No. 09-3311

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SETH BUNKE,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The United States believes that the issues presented in this appeal are straightforward, and that oral argument therefore is not necessary.

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STATEMENT OF JURISDICTION

The government concurs in defendant's jurisdictional statement.

ISSUES PRESENTED

1. Whether defendant's conviction violates his constitutional right to fair warning.

2. Whether the district court abused its discretion in denying defendant's request to provide funding for an expert on the issue of eyewitness identification.

3. Whether the district court erred in denying defendant's motion for a judgment of acquittal.

STATEMENT OF THE CASE

On February 6, 2008, a federal grand jury returned a multi-count indictment against Seth Bunke and two co-defendants (James Kotlarcyk and Joel McConnell) for, *inter alia*, deprivation of rights and conspiracy. (R.1; Indictment). The indictment charged defendant with five counts of deprivation of rights under color of law in violation of 18 U.S.C. 242 (Counts 1, 4, 5, 6, and 7); and conspiracy to violate 18 U.S.C. 1519 under 18 U.S.C. 371 (Count 2). (R.1; Indictment).[1] Following a jury trial in October 2008, defendant was convicted on Counts 1, 4, and 6. (R.96; Verdict). He was acquitted as to Counts 5 and 7. (R.96; Verdict).[2]

On March 9, 2009, the district court sentenced defendant to 48 months'

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[1] Kotlarcyk and McConnell were charged only with Counts 2 and 3. (R.1, Indictment). Count 2 is described above. Count 3 charged Kotlarcyk and McConnell with falsification of federal records in violation of 18 U.S.C. 1519, and aiding and abetting in violation of 18 U.S.C. 2. The district court later granted the government's motion to dismiss the charges against both men. (R.146; Judgment as to James Kotlarcyk); (R.147; Judgment as to Joel McConnell). Both pled guilty to witness tampering in violation of 18 U.S.C. 1512(d)(2) and were sentenced to a prison term of one day. (R.146; Judgment as to Kotlarcyk); (R.147; Judgment as to McConnell).

[2] The district court granted the government's motion to dismiss Count 2 against defendant. (R.73; 10/3/08 Order). Defendant was not charged in Count 3 of the indictment.

imprisonment on Count 1, and 12 months' imprisonment each with respect to Counts 4 and 6. (R.141; Minutes of Sentencing). The sentences are concurrent, resulting in a total of 48 months' imprisonment. (R.141; Minutes of Sentencing). No fine was imposed. (R.141; Minutes of Sentencing). This appeal followed.

STATEMENT OF THE FACTS[3]

During the relevant time period, defendant worked as a corrections officer for the Lucas County Sheriff's Office. His conviction on Count 1 involves an incident of excessive force against an inmate at the Lucas County jail named Jeffrey Jones.

1. The Jeffrey Jones Incident

a. The Assault

The assault on Jones occurred on July 11, 2007. (R.125; Tr. 489) (McQueary). Jones was being moved from one floor to another within the jail. (R.125; Tr. 426) (Elizondo). It is standard procedure in such situations to strip-search an inmate. (R.125; Tr. 427-428) (Elizondo). Officer McConnell escorted Jones into the multi-purpose room, where strip searches typically take place. (R.125; Tr. 429, 432-433) (Elizondo). Jones was not handcuffed at this point.

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[3] The facts contained herein are set forth in the light most favorable to the government.

(R.125; Tr. 491-492) (McQueary).

Jones was directed to remove his clothes and then proceed to "squat and cough," which is a procedure used to make sure nothing is hidden in the body cavity. (R.125; Tr. 433-435) (Elizondo). Jones was noncompliant, but was not physically aggressive toward the officers. (R.125; Tr. 435-437) (Elizondo). The officers eventually gave up and instructed Jones to put his clothes back on. (R.125; Tr. 437) (Elizondo).

