many of the other members were identified
11 through their involvement in this case, as well as through
12 the use of technology, computers, Facebook, stuff that we
13 looked up and were able to gather intel regarding these
14 members that came to us and admitted to being involved in
15 it. We took that information; we then went out and we
16 actually identified -- identified several other and
17 interviewed them, those that were not actually involved in
18 this incident that night.

19 Q: And obviously, it's probably self-explanatory, but
20 self-admission is basically where you sit down with them
21 and they tell you, hey ---

22 A: I'm a member of the gang.

23 Q: --- I'm a member of the gang?

24 A: Yes.

25 Q: Based on your investigation, did you learn the

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 organizational system or ranks of -- of 135?

2 A: I did. I learned that for here in Sumter County
3 especially Mickey Johnson, AKA Bless, is the lieutenant.
4 For lack of better terms, he is the person in charge of
5 Sumter County. And underneath him was his second-in-
6 command, his sergeant so to speak, Garnett Davis.

7 Q: Did you learn anything else about the rank structure
8 of 135 Piru?

9 A: That as a result of Mickey Johnson being named
10 lieutenant, that had to come from a higher-up here in South
11 Carolina. James Pikard out of Columbia, South Carolina,
12 who goes by the nickname of Cash, is in charge of the state
13 of South Carolina.

14 Q: Does he have a rank?

15 A: He is the I guess OG of South Carolina, so to speak.

16 Q: When you say OG, what is that?

17 A: Original gangster.

18 Q: And does James Pikard have someone who is higher up
19 than him?

20 A: He does. He was -- he was given that rank by DaShaun
21 Morris, who goes by the nickname of Jiwe, who is the per se
22 founder of Piru 135 here on the east coast.

23 Q: And based on your investigation, where is Jiwe
24 located?

25 A: In New Jersey.

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 Q: How were members initiated into 135 in Sumter?

2 A: They are jumped in or beat in, as you would call it.
3 They are selected, approved by Mickey Johnson. If he okays
4 them to be a part of that group, to be a part of their
5 gang, then that individual is beat in. They have to go
6 through a process of being beat in by other members that
7 Mickey Johnson would assign to beat in -- participate in
8 the beat-ins lasting twenty-one seconds.

9 Q: And how would they -- well, what is knowledge? Can
10 you explain that to the jury?

11 A: It's -- I guess it's much like reading -- reading a
12 book. They -- they are required to learn certain things.
13 It's kind of like going to school and you have to learn A,
14 B and C before you can get to D. Their knowledge
15 oftentimes revolves around information that's been handed
16 down over the years through generations regarding where
17 they originated from. They use certain slang terms to
18 indicate codes and, you know, they have their way of
19 talking that's different than carrying on a normal
20 conversation. They have to learn all this knowledge. If
21 they don't learn the knowledge, they can be punished as
22 well. They're giving -- they're given information that
23 they must know and be able to recite.

24 Q: Does this information also include how -- not only
25 exactly how -- well, let me ask you this first. What type

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 of gang is 135 Piru? Is it Blood? Crip? Folk Nation?

2 What?

3 A: It is a Blood gang.

4 Q: And it generates its roots from where? Obviously, you
5 testified it's operating in the east coast now. Where did
6 it generate its roots from?

7 A: It originated on the west coast in the early 1970s.

8 Q: And is that part of the knowledge that these
9 particular members once they're initiated has to learn?

10 A: That is correct. They -- they have to realize where
11 their group came from and how their leader Jiwe, DaShaun
12 Morris up in New Jersey, how and where he got permission
13 from to start Piru on the east coast. This particular 135
14 -- 135 Piru.

15 Q: What is -- what is a flag?

16 A: It would be much like a bandanna, so to speak.
17 Different -- they come in different colors, but it would be
18 a bandanna.

19 Q: In your investigations on criminal gangs just in
20 general, is it common to -- for individuals to flag
21 themselves as a particular gang?

22 A: That is correct. Oftentimes, you'll see the Blood
23 gang members wearing red, burgundy, green. Oftentimes, you
24 see Crip members wearing blue, sometimes black. Folk gang,
25 black. It just depends on what color they have

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 particularly adopted, especially if it's not some -- not a
2 nationally recognized group. Some of our local street
3 gangs, for lack of better terms, are unorganized and they
4 can kind of get things confused, so to speak, but the
5 national groups, Piru 135, their colors are burgundy, red,
6 and green.

7 Q: And that goes to my next question. This is not a
8 typical neighborhood grew up together type gang; is it?

9 A: No, it's not. Our -- our -- our typical neighborhood,
10 as you were saying growing up, living in the same
11 neighborhood, going to the same school together, those guys
12 are nowhere near as organized as this. In fact, they're
13 very loosely organized. Oftentimes, they don't have a true
14 rank structure. While somebody may call themselves as being
15 in charge, but they don't truly have someone to answer to.
16 Whereas, this group here is -- is a national group. It's
17 not just here in Sumter, South Carolina. Cases have been
18 investigated in our other jurisdictions within the state,
19 as well as the east coast involvement in this group.

20 MR. GOINGS: I beg the Court's indulgence.

21 Q: Detective Lyons, I'm going to ask you to take a look
22 at State's Exhibit 1 and 2.

23 (Whereupon, two color photographs are presented to the
24 witness for review.)

25 A: Yes, sir.

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 Q: Do you recognize the individuals in that photo?

2 A: Yes.

3 MR. GOINGS: Your Honor, at this time I would like to
4 publish 1 and 2 to the jury and also submit it into
5 evidence.

6 Q: Well, let me ask you. What's -- what's detailed in
7 the pictures?

8 A: There's two separate pictures. One has five
9 individuals in it; the other has more than a dozen or so
10 individuals in it. These are members of 135 Piru that have
11 been identified through the use of some self-admission
12 because some of the members you have have self-admitted,
13 but as well as through interviews with other gang members.
14 These guys as well, some of these guys have spoken and have
15 been shown these photographs and identified the members in
16 each one of these as being gang members of 135 Piru.

17 Q: All right. So you -- you were able to identify each
18 of the members depicted in one of the two photographs and
19 they are either members of 135 or ---

20 A: Associates.

21 Q: --- associates; is that correct?

22 A: Correct.

23 MR. GOINGS: Your Honor, at this time, I would like to
24 submit State's 1 and 2 into evidence and also publish it to
25 the jury and have Mr. Lyons identify the individuals in the

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 pictures.

2 THE COURT: Any objections?

3 MR. KENT: Subject to my original pre-trial objection
4 covered under that umbrella, as well as the testimony of
5 today.

6 THE COURT: State's 1 and 2 are admitted into
7 evidence.

8 MR. GOINGS: Thank you. Your Honor, I don't know if
9 this is actually turned on. Well, I know this is. How
10 does this work?

11 (Whereupon, the projector is tested, but does not
12 function properly.)

13 MR. GOINGS: We'll just do it like this for right now.

14 Q: This first picture, State's 2 ---

15 THE COURT: Why don't you go ahead and step down in
16 front of the jury where they can see you?

17 (Whereupon, the witness complies.)

18 Q: Who are the members? There's five individuals,
19 correct, in this picture?

20 A: Correct.

21 Q: Okay. And who are the members or people in that
22 particular picture?

23 A: I'll start with the gentleman here wearing the red
24 hoodie holding the P -- the hat with the P on it. That
25 gentleman is the defendant sitting over there, Mickey

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 Johnson. That would be him.. This gentleman sitting here
2 with the white jersey with the number 90 -- I'm sorry.
3 Number -- I believe it says 32. It's kind of crooked, but
4 anyhow, this is James Pikard, Cash, the leader of the South
5 Carolina group. The individual standing beside him in the
6 black is DaShaun Morris, AKA Jiwe, the leader of 1tre5 Piru
7 on the east coast. This is another member, Clifton
8 Johnson. He's the gentleman in the white shirt. He's from
9 the Florence group, the Florence faction of 1tre5 Piru. He
10 is one of the leaders of the Florence group.

11 Q: So again, Mickey Johnson and who else?

12 A: Mickey Johnson, Clifton Johnson, James Pikard, and
13 DaShaun Morris.

14 Q: And then the Florence leader?

15 A: And the Florence leader. And if you'll notice, each
16 of them -- those three are standing and if you'll look
17 closely at their arms, they're all making the letter P for
18 Piru, the three that are standing.

19 Q: Any other hand signals in that particular picture that
20 you can identify?

21 A: Yeah. Mr. Johnson, who is standing up here in the
22 burgundy shirt, is also making a P with his left -- with
23 his left hand.

24 Q: You can stay right here because we're going to look at
25 the other picture. State's 1, what's depicted there?

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 A: Again, also I think that was taken at [REDACTED]
2 Apartments. I'm sorry. You may have saw it on the sign.
3 This photograph here was also taken inside [REDACTED]
4 Apartments. In this picture here, this is a little more
5 larger group of the individuals. Again in this picture as
6 well, this is the defendant, Mickey Johnson, AKA Bless,
7 there in the middle with the P on his hat. Sitting in
8 front of him, again is DaShaun Morris, the east coast
9 leader of 1tre5 Piru. Sitting beside him again is James
10 Pikard, AKA Cash, the leader of South Carolina. This
11 gentleman right here, his name is David Martin. He's also
12 a member of 1tre5 Piru. This gentleman right here in the
13 middle is Garnett Davis. He's also a member. This
14 gentleman here with the burgundy flag over his face is
15 Rasheed Brandon. The gentleman here in the black is
16 William Morgan holding the pistol. William Morgan is not a
17 member of 1tre5. He is not a member of that group, but he
18 is a very close associate of the defendant, Mickey Johnson.
19 Q: Is he also affiliated with Blood gangs?
20 A: He is. He is, but he's not in 1tre5 Piru. The
21 individual with the green hat on with the P in the back is
22 Lashae Badger. She is also a member of 135 Piru. Again,
23 that gentleman there is from the Florence area, the same
24 gentleman in this picture in the first photograph I showed
25 you. There are several others that are hard to recognize

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 just as a result of the photograph quality and the way
2 they're pictured in here, but according to the individuals
3 we spoke to about this photograph, everyone pictured in it
4 other than William Morgan is a member of 135 Piru and this
5 was taken in [REDACTED] Apartments along with the first
6 picture.

