

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SEP 29 2010

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**BRIAN THOMPSON, PRESLEY
SHORTY, KELVIN AUGUSTINE, and
BYRON PAHE,**

Defendants.

CRIMINAL NO. 10cr 2744 JH

Count 1: 18 U.S.C. §§ 1153, 1111
and 2: Second Degree Murder;

Count 2: 18 U.S.C. §§ 1153 and
113(a)(1): Assault with Intent to
Commit Murder;

Count 3: 18 U.S.C. §§ 1153 and
113(a)(3): Assault With a Dangerous
Weapon;

Count 4: 18 U.S.C. §§ 1153 and
113(a)(6): Assault Resulting in
Serious Bodily Injury;

Counts 5 and 6: 18 U.S.C. §§
924(c)(1)(A)(iii): Use of a Firearm
During and in Relation to a Crime of
Violence;

Count 7: 18 U.S.C. § 4: Misprision of
a Felony;

Count 8: 18 U.S.C. § 3: Accessory
After the Fact.

INDICTMENT

The Grand Jury charges:

Count 1

On or about September 4, 2010, in Indian Country, in McKinley County, in the
District of New Mexico, the defendants, **BRIAN THOMPSON** and **PRESLEY SHORTY**,

both Indians, did, with malice aforethought, kill Vinton Wally.

In violation of 18 U.S.C. §§ 1153, 1111(a) and 2.

Count 2

On or about September 4, 2010, in Indian Country, in McKinley County, in the District of New Mexico, the defendant, **BRIAN THOMPSON**, an Indian, did assault Nathaniel Wally with intent to commit murder by shooting him with a firearm.

In violation of 18 U.S.C. §§ 1153 and 113(a)(1).

Count 3

On or about September 4, 2010, in Indian Country, in McKinley County, in the District of New Mexico, the defendant, **BRIAN THOMPSON**, an Indian, did assault Nathaniel Wally with a dangerous weapon, that is, a Cowboy .22 caliber F.I.E. revolver, serial number TR39733, with intent to do bodily injury, and without just cause or excuse.

In violation of 18 U.S.C. §§ 1153 and 113(a)(3).

Count 4

On or about September 4, 2010, in Indian Country, in McKinley County, in the District of New Mexico, the defendant, **BRIAN THOMPSON**, an Indian, did assault Nathaniel Wally, such assault resulting in serious bodily injury.

In violation of 18 U.S.C. §§ 1153 and 113(a)(6).

Count 5

On or about September 4, 2010, in Indian Country, in McKinley County, in the District of New Mexico, the defendant, **BRIAN THOMPSON**, knowingly used, possessed, brandished and discharged a firearm, to wit: a Cowboy .22 caliber F.I.E. revolver, serial number TR39733, during and in relation to a crime of violence for which **BRIAN**

THOMPSON may be prosecuted in a court of the United States, namely Second Degree Murder, as charged in Count 1.

In violation of 18 U.S.C. §§ 924(c)(1)(A)(iii).

Count 6

On or about September 4, 2010, in Indian Country, in McKinley County, in the District of New Mexico, the defendant, **BRIAN THOMPSON**, knowingly used, possessed, brandished, and discharged a firearm, to wit: a Cowboy .22 caliber F.I.E. revolver, serial number TR39733, during and in relation to crimes of violence for which **BRIAN THOMPSON** may be prosecuted in a court of the United States, namely: Assault with Intent to Commit Murder, as charged in Count 2; Assault with a Dangerous Weapon, as charged in Count 3; and Assault Resulting in Serious Bodily Injury, as charged in 4.

In violation of 18 U.S.C. § 924(c)(1)(A)(iii).

Count 7

On or about September 4, 2010, in Indian Country, in McKinley County, in the District of New Mexico, the defendant, **BYRON PAHE**, having knowledge of the actual commission of a felony cognizable by a court of the United States, to wit, Second Degree Murder, Assault with Intent to Commit Murder, Assault with a Dangerous Weapon, Assault Resulting in Serious Bodily Injury, and Use of a Firearm in Relation to a Crime of Violence, did conceal the same by assisting in the hiding of the weapon used to commit each offense, and did not as soon as possible make known the same to some judge or other person in civil or military authority under the United States.

In violation of 18 U.S.C. § 4.

Count 8

On or about September 4, 2010, in Indian Country, in McKinley County, in the District of New Mexico, the defendant, **KELVIN AUGUSTINE**, having knowledge of the actual commission of a felony cognizable by a court of the United States, to wit, Second Degree Murder, Assault with Intent to Commit Murder, Assault with a Dangerous Weapon, Assault Resulting in Serious Bodily Injury, and Use of a Firearm During and in Relation to a Crime of Violence, did receive, relieve, comfort, and assist the offenders, **BRIAN THOMPSON** and **PRESLEY SHORTY**, by driving each from the scene of the offense in order to hinder and prevent the offenders' apprehension, trial, and punishment.

In violation of 18 U.S.C. § 3.


FORFEITURE ALLEGATION

Upon conviction of an offense alleged in this Indictment, the defendants, **BRIAN THOMPSON, PRESLEY SHORTY, KELVIN AUGUSTINE**, and **BYRON PAHE**, shall forfeit to the United States pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c) any interest each may have in a Cowboy .22 caliber F.I.E. revolver, serial number TR39733 used in the commission of the offenses listed above.

A TRUE BILL:

/s/
FOREPERSON OF THE GRAND JURY


Assistant United States Attorney

 September 22, 2010 (9:35am)