At that point, Jones got into a verbal exchange with McConnell. (R.125; Tr. 437) (Elizondo). The officer lifted his leg and extended it toward Jones' shoulder in a "[martial] arts type move," but did not strike him. (R.125; Tr. 437-439) (Elizondo). Officers Elizondo, McConnell, Kotlarcyk, and defendant then took Jones to the ground. (R.127; Tr. 670) (Branch). Jones ended up on his stomach, facing the floor. (R.128; Tr. 782) (Jones). He had done nothing at that point that justified being taken to the ground. (R.125; Tr. 440) (Elizondo).

Once Jones was on the ground, Elizondo and Kotlarcyk were on Jones' left, and McConnell was on his right. (R.125; Tr. 442-444) (Elizondo).[4] McQueary also joined in and was on Jones' right. (R.125; Tr. 495-496) (McQueary). They

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[4] McQueary testified that McConnell was on Jones' left side. (R.125; Tr. 496) (McQueary).

attempted to pull Jones' arms from underneath him so that he could be handcuffed, but Jones resisted. (R.125; Tr. 442, 444) (Elizondo).

At some point, while Jones was on the floor, defendant was standing to Jones' right. (R.125; Tr. 445) (Elizondo). Defendant kicked Jones in the side twice. (R.125; Tr. 445) (Elizondo).[5] Elizondo testified that the blows "looked pretty hard." (R.125; Tr. 445-446) (Elizondo). McQueary testified that he saw defendant kick Jones "[m]ultiple times" in "his head and upper face," and that defendant continued to kick Jones even after being told to stop. (R.125; Tr. 499-501) (McQueary). McQueary described the resulting noise, stating that it sounded "[l]ike a bowling ball hitting the floor," and indicated that these were "hard kicks." (R.125; Tr. 500) (McQueary); (R.126; Tr. 531) (McQueary). Although he could not see where they came from or what type of blows they were, Jones confirmed that he was struck in the head and right side during the assault. (R.128; Tr. 794) (Jones).

Other officers testified that Jones was not a threat to defendant at the time he was kicked (R.125; Tr. 447) (Elizondo), and the kicks were both unnecessary

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[5] Officer Christopher Branch, who also was present, saw defendant deliver only one kick to Jones' side, but noted that "[i]t was a hard kick," and that he was sitting on Jones' leg at the time and could "feel the impact." (R.127; Tr. 674) (Branch).

and inconsistent with the training that corrections officers receive. (R.125; Tr. 447) (Elizondo); (R.125; Tr. 502) (McQueary); (R.126; Tr. 537) (McQueary); (R.127; Tr. 675) (Branch). Indeed, defendant's kicks made things more difficult for the other officers, in that they caused Jones to go into a defensive posture to protect himself, which made it harder to gain control of his arms and prolonged the altercation. (R.125; Tr. 448) (Elizondo); (R.125; Tr. 501) (McQueary). The officers eventually got control of Jones' arms and handcuffed him. (R.125; Tr. 503) (McQueary).

After the incident, a bone in Jones' shoulder protruded upward (though it did not break the skin), and he had trouble getting his arm in the jumpsuit. (R.126; Tr. 638) (Stewart); (R.125; Tr. 390) (Tytko). He appeared to be in pain, and there was blood on his face. (R.125; Tr. 390) (Tytko). There also was a plate-sized "pool of blood" approximately "eight inches around" on the floor of the multipurpose room. (R.125; Tr. 454) (Elizondo); (R.126; Tr. 577-578) (Mysinger); (R.126; Tr. 639) (Stewart).

Following the incident, defendant got on the intercom in the control room and announced that "he kicked an inmate's ass." (R.125; Tr. 393) (Tytko). In doing so, defendant was "[v]ery angry," but also was laughing and joking about the incident and was not concerned or upset. (R.125; Tr. 393) (Tytko). Once in

the control room, three different officers noticed that defendant had blood on his boot. (R.125; Tr. 455-456) (Elizondo); (R.125; Tr. 505-506) (McQueary); (R.126; Tr. 636-637) (Stewart).[6]