7 Q: Let's talk about the significance. Obviously, you've
8 indicated -- what color was the flag that was used by 135
9 here in Sumter?

10 A: They use a red and a burgundy flag. In this case,
11 this flag -- and it may be because of the color of the
12 paper -- appears to be red and burgundy colors. It's hard
13 to pinpoint an exact color on that flag.

14 Q: Based on your investigation, what -- what colors would
15 they -- would they wear as representing their gang?

16 A: Red.

17 Q: And is that the significance of what they're wearing?
18 The hats and that type of thing?

19 A: Yes. The hat, the Philadelphia Phillies hat has the P
20 on it for Piru.

21 Q: What about the hand signals that are ---

22 A: They're throwing a 135 and also east side.

23 Q: And when you -- can you identify -- what is this
24 particular hand signal that the individual in the white
25 shirt is throwing?

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 Q: Let's go to the incident that March of 2011. Now, you
2 were not the gang investigator at that time; is that right?

3 A: No. On March 22nd, 2011, I was the senior detective
4 over the violent crimes division.

5 Q: But as you testified, you still handled the gang
6 stuff?

7 A: Correct.

8 Q: And before we get any further, did you ask for
9 assistance from any other police departments or law
10 enforcement agencies to help in investigating this case?

11 A: I did. We contacted State Law Enforcement Division
12 and asked for their assistance. We initially contacted the
13 FBI, but they were unable to take the case because of they
14 had another case that was already in the works. So we
15 contacted SLED, Special Agent Mark Berube, because he had
16 worked down here with me over the years. We contacted them
17 and asked for their assistance in the case.

18 Q: So March 22nd, 2011, were you on duty that particular
19 evening?

20 A: Yes, I was.

21 Q: All right. And obviously, when did you first learn
22 about anything that was going over there at [REDACTED]
23 Apartments on that particular day?

24 A: If I can go back, as -- I was out working that night
25 as a result of a funeral that had occurred that day. We

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 were over in the Bowman Street area, which is maybe two
2 blocks from [REDACTED] Apartments. It's not very far.
3 It's within walking distance from one another. About a
4 week prior, a sixteen-year-old boy had been shot and killed
5 on Bowman Street in an unrelated incident, not related to
6 this, but we were out working that night because they had
7 had the funeral that day. A large crowd had gathered over
8 there and while we were working, the call came out for the
9 shots being fired in [REDACTED] Apartments that night.

10 As we got over there on scene, I was one of the first
11 officers to arrive on the scene. We discovered Mr. Davis
12 there in the living room area of the -- of the apartment
13 with a gunshot wound. We secured the scene and EMS was
14 called. As we began our investigation, we began talking to
15 residents within the apartment complex. It was only then
16 that we learned that some previous altercations had
17 occurred that very same day.

18 It was then that we learned that those altercations
19 revolved around some of those guys that were actually at
20 the -- over on Bowman Street where we were working after
21 the funeral. So in other words, the boys from -- that had
22 attended the funeral had actually gone into [REDACTED]
23 Apartments that afternoon and an altercation had occurred
24 between them and members of 135 to include the defendant,
25 Mickey Johnson.

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 come in to the apartment complex after that funeral that
2 afternoon.

3 Q: Now, you had testified that they had meetings for 135;
4 is that correct?

5 A: Correct.

6 Q: Was there a meeting going on that day?

7 A: Yes. They were over there working out.

8 Q: And based on your investigation, who called that
9 meeting?

10 A: The defendant, Mickey Johnson.

11 Q: Now, when you get on scene at the murder -- now, we're
12 going to switch gears and go to that night when you
13 actually arrived on the scene. Okay? What did you find
14 again?

15 A: Again, I was one of the first officers who arrived on
16 the scene and entered the residence. I found the victim,
17 Adrian Davis, suffering from a single gunshot. The
18 apartment was occupied by himself, Annesia Allen, and Ms.
19 Kanadja McConico. We got -- we had them exit the
20 apartment. EMS came in and attempted life-saving
21 techniques on Mr. Davis, but they were unsuccessful.

22 Q: I'll show you what's been marked State's 4 and 5. Can
23 you review those photographs?

24 A: Yes, sir.

25 Q: And what are those photographs of?

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

- 1 the general beginning of an investigation.
- 2 Q: Let's go back to the crime scene when you first got
3 there and physical evidence that was collected. Obviously,
4 you're not the crime scene guy that comes out there and
5 actually takes the photographs or collects any physical
6 evidence; is that right?
- 7 A: That's right.
- 8 Q: I mean y'all have a separate designated person for
9 that?
- 10 A: Correct.
- 11 Q: But as the case agent for this case, you know what is
12 collected and what's not collected; correct?
- 13 A: Correct.
- 14 Q: Was any significant tangible evidence collected from
15 the crime scene that night?
- 16 A: We did not collect any shell casings that night. I do
17 know that I believe they removed the door for evidentiary
18 purposes, and once Mr. Davis was taken to the hospital,
19 they actually recovered the bullet out of his clothing
20 there in the hospital.
- 21 Q: The fired bullet?
- 22 A: Yes, sir.
- 23 Q: Any weapons collected?
- 24 A: No. No weapons were collected.
- 25 Q: Has any weapons ever been matched in this case?

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 A: No, sir, it has not.

2 Q: As a part of your investigation, have y'all collected
3 any firearms from any individuals?

4 A: No, we have not.

5 Q: What about DNA or anything? Was there anything
6 substantially received from the crime scene that matched
7 anything in this case?

8 A: No, sir.

9 Q: And -- and I know you're not a DNA expert, but based
10 on your investigation, did the person who shot actually
11 enter the apartment?

12 A: No, he did not.

13 Q: And based on your investigation, was Mickey Johnson
14 even personally present at that front door?

15 A: No, he was not.

16 Q: Based on your investigation -- well, let me ask you
17 this way. You said you went and started interviewing
18 Annesia Allen and Kanadja McConico?

19 A: Correct.

20 Q: Those were the two individuals who were in the
21 apartment at the time of the shooting?

22 A: Correct.

23 Q: Okay. And you said you eventually learned about the
24 prior shooting that happened between 135 Piru and the
25 alleged Folk Nation gang through your investigation?

DETECTIVE BILLY LYONS - DIRECT EXAMINATION BY MR. GOINGS

1 A: That is correct.

2 Q: All right. What was your next step? Did you show any

3 photo lineups or develop a suspect or anybody?

4 A: We did. As a result of ---

5 Q: And I don't want to know who they picked out or what

6 they said.

7 A: Right.

8 Q: Just did you do that?

9 A: Yes, we did. We did -- we did end up showing a photo

10 lineup.

11 Q: To who?

12 A: To Ms. Annesia Allen.

13 Q: And based on your investigation and your interview

14 with Ms. Allen, what happened next?

15 A: A warrant was signed for Rasheed Brandon's arrest for

16 the murder of Adrian Davis.

17 Q: And were y'all able to locate Rasheed Brandon?

18 A: Eventually, we were.

19 Q: All right. Were other interviews conducted in your

20 investigation?

21 A: They were.

22 Q: Again, I don't want to know what they said, but as a

23 result of those interviews, did y'all make more arrests?

24 A: We did. Eventually, warrants were obtained for Bryant

25 Bradley, John Wesley Stamps, Garnett Davis, Mickey Johnson,

DETECTIVE BILLY LYONS - CROSS EXAMINATION BY MR. KENT

1 the course of your investigation. The course of your
2 investigation would be talking to witnesses?
3 A: Correct.
4 Q: And the witnesses would be co-defendants?
5 A: Some yes and some not.
6 Q: Some yes, some not, but -- well, let's break it up
7 into two parts. The gravamen of what we're talking about
8 is a murder?
9 A: Correct.
10 Q: And why a murder happened?
11 A: That is correct.
12 Q: And we can't beat around the bush. We're talking
13 about a murder and why a murder happened and the
14 allegations are that Mickey Johnson ordered somebody to
15 kill somebody?
16 A: Correct.
17 Q: The gravamen of that came from the co-defendants?
18 A: That is correct.
19 Q: So the extent of our "through our investigation" came
20 from people who were also charged with the same crimes that
21 Mr. Johnson is charged with?
22 A: Exactly.
23 Q: Okay. And those people that we're talking about --
24 and I think we keep hearing their names -- are William
25 Morgan, John Stamps, Rasheed Brandon, Bryant Bradley. Am I

DETECTIVE BILLY LYONS - CROSS EXAMINATION BY MR. KENT

- 1 missing anybody?
- 2 A: Garnett Davis.
- 3 Q: Garnett Davis. Okay. These are the individuals who
- 4 are also co-defendants who have also been charged who are
- 5 also looking at the same type of thing that Mr. Johnson is
- 6 looking at; correct?
- 7 A: Except for Mr. Morgan.
- 8 Q: Except for Mr. Morgan?
- 9 A: Correct.
- 10 Q: Okay. So these individuals are charged similarly with
- 11 the exception of Mr. Morgan, but they were charged --
- 12 charged that evening and they are the people who you keep
- 13 to referring to as "through my investigation" of the
- 14 murder, the alleged hit, the alleged "he ordered us to do
- 15 something?"
- 16 A: That is correct.
- 17 Q: Now, through the course of our investigation, we know
- 18 who the shooter is?
- 19 A: Correct.
- 20 Q: And through the course of our investigation, we know
- 21 it's not Mickey Johnson?
- 22 A: That is correct.
- 23 Q: No doubt about that, no question about that, nothing
- 24 of that nature?
- 25 A: Correct.

DETECTIVE BILLY LYONS - CROSS EXAMINATION BY MR. KENT

1 Q: Through the course of our investigation, we know who
2 the lookout man was?

3 A: That is correct.

4 Q: And we know that's not Mickey Johnson?

5 A: Correct.

6 Q: The lookout man who is John Stamps?

7 A: Correct.

8 Q: So he was looking out while our shooter, Rasheed
9 Brandon, went to a house and shot somebody; correct?

10 A: Correct.

11 Q: So we know those two people. And we know who the
12 getaway driver is; correct?

13 A: Correct.

14 Q: We know the getaway driver is not Mickey Johnson?

15 A: Correct.

16 Q: The getaway driver is Bryant Bradley; correct?

17 A: Correct.

18 Q: So we know those three things. Those are the facts
19 that we know. We know that for a fact and we know Mickey
20 Johnson was not there when those things happened. I mean
21 when someone was shot, individuals got in a car and drove
22 away. He was not there during that sequence of events?

23 A: Correct.

24 Q: Okay. So then we go to these individuals. Let's
25 start with these three people. They are the ones who help

DETECTIVE BILLY LYONS - CROSS EXAMINATION BY MR. KENT

- 1 Q: No sign of the murder weapon?
- 2 A: That is correct.
- 3 Q: Okay. And the extent of our case is based primarily
- 4 on the testimony of three individuals who were also charged
- 5 in this case, who were charged originally?
- 6 A: That and the other witnesses who were not charged.
- 7 Q: Who were not charged?
- 8 A: Right.
- 9 Q: But none of those witnesses could offer any
- 10 independent -- did they offer any evidence whatsoever about
- 11 the murder?
- 12 A: In relation to? I mean they offer evidence as to what
- 13 happened there on scene that night with the -- with the
- 14 shooting occurring. Do they know anything about the gang?
- 15 I don't think so, no. As far as witnesses, if you're
- 16 referring to outside of those who were charged, Ms. Allen
- 17 and the other female, no.
- 18 Q: As a result of the testimony of the three people that
- 19 we keep mentioning, the shooter, the getaway driver, and
- 20 the lookout, were they getting deals to testify?
- 21 A: They were given an opportunity to plead and I believe
- 22 ---
- 23 Q: Were they getting deals to testify?
- 24 A: Well, they were given a plea.
- 25 Q: They were given deals to testify?

DETECTIVE BILLY LYONS - CROSS EXAMINATION BY MR. KENT

1 A: They were given a plea ---

2 Q: All right. Well, let's go through that ---

3 A: --- in exchange for their testimony.

4 Q: --- since we're going to beat around the bush on it a
5 little bit. Was anyone's murder charge dismissed?

6 A: Yes.

7 Q: Somebody's murder charge was dismissed to get them to
8 testify against somebody who wasn't even there?

9 A: Correct.

10 MR. KENT: Thank you. That's all the questions I
11 have.

12 THE COURT: Redirect?

13 MR. GOINGS: Thank you, Your Honor, if it please the
14 Court.

15 REDIRECT EXAMINATION

16 BY MR. GOINGS:

17 Q: Detective Lyons, I want to clear some things up that
18 were brought since obviously we were talking about the
19 investigation and he asked you these. They're based on the
20 statements that were given by a certain individuals;
21 correct?

22 A: Correct.

23 Q: Specifically, I believe Rasheed Brandon, Bryant
24 Bradley, John Wesley Stamps, and William Morgan?

25 A: Correct.

ANNESIA ALLEN - DIRECT EXAMINATION BY MR. PAULING

- 1 A: Yes.
- 2 Q: And he says I don't have anything else to say?
- 3 A: Yeah.
- 4 Q: And then what happens?
- 5 A: They got up in each other's face. So that's when one
- 6 of the guys that was in my mouse, you know, him and along
- 7 with June's boyfriend, you know, he said ---
- 8 Q: Do you know who June's boyfriend is?
- 9 A: I can't remember his name.
- 10 Q: Okay.
- 11 A: But, you know, they told him, man, y'all go ahead and
- 12 get from in front of this lady's house, you know. We got
- 13 to stay out here. So one of the boys that was at June's
- 14 location, he put it out there like I don't give a F ---
- 15 Q: All right. Let me -- let me ask you this. You said
- 16 in front of this lady's house. Which -- who were they
- 17 speaking of?
- 18 A: Mine.
- 19 Q: In front of Apartment 50?
- 20 A: Yes.
- 21 Q: So now because they've come around the side of your
- 22 house, they're in front of your house?
- 23 A: In front of my door, yes.
- 24 Q: Okay. And after all that is stated, where did they
- 25 go?

ANNESIA ALLEN - DIRECT EXAMINATION BY MR. PAULING

1 A: The boys -- you know, the boys left. They was like
2 okay, we can respect that, and they left. They got in
3 their vehicle and they left. The boys that was at June's
4 house, they went back across the street and started doing
5 what they was doing.

6 Q: Okay. About what time of the day was this when all
7 this was occurring?

8 A: Three -- three -- four, something up in-between that
9 area.

10 Q: Was it still light out?

11 A: Yeah. It was still day.

12 Q: Okay. And did you have any conversation with the
13 individuals or this something you're -- you're just
14 listening to at this point?

15 A: No. I didn't have no conversation with neither side.

16 Q: Okay. And then you go back into your apartment?

17 A: Yes. I go back into my apartment.

18 Q: Now, you know, I asked you, Ms. Allen, what you were
19 doing that particular day or what you planned on doing that
20 day. As far as Dre is concerned, was he there at -- there
21 at that particular time?

22 A: No. He was at work.

23 Q: Okay. Do you remember about what time he would have
24 gone to work that day?

25 A: He went to work about nine -- nine that morning

ANNESIA ALLEN - DIRECT EXAMINATION BY MR. PAULING

1 because I think he had to open up at ten. So I think it
2 was about nine when he left that morning.

3 Q: Okay. And now, after the individuals left, the
4 individuals who were wearing black and the boys who were at
5 June's apartment, after they separated, the other boys got
6 back in their car and left, did you see those individuals
7 again?

8 A: The ---

9 Q: The ones who had -- who had left?

10 A: Yes.

11 Q: Who were dressed in black?

12 A: Yes, I did.

13 Q: Okay. About how long after this particular
14 altercation -- verbal altercation happened did that occur?

15 A: About twenty -- between twenty and twenty-five, thirty
16 minutes.

17 Q: Okay. And if you can, describe for the jury -- and
18 you're still in your apartment?

19 A: Yes. I'm still in my apartment. The door was still
20 open.

21 Q: Tell the jury what happened when they returned?

22 A: They returned and -- they returned and there was like
23 two, three carloads. They didn't pull up in front of my
24 door. They pulled up like two, three complexes -- two to
25 three complexes down from my unit and they got out the car

ANNESIA ALLEN - DIRECT EXAMINATION BY MR. PAULING

- 1 A: He -- he went in the house. Where Hope stay, I could
2 see who pulls up to my house in front of my house from her
3 house. So I saw him when he pulled up. So he called me
4 and asked me was I okay and I was like, yeah, some -- yeah,
5 I'm good. I said, I'm right around here to Hope's house.
6 He said, yeah, I just wanted you to know I'm home. I said,
7 yeah, I saw you when you pulled up. So he asked me who was
8 shooting and I was like I don't know who that is. I said
9 all I know is they was in front of the house with it.
- 10 Q: And did you leave Hope's house and then -- and then
11 eventually -- and come home?
- 12 A: Yes, I did.
- 13 Q: And once you got back home, so you and Dre -- was
14 anybody else there with you?
- 15 A: There was a girl that stayed down a little further
16 down from Hope. Her name is Tonice.
- 17 Q: Okay.
- 18 A: She was -- she came down to the house, too.
- 19 Q: And with Tonice, was she just hanging out with you all
20 or what?
- 21 A: Well, actually, she had cooked on the grill that day.
- 22 Q: Okay.
- 23 A: And I had told her to bring me some shrimps.
- 24 Q: Okay.
- 25 A: So she had brought me a plate down to Hope's house and

ANNESIA ALLEN - DIRECT EXAMINATION BY MR. PAULING

1 you can take a seat. Judge, can we just have a moment?

2 THE COURT: Yes, sir.

3 MR. PAULING: Ms. Allen, just take your time. Just
4 take a moment.

5 (Whereupon, there is a pause in the proceedings.)

6 Q: Okay?

7 A: He knocked on the screen door.

8 Q: And were you expecting anybody at that time?

9 A: No, no, no. It was just odd that somebody would knock
10 on the screen door so we still didn't think nothing of it.
11 So I opened the main door and he was standing at the screen
12 door and I noticed he was standing at an angle with one
13 hand behind his back, but I still didn't pay him no
14 attention. And he just looked at me in my face and said,
15 hey, how you doing.

16 Q: So he greeted you?

17 A: Yeah, he greeted me. And I said, hey, how are you,
18 and before I got through with that he just came from around
19 his back and aimed at Dre and shot one time and I slammed
20 the door and locked it. And Dre fell out the chair and he
21 was on his stomach and he just started using his arms and
22 he just started scooting and he just stopped and he was
23 just looking at me and I got on the phone with 9-1-1 and I
24 told them to send somebody, my boyfriend just been shot.
25 And I'm telling him, baby, hold on, hold on, they're

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 Q: --- and she can't take down head nods and shakes. So
2 you need yes and no and talk to her if you can. Okay?

3 A: Yes, I do.

4 Q: All right. I'm going to ask again just so we make
5 sure. Do you remember giving a statement to law
6 enforcement?

7 A: Yes, I do.

8 Q: Okay. And you gave a detailed statement to law
9 enforcement telling pretty much everything you remember
10 happening that day?