b. The Medical Testimony

Dr. Thomas Sterling was the emergency-room physician who treated Jones. (R.125; Tr. 349-350) (Sterling). Upon arriving at the hospital, Jones had "[p]ain in the right side of his chest" and a laceration on his forehead. (R.125; Tr. 353) (Sterling). He suffered from a pneumothorax (*i.e.*, collapsed lung) – a "very painful" injury that can be life threatening. (R.125; Tr. 355-357) (Sterling). A pneumothorax typically is caused by "a high-energy impact or high-energy insult." (R.125; Tr. 358) (Sterling). The pneumothorax was on Jones' right side. (R.125; Tr. 360-361) (Sterling). He had rib fractures and abrasions on that same side, and also suffered a separated shoulder. (R.125; Tr. 360-361, 365) (Sterling).[7]

The contusion on Jones' head – combined with the fact that he had been assaulted – caused some concern about possible brain injury. (R.125; Tr. 363)

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[6] Defendant denied having blood on his boot. He claimed that it was day-old spaghetti sauce. (R.128; Tr. 833-834) (Bunke). He also denied kicking Jones in the head or side, claiming instead that he "knee[d]" Jones "[i]n the side" "[m]aybe twice." (R.128; Tr. 831) (Bunke).

[7] Jones' rib fractures were not visible by x-ray, but were diagnosed clinically. (R.125; Tr. 362) (Sterling).

(Sterling). A CT scan was performed, but showed no bleeding in Jones' brain. (R.125; Tr. 364) (Sterling). Jones did, however, display signs of "raccoon eyes," a medical condition characterized by bruising below both eyes. (R.125; Tr. 366-367) (Sterling). Raccoon eyes indicates a head injury, typically caused by a car accident or very high energy impact. (R.125; Tr. 367-368) (Sterling).

2. Defendant's Training

Multiple witnesses testified regarding the type of training Lucas County sheriff's officers such as defendant typically receive. For example, they receive instruction regarding situations in which it is appropriate to use force on prisoners. (R.124; Tr. 224-225) (Leist). This includes instruction regarding the use-of-force continuum. (R.124; Tr. 224-225) (Leist); (R.127; Tr. 713-714) (Luettke).

A number of sheriff's officers testified that, according to their training, they are permitted to use only the minimal amount of force necessary in a given situation. (R.125; Tr. 402-403) (Elizondo); (R.125; Tr. 487-488) (McQueary); (R.126; Tr. 548-549) (Mysinger); (R.126; Tr. 620) (Stewart); (R.127; Tr. 662-663) (Branch); (R.127; Tr. 688) (Algarin); (R.124; Tr. 226-227) (Leist). They also receive instruction about violations of civil rights laws and are informed that they may be disciplined or prosecuted for using excessive force. (R.124; Tr. 228-229) (Leist); (R.127; Tr. 711-712) (Luettke).

Evidence introduced at trial indicated that defendant completed his training and received a manual containing the applicable rules and regulations at the time he was hired. (R.124; Tr. 231-233) (Leist). Defendant confirmed during cross-examination that his training was consistent with that described by other officers. Specifically, he conceded that he received training regarding use of force and civil rights, and that he understood he could be investigated and prosecuted for civil-rights violations. (R.128; Tr. 836-838) (Bunke). He also conceded that he understood he was permitted to use only the minimal amount of force necessary in a given situation. (R.128; Tr. 839) (Bunke).

Defendant's instructor, Matthew Luettke, testified at trial. (R.127; Tr. 719) (Luettke). Luettke indicated that defendant stood out because of "the amount of questions" he asked during training "that had to do with use of force situations" – specifically about the circumstances in which he would be able to take certain actions against inmates. (R.127; Tr. 719-720) (Luettke). Luettke also remembered that other trainees approached him and reported that, during practice exercises, defendant was taking "pain compliance techniques" "a bit too far" and "was maybe being a little overzealous." (R.127; Tr. 720-721) (Luettke). Luettke had to speak to defendant about this on more than one occasion during the training period. (R.127; Tr. 721-722) (Luettke).