11 A: Yes, I did.

12 Q: Okay. When you were asking a question -- the
13 prosecutor was asking you something, had you recognized
14 that individual who shot your man earlier, and you started
15 to say something like he made it very clear. I saw him
16 earlier; he made it very clear. What were you about to say
17 before you were cut off?

18 A: He got in the middle of the street and yelled ain't
19 nobody going to say nothing, ain't nobody going to say a
20 mother F-ing thing. I'll murder me a bitch and all of
21 that.

22 Q: Okay. And that was the person who came to your house
23 later that same night?

24 A: Yes.

25 Q: So earlier in the daytime, you heard this person who

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 Q: Thank you so much.

2 MR. KENT: Judge, I have a matter that I need to take
3 up without getting up there if I can avoid that.

4 THE COURT: Members of the jury, if you would, step
5 into the jury room for just a moment. Do not discuss the
6 case.

7 (Whereupon, the jury exits the courtroom at 3:29 p.m.)

8 THE COURT: All right. Mr. Kent?

9 MR. KENT: Thank you, Judge. The line-up that I'm
10 hearing that -- and it may be okay, but the line-up that
11 I'm hearing about or whatever they want to call it, first
12 time I'm hearing about it, of course, is through this
13 witness. I don't think she's motivated to lie or anything
14 of that nature, but in the necessity of protecting the
15 record, I need to look deeper into it because I've never
16 been told that she was shown any form of a line-up and it
17 sounds like she wasn't shown a line-up. It sounds like she
18 was shown one picture and told by them who was in the
19 picture, which is clearly inadmissible because it might be
20 a question based upon that now if that's how she was able
21 to identify Mr. Johnson today. It's not a permissible
22 line-up. It's not done the proper way.

23 More important, this is the first time I'm ever
24 hearing about it. It's nowhere in the statement. It's
25 nowhere in the discovery that she was shown any type of

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 identification and asked who are these individuals who were
2 out there that day. Can you identify them? None of that
3 has ever been turned over. I think it's discoverable
4 because at the very minimum I wouldn't have asked the
5 question because I would have known about it.

6 And the reason I bring it up, Judge, is because when
7 you go through her statement -- and I believe she's telling
8 the complete truth. I have nothing to challenge her
9 veracity, but when you're preparing for the case and I went
10 through her statement for details, she never identified the
11 individual who pulled the gun out earlier that day. I know
12 we've admitted to it, but one of -- the problem is when she
13 gets on the stand now and she talks basically about a line-
14 up, she basically is talking about a tainted line-up with
15 the State showing one piece of paper and saying identify
16 the people who were out there that day.

17 THE COURT: All right. Let me hear from the State.

18 MR. PAULING: Your Honor, it's the State's position
19 that this indeed was not a photo line-up. She was merely
20 -- she said she was shown a picture. Did she recognize any
21 of those individuals? She recognized those individuals
22 because she had seen them over at June's apartment, and as
23 far as it relates to this particular incident, she
24 indicates she saw that person and that's what that
25 particular person did. But this wasn't a photo line-up,

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 even wherein in the instance where she identified who the
2 shooter was. This was not that type of -- this was not a
3 photo line-up.

4 THE COURT: All right.

5 MR. PAULING: She was simply asked if she recognized
6 any of those individuals and she answered that she
7 recognized them from being over at June's apartment from
8 the incident that particular day.

9 THE COURT: All right.

10 MR. KENT: Judge, my problem is I would have been able
11 -- I would have made a motion to probably suppress that
12 because if they took that -- let's say they took that
13 [REDACTED] gang picture and used that as a photo line-up.
14 It's still impermissible. You either do a line-up or you
15 don't do a line-up. It's just ---

16 THE COURT: It wasn't a line-up. It was just a
17 picture.

18 MR. KENT: Which would make it akin to a show of ID,
19 which is -- our courts have ruled time and time again are
20 impermissible. The State can't have a show of ID. If they
21 would have taken her and had him in a perp walk and had him
22 with handcuffs, we'd have a problem with that also. They
23 take one picture of a group of individuals all dressed in
24 red around [REDACTED] Apartments who are a gang in nature
25 and say, are these individuals the people who were out

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 there. That's suggestive in and of itself.

2 Whether she knows them or whether they don't, this is
3 something I should have been told about. To find out while
4 the witness is on the stand that there was some type of --
5 the officers clearly showed her a picture. One, where did
6 they get the picture from? What is the picture? I need to
7 see the picture, see if the picture is suggestive in
8 nature. You can't just say, well, it wasn't a show-up. We
9 don't have to tell you about it. You still have to tell
10 you about it. You still have to tell me about it. It's
11 still discoverable.

12 THE COURT: Well, the picture is into evidence.

13 MR. KENT: Well, I don't know if that's the picture.
14 I mean I'm just making an assumption. I know nothing about
15 it.

16 THE COURT: All right. Let me hear from you.

17 MR. PAULING: Your Honor, again, this is not a photo
18 line-up. It's not even a show-up line-up. I mean it's not
19 even a show-up. You know, he mentions the perp walk. This
20 is -- this is not that -- that situation, Your Honor, and
21 she mentioned it here today in response to his question.
22 No, it wasn't in her -- her statement, but there's wasn't
23 -- there wasn't anything as far as it being a photo line-
24 up. Your Honor, I mean this is not -- it's not a photo
25 line-up. She was simply asked did she know any of those

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 individuals. She explained she did and -- and then she
2 further gave information as to how she knew them.

3 But it wasn't a question of was this person out here,
4 show me the person who pulled the gun, show me the person
5 who cocked the gun, show me the person who took the gun
6 away and then fired at the other group. This was not a
7 photo line-up.

8 THE COURT: All right.

9 MR. KENT: Judge, I think the State misses the point.
10 I know it's not a photo line-up. That's my problem. The
11 problem is some picture was shown to this witness that I
12 haven't been told about.

13 THE COURT: Well, the witness is out of the jury room.
14 Why don't we ask her some questions and find out which
15 picture we're talking about?

16 PROFFERED CROSS EXAMINATION

17 BY MR. KENT:

18 Q: Well, do you -- can you describe the picture that they
19 -- they showed you?

20 A: It's one of the same pictures you done seen with all
21 about twelve -- eleven or twelve of them on it.

22 THE COURT: They're up here on the counter.

23 Q: Is this the picture you were shown that day? And I'm
24 showing you what's been pre-marked as State's Exhibit
25 Number 1 for the record. The individuals -- the picture

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 that was introduced through Investigator Lyons. Is that
2 the picture you were shown?

3 A: Yes. This is the picture.

4 Q: Okay. And, Ms. Allen, do you know who showed you the
5 picture? And I know I keep belaboring the point, but just
6 for the record if you could tell me as much detail as you
7 can ---

8 A: I -- I can't remember which -- which detective showed
9 me this picture, but ---

10 Q: When was -- was it shown the night of the shooting?

11 A: No.

12 Q: Okay.

13 A: No. It wasn't shown the night of the shooting.

14 Q: When was it shown to you?

15 A: The next day, the day after the -- Tuesday? Either
16 that Wednesday or that Thursday.

17 Q: Yes, ma'am. And you're not in trouble. We're just
18 trying to get -- trying to figure stuff out.

19 A: Well, I have no reason to be in trouble.

20 Q: I know. So a couple of days after, you were shown
21 that picture. We have no clue what the -- who the officer
22 was or anything of that nature?

23 A: It was -- I think it was the female detective that was
24 with Detective Lyons. I'm not sure. I can't remember her
25 name, but if I'm not mistaken, I think it was her that

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 showed me this photo.

2 Q: Okay. Tell me ---

3 A: The only thing, she had it on a computer.

4 Q: She had it on a computer and showed it to you?

5 A: Yes.

6 Q: Anything that you can remember about what they asked

7 you or what they told you about this picture? Did they say

8 this is a gang picture? Anything that they could tell you

9 at all?

10 A: No. She just asked me did I recognize any individuals

11 in the photo.

12 Q: Okay. And tell me exactly what you said to her at

13 that point in time?

14 A: I told her yeah.

15 Q: And that's all you said is yes or what did you do

16 then?

17 A: I pointed them out.

18 Q: And tell me who you pointed out and what you said?

19 A: It's blurry on here. Like I said, it was better on

20 the computer.

21 Q: Okay. Do you remember what you said to her when you

22 were picking the individuals out on the computer? And if

23 you don't remember, you don't remember. I'm not trying to

24 put words in your mouth. I'm trying to see what you

25 remember.

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 A: I showed her who pulled out the gun. I showed her who
2 grabbed the gun. I showed her who I saw that I could
3 recognize that was out there in the complex.

4 Q: Okay. And so that was all that was said to her? Did
5 you give a statement or anything to that effect?

6 A: No.

7 Q: Or you just told her that and that was the extent of
8 it?

9 A: Yeah.

10 Q: Okay.

11 THE COURT: Solves your problem?

12 MR. KENT: No, sir, Judge. I think that creates more
13 of a problem.

14 THE COURT: Well, it's already into evidence.

15 MR. KENT: I think ---

16 THE COURT: You didn't object to it. I assumed it was
17 provided to you in the discovery; is that right?

18 MR. PAULING: It was, yes.

19 MR. KENT: Yeah.

20 THE COURT: State's Number 1.

21 MR. KENT: The problem is, of course, it's provided in
22 discovery, but there's -- I mean I guess I'd like to put
23 Investigator Lyons on the stand now and ask him about what
24 was shown. This is something that should have been
25 disclosed because then I probably would have made an

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 objection to the proper foundation.

2 THE COURT: She did not give a written statement to
3 that effect. She simply was asked the question and she
4 identified them based on the picture that is already in
5 evidence without objection.