SUMMARY OF ARGUMENT

Defendant's appeal is limited to the felony conviction on Count 1. He does not challenge his conviction on other counts or the sentence imposed. Br. 8 n.1. Defendant asserts that (1) the statute at issue did not provide fair warning that his conduct was illegal, and that his constitutional rights therefore were violated; (2) the district court erred in denying his request to provide funds for an expert witness; and (3) the district court erred in denying his motion for judgment of acquittal. All of defendant's arguments fail. This Court therefore should affirm the judgment below.

1. The right to be free from use of force inflicted to harm a prisoner and not for a legitimate penological purpose is well-established. Defendant acknowledged that he knew such action would be unlawful. There was no lack of fair warning and Defendant's constitutional arguments therefore fail.

2. The district court did not abuse its discretion in denying defendant's request for funds to retain an expert witness. Defendant sought to have an expert in eyewitness identification explain how various witnesses may perceive an event differently. The district court correctly determined that such testimony would not be admissible under the facts of this case.

3. The government introduced ample evidence from which a rational jury

could find guilt beyond a reasonable doubt. Accordingly, the district court also did not err in denying defendant's motion for a judgment of acquittal.

ARGUMENT

I

THE CONVICTION DOES NOT VIOLATE DEFENDANT'S CONSTITUTIONAL RIGHTS

A. Standard Of Review

The question whether a defendant's constitutional rights have been violated is reviewed de novo. *United States* v. *Webber*, 208 F.3d 545, 550 (6th Cir.), cert. denied, 531 U.S. 882 (2000).

B. Defendant's Constitutional Challenges Are Without Merit

Defendant's constitutional arguments (Br. 13-20) amount to little more than a challenge to the jury's verdict. He contends that the jury may have found that he did not kick the victim, but only kneed the victim in the side, and argues that the statute fails to provide fair warning that such conduct is illegal.

As the Supreme Court has held, "[t]here are three related manifestations of the fair warning requirement." *United States* v. *Lanier*, 520 U.S. 259, 266 (1997).

> First, the vagueness doctrine bars enforcement of a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its

> application. Second, as a sort of junior version of the vagueness doctrine, the canon of strict construction of criminal statutes, or rule of lenity, ensures fair warning by so resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered. Third, although clarity at the requisite level may be supplied by judicial gloss on an otherwise uncertain statute, due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope. In each of these guises, the touchstone is whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant's conduct was criminal.

Lanier, 520 U.S. at 266-267 (citations and internal quotations omitted).

None of the concerns set forth in *Lanier* applies here. Defendant was charged with violating Jones' "right to be free from cruel and unusual punishment." (R.1; Indictment 3). Using force to harm Jones without legitimate penological justification unquestionably was a violation of that right, made specific through settled judicial interpretation. See *Lanier*, 520 U.S. at 266. In addition, the rule of lenity has no application here.[8]

Defendant was free to argue that he only kneed Jones, and that such action

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[8] "[T]he rule of lenity is relevant only if there is grievous ambiguity or uncertainty in [a] statute, and only if after seizing everything from which aid can be derived, [this Court] can make no more than a guess as to the meaning of the language at issue." *United States* v. *Ali*, 557 F.3d 715, 725 n.7 (6th Cir. 2009) (quoting *United States* v. *Smith*, 549 F.3d 355, 363 n.2 (6th Cir. 2008)) (additional citation and internal quotations omitted). Such is not the case here.

was permissible. But the issue is not whether he kneed Jones or kicked him, but whether he used force that had no legitimate penological purpose. On that question, the jury, considering all the evidence, found against him.[9]

II

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING FUNDING FOR DEFENDANT'S PROFFERED EXPERT WITNESS

A. Standard Of Review

"[T]his [C]ourt reviews a district court's denial of funds for an expert under the Criminal Justice Act for abuse of discretion." *United States* v. *Osoba*, 213 F.3d 913, 915 (6th Cir. 2000).

B. The District Court's Decision

Under the Supreme Court's decision in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), courts determining the admissibility of expert evidence must "perform a two-step inquiry." *United States* v. *Smithers*, 212 F.3d 306, 313 (6th Cir. 2000). "First, the court must determine whether the

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[9] To the extent defendant's argument can be read to challenge the clarity of the jury's verdict, this too fails. He never requested a special verdict form, which are disfavored in criminal cases at any rate. See *United States* v. *Blackwell*, 459 F.3d 739, 766 (6th Cir. 2006), cert. denied, 549 U.S. 1211 (2007). He also failed to request a specific unanimity instruction, which also would not have been appropriate in this case. See *United States* v. *Kimes*, 246 F.3d 800, 809-810 (6th Cir. 2001), cert. denied, 534 U.S. 1085 (2002).

expert's testimony reflects 'scientific knowledge,' that is, the court must make 'a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether the reasoning or methodology properly can be applied to the facts in issue.'" *Ibid.* (quoting *Daubert*, 509 U.S. at 592-593). "Second, the court must ensure that the proposed expert testimony is relevant to the task at hand and will serve to aid the trier of fact," which is referred to "as the 'fit' requirement." *Ibid.* (citing *Daubert*, 509 U.S. at 592-593).

The district court denied funding for defendant's proffered expert in large part because it concluded that the testimony would not be admissible under *Daubert*. Specifically, it determined that the proffered testimony was inadmissible under the second *Daubert* prong, and therefore did not evaluate it under the first prong. (R.59; 9/22/08 Order 3).[10]

The district court's conclusion that the evidence was inadmissible under the second prong of *Daubert* was based on the following: (1) the proffered testimony did not fit within categories of testimony previously identified by this Court as potentially "add[ing] to the jury's assessment of eyewitness testimony identifying

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[10] This approach was entirely appropriate, as a district court need not consider the first prong if the proffered evidence fails to satisfy the second prong. See *United States* v. *Hall*, 165 F.3d 1095, 1103 n.4 (7th Cir.), cert. denied, 527 U.S. 1029 (1999).

a defendant," see *United States* v. *Langan*, 263 F.3d 613, 621 (6th Cir. 2001); (2) the eyewitnesses at issue knew defendant, and "[e]valuating issues related to the memory and recall by an individual known to the eyewitness is well within the normal experiences and capabilities of a lay juror." (R.59; 9/22/08 Order 2-3). The court also noted that it would "instruct the jury on how to deal with eyewitness testimony," and that the government would "be offering other evidence at trial that does not depend solely upon eyewitness identifications." (R.59; 9/22/08 Order 3) .

C. The District Court Properly Denied Funding

This Court has taken a balanced approach to the general issue of expert testimony regarding the reliability of eyewitness identifications, allowing for its admission in some cases and exclusion in others. Compare *Ferensic* v. *Birkett*, 501 F.3d 469, 484 (6th Cir. 2007) (providing habeas corpus relief, but limiting the scope of the ruling); *Smithers*, 212 F.3d at 314 (district court "abused its discretion in excluding [the expert's] testimony, without first conducting a hearing pursuant to *Daubert*"); with *Langan*, 263 F.3d at 623-624 (affirming district court's exclusion of expert testimony); *United States* v. *Smead*, 317 F. App'x 457, 466 (6th Cir. Nov. 20, 2008) (unpublished) (affirming the exclusion of portions of the expert's testimony). But the issue presented here is two steps removed from the

ones addressed in these previous cases: (1) by his own admission, defendant sought to introduce testimony having nothing to do with identification; and (2) the ruling at issue addressed whether the court would authorize funding for such testimony, not whether an expert retained by defendant could offer such testimony.

Turning first to the substance of the proffered testimony, defendant asserts that an expert was necessary to "explain how multiple people can see the same event and report it differently, doing so out of confusion rather than any dishonesty." Br. 22. As a preliminary matter, there is no reason to think a jury would need expert testimony to understand this point. The fact that different people with different vantage points may perceive a chaotic event differently is something most jurors presumably would well understand.