6 MR. KENT: And I guess, Judge, that would be my
7 problem. Had I know about this, known about the line-up,
8 known about this situation ---

9 THE COURT: It wasn't a line-up.

10 MR. KENT: I know. I think it's a line-up. I
11 understand your concern, Judge, but in my position, that at
12 the very minimum it violates the line-up provision. What
13 it is to me is a show-up, which they take this to her, a
14 picture of the gang -- individuals on a gang on the
15 computer, point it to her and say, who was involved and who
16 was out there. That's improper based upon any type of
17 line-up case law that we look at. Judge, at the minimum
18 had I known about this, I would have been allowed to
19 challenge it pre-trial and try to suppress that statement
20 as well.

21 THE COURT: Well, if it was not in writing, it was not
22 a statement. Nobody knew about it until you asked about it
23 in this trial.

24 MR. KENT: I will respectfully disagree, Judge, and
25 ---

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 THE COURT: Would you like to reply to that?

2 MR. PAULING: Your Honor, all that's been said still
3 at this point, there was no indication that she identified
4 who these people were or knew their names, and from her
5 testimony, they didn't characterize this as here's this
6 gang photo, here's this gang operating in Friendship
7 Apartments, can you pick out the members of this gang who
8 were involved in this particular shooting. None of that
9 happened. They showed her a picture and asked her if she
10 recognized any of the individuals.

11 THE COURT: All right. Hold on one second.

12 (Whereupon, there is a pause in the proceedings.)

13 THE COURT: I'm going to deny your motion.

14 MR. KENT: Thank you, Judge.

15 THE COURT: Go ahead and proceed and bring the jury
16 back out.

17 THE BAILIFF: Certainly.

18 (Whereupon, the jury enters the courtroom at 3:39
19 p.m.)

20 THE CLERK: Your Honor, all the jurors are present in
21 the courtroom.

22 THE COURT: Thank you. You may continue.

23 CONTINUED CROSS EXAMINATION

24 BY MR. KENT:

25 Q: Ms. Allen, I'm almost done. I just want to make sure

ANNESIA ALLEN - CROSS EXAMINATION BY MR. KENT

1 I'm clear. The statement that was uttered by the person
2 who shot from the door, what was that statement again?
3 What did he say to that person who made it clear? What did
4 he make clear to everybody out there?
5 A: He said, anybody say something, he'll murder somebody.
6 Q: Okay. And then that's the same person who came to
7 your door later that evening ---
8 A: Yes.
9 Q: --- and killed your boyfriend?
10 A: Yes.
11 Q: When he made that statement, did you see anybody
12 around him talking to him or anything like that?
13 A: Yeah. They told him to come on, get in the car.
14 Well, June hollered let's go, get in the car, they about to
15 call the police, the police going to be out here, get in
16 the car. So that's when I guess she put all that she could
17 in the car and a few of them stayed behind and he was one
18 of them.
19 MR. KENT: Okay. Thank you so much, Ms. Allen. I
20 appreciate it.
21 THE COURT: Redirect?
22 MR. PAULING: Just briefly, Your Honor.
23 REDIRECT EXAMINATION
24 BY MR. PAULING:
25 Q: Ms. Allen, that last statement you made about what the

KANADJA MCCONICO - DIRECT EXAMINATION BY MR. GOINGS

1 A: It's blue, a blue shirt.

2 MR. GOINGS: Your Honor, we would like the record to
3 reflect that the witness has identified the defendant as
4 Bless.

5 Q: Did you hear what Bless was saying to the other boys?

6 A: No. He took the -- one of the young boys around the
7 side of the apartment. I don't know what the confrontation
8 was about on the side. None of us knew. It was just him
9 and -- it was just those two that stepped off to the side,
10 and when they came back from around, they was like arguing
11 a little bit. They was having words. So my boyfriend was
12 like, look, y'all -- we don't need this in front of Neecy's
13 apartment. She got to live here. Y'all need to take that
14 somewhere else.

15 Q: All right.

16 A: So ---

17 Q: And who was arguing when they came back around? Both
18 of them going back and forth to each other?

19 A: Yes. They was going back and forth to each other.

20 Q: Did you hear what they were saying?

21 A: The young boy was like, I don't got time for this. I
22 just come from my people's funeral. I don't got time for
23 this. And a little couple of cuss words flew out and
24 that's when my boyfriend stepped in.

25 Q: All right. Do you remember Bless saying anything back

KANADJA MCCONICO - DIRECT EXAMINATION BY MR. GOINGS

1 to him while he was saying that, that he ain't got time for
2 this?

3 A: I don't remember what he was saying. We was just like
4 confused and I wasn't really paying -- because I had my
5 kids, I was just trying to get out of the way, so.

6 Q: Okay. What happens next?

7 A: Bless and his crew walked back across the street and
8 the young guys left and ---

9 Q: All right. Did y'all go back in the house or did
10 y'all stay outside?

11 A: Yes. We went back in the house. We went back inside
12 and maybe like an hour and a half later, the young boys
13 came back, but they came back in a different car. It was a
14 truck, like a green Trailblazer truck.

15 Q: How many boys came back?

16 A: Maybe about six.

17 Q: Was it the same exact boys that ---

18 A: No. They came back with a couple of more other guys
19 with them. They came back with a couple of different guys
20 and then the other ones that was in the Honda earlier, I
21 think they let two of them out the car, but the other ones
22 were still in there. So altogether it was maybe like six
23 of them.

24 Q: Okay.

25 A: And the young ---

KANADJA MCCONICO - DIRECT EXAMINATION BY MR. GOINGS

1 Q: So two vehicles come back?

2 A: Yes. The Honda came back, but it didn't pull all the
3 way up. It just pull in the front and the truck pulled
4 like two apartments down from Neecy's apartment.

5 Q: Going towards where this individual named -- or Bless
6 was with the guys he was hanging out with or back?

7 A: It just stopped.

8 Q: Okay.

9 A: They just stopped right there and parked and got out
10 and walked up toward Neecy's apartment again.

11 Q: What happened after that?

12 A: The young boy that Bless got into it with, he was in
13 like between Neecy's apartment and the apartment to the
14 left of hers and he had a gun and he was like, yeah,
15 nigger, I'm back. So across the street -- well, we was
16 standing outside then. We stepped onto the porch across
17 the street because my cousin knew the young guys so she was
18 like trying to tell him no, leave from out here with that
19 gun, this and that, but that's when I guess the boy named
20 New York, the one that had on the hat, he pulled out a gun
21 and he like pointed it, but he didn't shoot it and that's
22 when Bless came and grabbed it and just started shooting.
23 That's how the shooting started.

24 Q: Okay. So these young guys come back with a little bit
25 more. They get out?

WILLIAM MORGAN - DIRECT EXAMINATION BY MR. PAULING

- 1 Q: Okay. All right. Was anybody flagging?
- 2 A: No.
- 3 Q: Okay. And now, when they came back, did they come
- 4 directly to where you all were or what happened?
- 5 A: Yeah. They came out the car and, you know, we walked
- 6 towards them and I -- you know, that's -- yeah, that's how
- 7 we did.
- 8 Q: Okay. So when they pulled up, I mean -- well, who
- 9 decided y'all needed to make the move to go towards them?
- 10 Or did y'all just kind of all walk over there?
- 11 A: Yeah, we all -- yeah, we all kind of walked over
- 12 there. Kind of -- kind of walked over there.
- 13 Q: All right. What was going on in your mind at that
- 14 point about ---
- 15 A: The first thing in my mind?
- 16 Q: Yes.
- 17 A: I'm not trusting nobody else. Nobody, not even the
- 18 guys that I'm with. I'm not trusting them. So I'm going
- 19 to go with, you know, from what I -- what I know. So, you
- 20 know.
- 21 Q: So what did you do?
- 22 A: Grabbed a gun.
- 23 Q: All right. Where did you grab the gun from?
- 24 A: It was outside. It was outside.
- 25 Q: Outside of [REDACTED] where ---

WILLIAM MORGAN - DIRECT EXAMINATION BY MR. PAULING

1 A: Yeah. Like this is like the step right here. It was
2 like below the step on the grass.
3 Q: Okay.
4 A: Under some stuff.
5 Q: When you say the step, the steps leading up into the
6 apartment?
7 A: Yeah. Like it's the step, yeah.
8 Q: Okay.
9 A: Okay.
10 Q: And what did you do with that gun?
11 A: Put it in my pants.
12 Q: Okay. And then you continued on walking towards the
13 other group?
14 A: Yeah. I didn't want no kids to see me with -- you
15 know, with a gun. There were a lot of kids out there.
16 Q: There were a lot of kids out there?
17 A: Yeah. There was a lot of kids out there.
18 Q: All right. Do you know what time of day this was?
19 A: Three o'clock. Three, three thirty or something like
20 that. It was -- it was a lot of people out there.
21 Q: It was light out still?
22 A: Daylight.
23 Q: Okay. And you're walking towards this other group.
24 Who was walking there? Who was walking with you?
25 A: Everybody. At that time, everybody started walking

WILLIAM MORGAN - DIRECT EXAMINATION BY MR. PAULING

1 over there.

2 Q: So would that be Bless?

3 A: Yeah. Bless would be walking with me.

4 Q: Ratchet?

5 A: Yeah. Ratchet was walking.

6 Q: Ready?

7 A: Ready, Bundy.

8 Q: Bundy?

9 A: Yes, sir.

10 Q: Was Bliff there, too?

11 A: No. Bliff had left.

12 Q: Okay.

13 A: Bliff left.

14 Q: All right. Are there any words being exchanged as

15 you're walking towards this other group? Did anybody say

16 anything?

17 A: Yeah. I tried to calm the crowd down, tried to tell

18 them to, you know, calm down.

19 Q: Okay. Is the gun still in your pants at this point?

20 A: The gun is still in my pants.

21 Q: Okay. And then what happened?

22 A: They wasn't trying to hear me. I knew a couple guys

23 -- a couple guys out there and I told them, y'all just

24 chill. There's a lot of kids out there and one of them

25 said, oh, no, ask that. I said, oh, all right, and I took

WILLIAM MORGAN - DIRECT EXAMINATION BY MR. PAULING

- 1 the gun out, cocked it. A light went off in my head real
2 fast. I put the gun back in my pants. As I'm putting it
3 back in my pants, Bless end up snatching it from me.
- 4 Q: All right. The other group, the other individuals who
5 were walking towards you, did you notice if any one of them
6 had a gun at the time?
- 7 A: Yeah. He had a gun out. Yeah. He had a gun out.
8 That's why I guess Bless got mad because I ain't shoot.
- 9 Q: Okay. I mean was he pointing the gun already or did
10 he ---
- 11 A: He had it down like -- you know, down like this.
12 (Indicating.)
- 13 Q: Down by his side?
- 14 A: Yes, sir.
- 15 Q: Okay. You put the gun back in your pants? Well, you
16 said you were putting the gun back in your pants, but what
17 happened?
- 18 A: As I'm putting it in, me and Bless was like -- you
19 know, he trying to get it with me.
- 20 Q: Okay.
- 21 A: I just gave it to him. I'm not about to shoot myself.
22 It ain't have no safety.
- 23 Q: Okay. Had you already racked a round at that point?
- 24 A: Excuse me?
- 25 Q: Had you already racked one in the chamber at that

WILLIAM MORGAN - DIRECT EXAMINATION BY MR. PAULING

1 point?

2 A: Yeah. One was in the chamber.

3 Q: Okay,

4 A: One was in the chamber.

5 Q: So did Bless -- well, did Bless eventually get the

6 gun?

7 A: Yeah. He got it. He ended up getting the gun from

8 me.

9 Q: All right. And what did he do or what happened?

10 A: He started shooting. He started shooting. I mean

11 it's that. He just started shooting.

12 Q: And was there return fire?

13 A: Yeah, yeah. The guy let off a couple of shots. They

14 shooting at each other.

15 Q: And just approximate for me how far are y'all away

16 when this shootout starts?

17 A: Maybe from here where I'm sitting at to probably about

18 that desk right there.

19 Q: Okay.

20 A: Or maybe to the -- you know, where Mr. Lyons is

21 sitting.

22 Q: Okay.

23 A: That close.

24 Q: And y'all were shooting back and forth? Well, I say

25 y'all were shooting back and forth. Bless is shooting and

WILLIAM MORGAN - DIRECT EXAMINATION BY MR. PAULING

1 the other individual ---
2 A: Back and forth. Back and forth.
3 Q: What does everybody do at that point?
4 A: Scatter. Everybody scattered. Everybody getting in
5 their cars and leaving. I ain't had no ride so I'm out
6 there.
7 Q: How did you get out there?
8 A: My girlfriend.
9 Q: Okay. She -- did she drop you off?
10 A: Yeah. She dropped me off.
11 Q: Okay. And so where did you go after this -- this
12 shootout?
13 A: I'm still there. We all still there. We ain't go
14 nowhere.
15 Q: Okay. When you say still there, are you still
16 standing out in the street or did you go back in the
17 apartment?
18 A: No. We're in the back yard. We're in the back.
19 Q: In the back yard?
20 A: In the back of the apartments.
21 Q: All right. Did the police come out?
22 A: Yeah. I believe -- yeah, the police came out.
23 Q: Okay. I mean did anybody talk to you or ask about ---
24 A: I ain't talked to nobody. They just went out there
25 and just got in the car and left.

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JOHN WESLEY STAMPS, JR. - DIRECT EXAMINATION BY MR. GOINGS

- 1 A: I believe it was Bless who shot.
- 2 Q: How crowded was [REDACTED] Apartments?
- 3 A: There was a lot of people out there, man. There was
- 4 kids out there. There was a lot of people outside, you
- 5 know, including the people that were, you know, by their
- 6 cars, you know. There was a lot of people out there, a lot
- 7 of people.
- 8 Q: So it's not only your group, their group, but who
- 9 else?
- 10 A: Other people that lived in the apartment buildings.
- 11 Kids was over there to the side, you know, women, you know.
- 12 Q: But Bless fires. Do they fire back?
- 13 A: Yeah.
- 14 Q: Did they leave? What?
- 15 A: They start shooting at each other.
- 16 Q: Anybody get hit?
- 17 A: Nobody got hit.
- 18 Q: What happens next?
- 19 A: After that, they leave. The guy with the gun, he
- 20 starts running up to the car because they're pulling off.
- 21 You know, the guy gets in the car. They leave and, you
- 22 know, Bless, Bundy, Ready was there. You know what I'm
- 23 saying? New York. They left, you know, and Bless told me
- 24 to stay at the house with the women basically.
- 25 Q: Did you stay at the house with the women?

JOHN WESLEY STAMPS, JR. - DIRECT EXAMINATION BY MR. GOINGS

- 1 A: Yes, sir.
- 2 Q: Did you know where these other guys were going?
- 3 A: No, sir.
- 4 Q: What happens while you're still at the house ---
- 5 A: Well ---
- 6 Q: --- later on that afternoon?
- 7 A: I'm at the house and, you know, we start getting
- 8 drunk, you know. Teece, Bless' girlfriend, she put out
- 9 some Absolut. So I'm drinking and I'm, you know, standing
- 10 -- standing in front of the house, you know. This car
- 11 pulls up. I think it's a white Malibu or white Caprice.
- 12 It was a new classic, you know, car. It pulls up and a guy
- 13 hops out. He goes into a house that was like right next
- 14 door to the -- June's complex. And he gets back out and he
- 15 goes and he gets in the car and they spin and they turn
- 16 around at the dumpster and, you know, one of them guys says
- 17 -- excuse my French -- he says what you looking at, you
- 18 bitch ass nigger? That's what he says and then he pulls a
- 19 gun out, you know, while they're riding off and he shoots
- 20 at me. He shoots one shot at me.
- 21 Q: You know where that shot hit?
- 22 A: I'm not quite sure.
- 23 Q: Obviously, it didn't hit you?
- 24 A: Yes, sir.
- 25 Q: Did you report that information to Bless?

JOHN WESLEY STAMPS, JR. - DIRECT EXAMINATION BY MR. GOINGS

1 A: Yes, sir.

2 Q: How?

3 A: Well, I used -- I believe I used Teece's phone or I
4 might have used New York girl's phone, but either way I
5 don't remember, but I know I got in contact with him and
6 told him to be careful because, you know, a guy just shot
7 at me.

8 Q: What was he -- what was his reaction to you when you
9 told him that?

10 A: He wanted to know exactly what house the guy who had
11 got in the car, you know, what house -- exactly house, you
12 know, he came out of basically.

13 Q: Did you give him that information?

14 A: Yeah. I was -- you know, I was -- I basically gave it
15 to him. First, I was like, you know, I'm not quite sure,
16 but he kept on pestering me, you know, which one is it, you
17 know, and I wasn't quite sure if it was this one or that
18 one, you know, so I had to, you know, walk out in front of
19 the yard a little, you know, and I gave it to him.

20 Q: And what did you give him?

21 A: I believe it was 7 or 17.

22 Q: Did you give him both those numbers or you just ---

23 A: It was one, but it was ---

24 Q: It was one?

25 A: I know it was a seven in it so it was 7 or 17, one of

JOHN WESLEY STAMPS, JR. - DIRECT EXAMINATION BY MR. GOINGS

- 1 A: We was just sitting, chilling, talking. I believe we
2 had some beers and we was drinking as well.
- 3 Q: What happens next?
- 4 A: I hear a car pull up out -- out front, you know. I
5 hear Bless call my name. He called me Ratchet. That's
6 what they called me. You know, that's the name he gave me.
7 He said Ratchet, so I jumped the fence, you know, and I go
8 to the car and I see him. The door is open. You know what
9 I'm saying? So I go get in the car.
- 10 Q: Whose car is it?
- 11 A: Teece's car. Bless' girlfriend's car.
- 12 Q: The same gold Civic or ---
- 13 A: Yeah.
- 14 Q: --- car you just described?
- 15 A: Same car.
- 16 Q: Who is driving?
- 17 A: Bless is driving it.
- 18 Q: Where -- and who else is in the car?
- 19 A: Garney is in the passenger seat. Bundy is on the
20 other -- behind the passenger -- behind the driver. Ready
21 is in the middle and I squeeze in on the end.
- 22 Q: Where did you think y'all were going at that point in
23 time?
- 24 A: I wasn't quite sure. We were just riding.
- 25 Q: Where did y'all eventually end up?

JOHN WESLEY STAMPS, JR. - DIRECT EXAMINATION BY MR. GOINGS

- 1 A: We ended up going around a whole new scenic route that
2 I never went -- went to, you know. We ended up behind
3 [REDACTED] -- [REDACTED] Apartments. Well, it wasn't like
4 right behind there, but it was up a ways a little bit
5 behind a green trash can.
- 6 Q: And what were you thinking at this point in time?
- 7 A: I'm thinking something's about to go down.
- 8 Q: Did you know if there was a gun in the car?
- 9 A: When I first got in the car, they told me there was a
10 gun in the car, yeah.
- 11 Q: Who had the gun?
- 12 A: I'm not quite sure who had it.
- 13 Q: When they told you there was a gun in the car, what
14 were you thinking to yourself at that point in time?
- 15 A: I mean I was a little suspicious, but I didn't think
16 it was a murder, you know, but there's always guns around,
17 you know. I wasn't really thinking about it like that. I
18 told you, you know, I was intoxicated, you know. I was
19 numb, you know. I was kind of -- it was like surreal. I
20 was numb to it, you know. Numb to what was going on around
21 me.
- 22 Q: When you get out of the car or when you go to
23 [REDACTED] Apartments knowing there was a gun in the car,
24 had your attitude about what's going down changed yet?
- 25 A: Oh, yeah, yeah.