More to the point, defendant fails to cite a single case in which a court has admitted such testimony, let alone funded it. The cases upon which defendant relies address expert testimony regarding the ability of an eyewitness to identify someone, not the ability of witnesses who know a defendant well to recall what actions they saw him take during a specific altercation.

Second, the ruling at issue is a denial of funding under the Criminal Justice

Act.[11] To be sure, the denial was based in large part on the district court's conclusion that the evidence would not be admissible even if funded. But the showing required of defendant is different.

The statute provides, in pertinent part, that "[c]ounsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an ex parte application." 18 U.S.C. 3006A(e)(1). This Court has set forth the following standard for evaluating such requests:

> An indigent defendant may obtain authorization for investigative, expert, or other services under 18 U.S.C. § 3006A(e)(1) upon a demonstration that (1) such services are necessary to mount a plausible defense, and (2) without such authorization, the defendant's case would be prejudiced.

United States v. *Gilmore*, 282 F.3d 398, 406 (6th Cir. 2002).

Defendant criticizes the district court's focus on the issue of admissibility. Br. 23. But it is axiomatic that inadmissible evidence cannot satisfy the above-cited standard. Accordingly, the district court did not abuse its discretion in denying defendant's request for funding.

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[11] Defendant's filing with the district court does not cite a specific statuory provision, but the government assumes the request was made pursuant to 18 U.S.C. 3006A(e)(1).

III

THE DISTRICT COURT CORRECTLY DENIED DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL

A. Standard Of Review

This Court exercises de novo review over the denial of a motion for judgment of acquittal. *United States* v. *Meyer*, 359 F.3d 820, 826 (6th Cir.), cert. denied, 543 U.S. 906 (2004). It "must determine 'whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Ibid.* (quoting *United States* v. *Humphrey*, 279 F.3d 372, 378 (6th Cir. 2002)). This Court "do[es] not 'weigh the evidence, consider the credibility of witnesses or substitute [its] judgment for that of the jury.'" *Ibid.* (quoting *United States* v. *Hilliard*, 11 F.3d 618, 620 (6th Cir. 1993), cert. denied, 510 U.S. 1130 (1994)). Moreover, "[c]ircumstantial evidence alone is sufficient to sustain a conviction and such evidence need not remove every reasonable hypothesis except that of guilt." *Ibid.* (quoting *United States* v. *Ellzey*, 874 F.2d 324, 328 (6th Cir. 1989)).

B. Defendant Is Not Entitled To A Judgment Of Acquittal

There is ample evidence to support the verdict. Defendant's claim that he did not use excessive force is undercut at nearly every turn. Elizondo and

McQueary both testified that they saw defendant kick Jones, albeit in different places. (R.125; Tr. 445-446) (Elizondo); (R.125; Tr. 499-501) (McQueary).

Moreover, regardless of how defendant inflicted Jones' injuries, the fact remains that after the incident he was bleeding and suffering from a fractured rib, collapsed lung, and head and shoulder injuries. This clearly indicates that excessive force was used. Accordingly, there was ample evidence on which a rational jury could base a guilty verdict. The district court therefore did not err in denying defendant's motion for a judgment of acquittal.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B), I hereby certify that this brief is proportionally spaced, 14-point Times New Roman font. Per WordPerfect X4 software, the brief contains 4,055 words, excluding those parts exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

/s/ Dirk C. Phillips
DIRK C. PHILLIPS
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DATED: December 11, 2009

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2009, a copy of the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE was filed electronically with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following registered CM/ECF users:

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ADDENDUM

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Record Number	Document
1	Indictment
59	9/22/08 Order
73	10/3/08 Order
96	Jury Verdict
124	Transcript - 10/8/08 a.m.
125	Transcript - 10/8/08 p.m.
126	Transcript - 10/9/08 a.m.
127	Transcript- 10/9/08 p.m.
128	Transcript- 10/10/08 a.m.
141	Minutes of Sentencing Proceeding
146	Judgment as to James Kotlarcyk
147	Judgment as to Joel McConnell