JOHN WESLEY STAMPS, JR. - DIRECT EXAMINATION BY MR. GOINGS

- 1 Q: What did you think was going to go down now?
- 2 A: I mean when -- when they -- when they got out -- you
- 3 want me to tell you what happened when they ---
- 4 Q: Yeah.
- 5 A: When we got there? When we got there, I stayed in the
- 6 back seat of the car, you know. Bundy hops out, you know.
- 7 Garney hops out. Ready -- Ready hops out. Bless hops out
- 8 and I hear -- you know, the car doors are open. I hear
- 9 Bless tell Ready, whoever come to the door, shoot whoever
- 10 come to the door. That's what I heard.
- 11 Q: Who told Ready that?
- 12 A: Bless.
- 13 Q: And what was his exact words that you heard?
- 14 A: Shoot whoever come to the door.
- 15 Q: Did you hear their conversation prior to that?
- 16 A: Not really.
- 17 Q: What did Bless tell you?
- 18 A: He didn't tell me nothing.
- 19 Q: So at no point in time did he actually discuss what
- 20 your role in what was going to happen that night?
- 21 A: No. I'm just the dumb guy in the car, should have got
- 22 out of the car. I should have got out.
- 23 Q: What did you do?
- 24 A: I stayed in the car.
- 25 Q: The whole entire time?

JOHN WESLEY STAMPS, JR. - DIRECT EXAMINATION BY MR. GOINGS

1 A: Seven or 17, whichever one. But, you know, nobody
2 came to the door. So I was relieved, you know.

3 Q: Then what happened?

4 A: Then I mean I'm waiting for him to come walk back up.
5 He crosses the street a little when he comes back up and
6 then he goes and stops at another apartment building. You
7 know what I'm saying? And he stops. I see him knock and I
8 see him pull the gun out so I start walking off. You know
9 what I'm saying? I hear a girl scream, you know, and then
10 I hear a shot. So I start -- you know, I start running
11 back to the car, but he's -- he's dipping, he's jacking,
12 you know what I'm saying, to the car. He's got the gun in
13 his hand. You know, he gets to the car way before me and I
14 was like I'm -- it's surreal.

15 It happened so quick. I'm like numb to it, like did
16 this just really happen? You know what I'm saying? That's
17 why I'm not running that fast. And then he's like,
18 Ratchet, come on, Ratchet, Ratchet. You know what I'm
19 saying? So I go hop in the car in the back seat.

20 Q: Okay. When y'all get there, Ready goes to the first
21 apartment and nobody answers?

22 A: Yes, sir.

23 Q: He goes to the second one and you hear a gunshot?

24 A: I hear a scream and then I hear the gunshot.

25 Q: How many gunshots?

JOHN WESLEY STAMPS, JR. - DIRECT EXAMINATION BY MR. GOINGS

1 A: One shot.

2 Q: And then Ready comes back out and says let's go. Is
3 that pretty much it?

4 A: No. I mean -- no. I mean I was running and I saw him
5 run real fast past me. You know what I'm saying? He came
6 like around the corner and he came past me when he started
7 running and then he got to the car and was like, come on,
8 because I wasn't running fast enough. You know what I'm
9 saying?

10 Q: If Bless didn't tell you to stay as the lookout, why
11 did you get out of that car ---

12 A: It was the dumbest ---

13 Q: --- and walk with Ready that night?

14 A: Dumbest decision I ever made. I mean a few things ran
15 through my mind, you know, but basically I was a coward,
16 man. I mean I can't lie to y'all. I was a coward, you
17 know. I should have did the right thing. You know what
18 I'm saying? But I did -- you know, for Adrian's family,
19 the victim's family, for my family, or at least reported
20 the murder, but, you know, I was thinking about no cuts. I
21 was thinking about how they was going to look at me if I
22 was a coward. I didn't want to get violated. You know
23 what I'm saying? I thought -- I had just left the
24 apartment building and the guy who had just shot at me, he
25 just got in the car so I didn't believe he was going to

JOHN WESLEY STAMPS, JR. - DIRECT EXAMINATION BY MR. GOINGS

1 answer the door, which I was right. I didn't know nothing
2 about that other thing that they had planned. You know
3 what I'm saying? And, you know, I just ---

4 Q: Again, what is no cuts?

5 A: No cuts means no ifs, ands, or buts, you know, and I
6 also felt like, you know, if I would have -- I felt like I
7 was committed. I mean if I would have got out of that car,
8 they would have -- I'd have been the first person they came
9 to, you know, if or when they would have got, you know,
10 arrested. You know, I just -- I was a coward.

11 Q: Where did y'all go from there?

12 A: We went to ---

13 Q: Once it was over, where did y'all go?

14 A: We went to [REDACTED] -- I mean Garney's house.

15 Q: So y'all went back over to Garnett Davis' house?

16 A: Yes, sir.

17 Q: Who was there?

18 A: Dave, Mike, Bless, Garney, Miami.

19 Q: What happened that night?

20 A: When we went there? When we went back, Bless pulled
21 Ready to the side and I heard him say, did you get him, and
22 Ready said, yeah, I got him and he kind of did like a -- he
23 showed the dude falling over. He said, I saw him fall over
24 like this. You know what I'm saying? I'm like he done
25 killed the guy. You know what I'm saying? And after that,

BRYANT BRADLEY - DIRECT EXAMINATION BY MR. GOINGS

1 A: Yes, sir.

2 Q: Did you actually sign that statement?

3 A: I don't think so.

4 Q: Do you remember what you told them that day?

5 A: Yes, sir.

6 Q: Do you remember telling them that you went back to

7 [REDACTED] Apartments after leaving McDonald's?

8 A: I don't think so.

9 Q: But eventually at some point y'all get to where?

10 A: James Village.

11 Q: And who lives at James Village?

12 A: Ready. Rasheed Brandon.

13 Q: And anybody else living with Ready that you know of?

14 A: I was back on and off from Bliff's house -- from Bliff

15 to -- to Ready's house. When I met him, when I came up

16 there from Bliff's house ---

17 Q: Uh-huh.

18 A: --- and Bliff -- it was too crowded in the apartments

19 because I don't think it had three bedrooms. So Bless

20 asked Ready to let me stay over there for a couple days and

21 I started staying with him.

22 Q: All right. So prior to this shooting on March 22nd,

23 you were actually staying a couple nights over at Ready's

24 apartment?

25 A: Yes, sir.

BRYANT BRADLEY - DIRECT EXAMINATION BY MR. GOINGS

- 1 A: Yes, sir.
- 2 Q: On the afternoon of March 22nd?
- 3 A: Yes, sir.
- 4 Q: All right. What else did y'all do when y'all were
5 over at James Village?
- 6 A: Rasheed Brandon get some more bullets from across from
7 the neighbor.
- 8 Q: What was the purpose of him going and getting some
9 more bullets?
- 10 A: Because Bless -- Bless out telling him to go get some
11 more guns because we ain't had no more, no shells for the
12 casings, but it was .380 bullets for the 9 millimeter. We
13 ain't ---
- 14 Q: At that point -- I'm sorry.
- 15 A: He ain't had -- we ain't had no 9 millimeter bullets,
16 but the next-door neighbor had .380 bullets so we used
17 that.
- 18 Q: Now, at this point in time, did you know what the plan
19 -- was there a plan developed at that point in time or
20 Bless just said go get more bullets?
- 21 A: Yeah. It wasn't a plan right then and there.
- 22 Q: All right. What happened next then?
- 23 A: We heard -- Kentishie called Bless' phone and tell him
24 somebody shot at Ratchet where he was at the apartment left
25 with the girls.

BRYANT BRADLEY - DIRECT EXAMINATION BY MR. GOINGS

- 1 Q: All right. So Ratchet's not with y'all at James
2 Village?
- 3 A: No. He stayed at the apartment with the females.
- 4 Q: And at some point in time, who received a phone call
5 -- phone call from Kentishie?
- 6 A: Bless.
- 7 Q: And information is relayed to him?
- 8 A: Mm-hmm.
- 9 Q: About what?
- 10 A: About Ratchet got shot at.
- 11 Q: And how did that make him react?
- 12 A: He tell -- he tell everybody let's go to Garney's
13 house.
- 14 Q: I mean had he calmed down any?
- 15 A: No.
- 16 Q: So who all -- how do you get from James Village to
17 Garney's house?
- 18 A: Bless.
- 19 Q: Bless is driving what car?
- 20 A: The Honda.
- 21 Q: Teece's car?
- 22 A: Yes, sir.
- 23 Q: So who is all in the car at that point in time?
- 24 A: Me -- me, Bless -- I think me, Bless, Ready, and New
25 York.

BRYANT BRADLEY - DIRECT EXAMINATION BY MR. GOINGS

- 1 Q: The gun that was used by Bless earlier that day, do
2 you know where it -- what happened to it at that point in
3 time? Obviously, you were going to get more bullets, but
4 do you know where specifically the gun is?
- 5 A: It was either Bless or New York had it.
- 6 Q: Okay. You're not sure which one?
- 7 A: No, sir. I ain't sure.
- 8 Q: All right. And again, once he finds out that Ratchet
9 gets -- Ratchet gets shot, what's his attitude like?
- 10 A: He said he's calling a meeting. He said everybody
11 meet up at Garney's house on Woodlawn and tell them we
12 about to -- you know.
- 13 Q: Because whose territory did Ratchet get shot at?
- 14 A: Bless or Piru territory. [REDACTED] Apartments.
- 15 Q: And y'all get to Garney's house. Obviously, it's you,
16 Bless, New York. New York went over there with y'all at
17 first; right?
- 18 A: Yeah. But he left. He ain't stayed long.
- 19 Q: All right. But he rode over there with you?
- 20 A: Yes, sir.
- 21 Q: And who else is in the car? Or -- Ready?
- 22 A: Ready.
- 23 Q: All right. So the four of you. Just four of you?
- 24 A: Yes, sir.
- 25 Q: Okay. So y'all get over to Garney's house. Who was

BRYANT BRADLEY - DIRECT EXAMINATION BY MR. GOINGS

1 MR. KENT: Judge, I'm going to object to this
2 testimony until a proper foundation is laid about that
3 phone conversation.

4 THE COURT: Come on up here.

5 (Whereupon, a bench conference is held off the
6 record.)

7 Q: You were asked -- you testified that Bless called
8 Jiwe. How do you know it was Jiwe?

9 A: He had him on speaker phone.

10 Q: So you actually heard the conversation that Bless was
11 having with whoever -- what you believe is Jiwe on the
12 phone?

13 A: Yes, sir.

14 Q: All right. Did Bless say I'm going to call Jiwe
15 before he called him?

16 A: Yes, sir.

17 Q: Okay. So he makes the phone call to Jiwe?

18 A: Yes, sir.

19 Q: And what does Bless tell Jiwe?

20 A: He wants some shooters en route.

21 Q: All right. And what does Jiwe tell him?

22 A: To call Hollow.

23 Q: So Jiwe specifically says to Bless call Hollow?

24 A: Yes, sir.

25 Q: Who is the lieutenant where?

BRYANT BRADLEY - DIRECT EXAMINATION BY MR. GOINGS

- 1 Q: So what were y'all left with?
- 2 A: Say what? Say it again?
- 3 Q: I said so what happened next?
- 4 A: So that's when Bless tell us what about to happen.
- 5 Q: And that's when the plan was developed?
- 6 A: Yes, sir.
- 7 Q: Because Bless didn't want to wait?
- 8 A: Yes, sir.
- 9 Q: And what was the plan that was developed?
- 10 A: To go to [REDACTED] Apartments. He got Ready, Rasheed
- 11 Brandon, to go to [REDACTED] Apartments, knock on the door.
- 12 I remember Apartment 50, but I don't know the other. He
- 13 was supposed to go knock on the first one. I believe
- 14 Apartment 7 first. If nobody answered, go to 50 and shoot
- 15 whoever answered the door.
- 16 Q: Did he give any instructions about no females and
- 17 kids?
- 18 A: He say -- he say don't shoot no females.
- 19 Q: But his instructions to Ready was knock on Apartment
- 20 -- you believe it was 7?
- 21 A: Yes, sir.
- 22 Q: And then 50?
- 23 A: Yes, sir.
- 24 Q: And the first person who answers, do what?
- 25 A: Shoot them, but not no touch no females or nothing

BRYANT BRADLEY - DIRECT EXAMINATION BY MR. GOINGS

1 Q: And so they come back to the car, y'all get in the
2 car, and where do you go?
3 A: We went to Garney's -- back to Garney's house.
4 Q: And who was there when y'all got there?
5 A: Everybody except Bless and Garney.
6 Q: They hadn't made it back yet?
7 A: No, sir.
8 Q: Did they eventually come back to Garney's house?
9 A: Yes, sir.
10 Q: Did they have any beer with them?
11 A: No.
12 Q: And what happened after that?
13 A: That when he had a meeting. He gave ranks out.
14 Q: Who was there at the meeting?
15 A: It was all of us that attend -- attend the murder was
16 there.
17 Q: Was there any other members of 135 there?
18 A: Mike and David, but they was on and off back in the
19 house I think.
20 Q: But Bless calls this meeting once y'all get back and
21 what's he say?
22 A: He say, y'all did it? And Ready say, yeah, and that's
23 when he had a meeting and he started giving out ranks.
24 Then later on he said let's go get some beer and weed and
25 stuff and we got drunk and high.

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 Q: All right. And then you went to Lexington County
2 Sheriff?

3 A: That's correct.

4 Q: What was your role with Lexington County Sheriff's
5 Department?

6 A: I was a road deputy. I started out as a road deputy
7 and made master deputy in about a year and a half, just
8 handling calls for service on the road.

9 Q: When you were hired at SLED, what was your position?

10 A: I was hired into the gang intelligence team or
11 intelligence unit in October of 2008.

12 Q: All right. And how long did you serve in that
13 capacity?

14 A: Up until about August of last year, August of 2012.

15 Q: And where were you transferred then?

16 A: Where I currently am. I'm in the fugitive unit at
17 SLED.

18 Q: All right. As being employed with the gang -- or task
19 force, did you have opportunity to receive training --
20 specialized training in gangs?

21 A: Yes, sir. I don't -- I don't know if I can give you a
22 number of training hours. I went to the South Carolina
23 Gang Investigators Conference in 2009, 2010, '11, and '12;
24 Georgia Gang Investigators Conference three years; one year
25 at North Carolina Gang Investigators Conference. In

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 A: Yes, sir.

2 Q: Who requested y'all at SLED to assist?

3 A: I was contacted by Detective Billy Lyons initially on

4 this case.

5 Q: And you became involved in the case from then on?

6 A: Yes, sir.

7 Q: All right. And you participated in the interviews

8 that happened from then on and so forth; is that correct?

9 A: Yes, I did.

10 Q: Prior to becoming involved with Detective Lyons down

11 here, did you have any -- any information on 135 Piru

12 operating in Sumter, South Carolina?

13 A: I did not have information on a 135 set in Sumter, no.

14 Q: All right. Since that time, obviously you've had

15 plenty of information on 135; is that correct?

16 A: Yes, that's correct.

17 Q: All right. And you've interviewed several

18 individuals, including people who have testified in this

19 trial; correct?

20 A: That's correct.

21 Q: All right. But you've also interviewed other

22 individuals of 135?

23 A: Yes, I have.

24 Q: All right. And who would those individuals be?

25 A: That's not related to this case?

SPECIAL AGENT MARK BERUBE - DIRECT EXAMINATION BY MR. GOINGS

1 2011, do you have an opinion as to why it happened?

2 A: I believe that the leader of this gang was
3 disrespected by two rival -- what we perceived to be rival
4 gang members in his territory and he took action to -- to
5 make sure they didn't come back in such a way that it
6 caused an altercation and it escalated from there.

7 Q: I also want to talk about proffer agreements with you
8 because there's been a lot of conversations about proffers.
9 Do you know what a proffer agreement is?

10 A: Yes. It is ---

11 Q: Okay.

12 A: A proffer agreement is an agreement you have with a
13 person who is able to come in and give you information that
14 would be helpful to law enforcement and the only -- the
15 only stipulation to it is if they are completely truthful
16 with us on this information they give us, we're not going
17 to use this information against them to prosecute them.

18 Q: Is it a plea agreement?

19 A: No, it is not.

20 Q: Why is a proffer used in the criminal justice system?

21 A: Because there are some -- there are some ways that
22 police cannot generally walk into an area and just get
23 information because a lot of people are just not going to
24 talk to them. If you can get someone who is willing to
25 talk to you, it's an agreement to where you can get

SPECIAL AGENT MARK BERUBE - CROSS EXAMINATION BY MR. KENT

1 A: Yes, sir.

2 Q: Not Berube, not whatever it is.

3 A: That's correct.

4 Q: Agent, I don't have too many questions for you. I

5 just want to make sure I understand a little bit of the

6 background. Correct me if I'm wrong, but out entire case

7 -- your case is based on co-defendant testimony for the

8 most part?

9 A: For the most part.

10 Q: And when I say that, I'm not trying to put words in

11 your mouth, but there really in this particular case is not

12 a lot of corroboration. It's witness testimony and witness

13 statements. It's not corroboration as in tangible facts,

14 the things that we can touch, meaning DNA evidence,

15 bullets, a video?

16 A: Okay. Yes.

17 Q: Would you agree with me on that?

18 A: Yes, sir.

19 Q: Would you explain to the jury the difference between

20 corroboration -- and you can say we corroborate with

21 statements. Just explain to the jury what we want when we

22 have corroboration in cases?

23 A: When you have corroboration, you have -- say person A

24 says something and if you talk to person B and C and they

25 validate what that first person told you.

1 thinking none of his record would come in. That being
2 said, if you want to talk to him now or if you want me to
3 explain what he chooses, whatever the Court sees fit.

4 THE COURT: All right. Mr. Johnson, do you intend to
5 testify ---

6 THE DEFENDANT: No, sir.

7 THE COURT: --- in your trial?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. Have you discussed that with
10 your lawyer?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Has he answered all of your
13 questions?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have I answered all of your questions in
16 regard to your right to remain silent and your right to
17 testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions for me or your
20 lawyer?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Thank you very much. Do you
23 intend to call any witnesses, Mr. Kent?

24 MR. KENT: Based upon the fact that he's not
25 testifying, we will not be putting up a case at all.

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	CASE NO. 2012-GS-47-00002
	)	2012-GS-47-00003
	)	2012-GS-47-00004

STATE OF SOUTH CAROLINA,
 Plaintiff,

-vs-

MICKEY JOHNSON,
 Defendant.

TRANSCRIPT OF RECORD
 (VOLUME III: DAY 3 OF 3)

July 16-18, 2013
 Sumter, South Carolina

B E F O R E:

THE HONORABLE WILLIAM SEALS, Judge; and a jury

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

CARY GOINGS, Assistant Attorney General
 CURTIS PAULING, Assistant Attorney General
 Attorneys for the Plaintiff

SHAUN KENT, Esquire
 Attorney for the Defendant

KRYSTAL J. SMITH
 Court Reporter

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all
9 the proceedings had and evidence introduced in the hearing
10 of the above captioned case, relative to appeal, in the
11 Court of General Sessions for Sumter County, South
12 Carolina, on the 16th through 18th days of July, 2013.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15

16

Krystal J. Smith

17

Court Reporter

18

19 Florence, South Carolina

20 February 13, 2014

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23

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25