

## **APPENDIX**

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 18-14169  
Non-Argument Calendar

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D.C. Docket No. 9:18-cr-80062-DMM-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CHARLES EDWARD SMITH,  
a.k.a. Suncoast,

Defendant - Appellant.

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Appeal from the United States District Court  
for the Southern District of Florida

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(September 20, 2019)

Before TJOFLAT, BRANCH and ANDERSON, Circuit Judges.

PER CURIAM:

**Appendix A**

A jury convicted Charles Edward Smith for conspiring to commit sex trafficking of a minor, in violation of 18 U.S.C. §§ 1591(a)(1), (b)(2) and (c), 1594(c), and the district court sentenced him to prison for a term of 235 months. He appeals his conviction and sentence. He challenges his conviction on two grounds: (1) the district court erred in overruling his *Batson* challenge during jury selection by impermissibly making its own speculative finding as to why a potential juror was struck using a peremptory strike, instead of requiring the prosecutor to provide a race-neutral reason; (2) the evidence at trial was insufficient to convict him because the government failed to show that he acted in concert with anyone to entice the 14-year old minor “AA” into sex trafficking, let alone his codefendant, Michael Joseph Clark, who pled guilty prior to Smith’s trial.

Smith challenges his sentence on two grounds: (1) the district court erred by enhancing his sentence under U.S.S.G. § 2B1.3(b)(2)(B) and § 2G1.3(b)(4) for “unduly influencing a minor” and for an offense involving the commission of a “sex act”; (2) his sentence is substantively unreasonable because the 18 U.S.C. § 3553(a) sentencing factors that the court relied on did not warrant a sentence at the high-end of his advisory guideline range of 188 to 235 months’ imprisonment. We turn first to Smith’s challenges to his conviction.

1) The *Batson* issue.

“When reviewing the district court's ruling on *Batson* challenges, the court's determination is entitled to great deference, and must be sustained unless it is clearly erroneous.” *United States v. Robertson*, 736 F.3d 1317, 1324 (11th Cir. 2013). Ordinarily, a prosecutor is entitled to exercise permitted peremptory challenges for any reason at all. *Batson v. Kentucky*, 476 U.S. 79, 89 (1986). However, the Equal Protection Clause forbids a prosecutor from challenging potential jurors solely on account of their race. *Id.* *Batson* provides a three-step process for trial courts to use in adjudicating a claim that a peremptory challenge was based on race: (1) the objecting party must make a *prima facie* showing that the peremptory challenge is exercised on the basis of race; (2) the burden then shifts to the challenger to articulate a race-neutral explanation for striking the juror in question; and (3) the trial court must determine whether the objecting party has carried its burden of proving purposeful discrimination. *United States v. Allen-Brown*, 243 F.3d 1293, 1297 (11th Cir. 2001).

A district court should consider “all relevant circumstances supporting the challenging party's assertion of discrimination,” including: the striking party's pattern of striking venire members of a particular race, whether the underlying case contains race-related issues, the race of the defendant, and the racial composition of the remaining pool of potential jurors. *Robertson*, 736 F.3d at 1325-26. We have previously warned that “the mere fact of striking a juror or a set of jurors of a

particular race does not necessarily create an inference of racial discrimination.” *United States v. Ochoa-Vasquez*, 428 F.3d 1015, 1044 (11th Cir. 2005) (citing *Cent. Ala. Fair Hous. Ctr., Inc. v. Lowder Realty Co.*, 236 F.3d 629, 637 (11th Cir. 2000)). The pure numbers of those struck of a certain race “takes on meaning *only* when coupled with other information such as the racial composition of the venire, the race of others struck, or the *voir dire* answers of those who were struck compared to the answers of those who were not struck.” *Id.* The district court need not require an explanation for a peremptory strike unless it is satisfied that a *prima facie* case of discrimination exists. *Robertson*, 736 F.3d at 1326. We give deference to the district court’s *prima facie* finding of discrimination. *See id.* at 1327. We consider the “relevant circumstances existing at the time of the first *Batson* challenge,” as a *prima facie* determination is “self-contained, first step in a one-direction process, which is not affected by events or determinations that occur thereafter.” *Id.* at n.11 (citing *United States v. Stewart*, 65 F.3d 918, 926 (11th Cir. 1995)).

The district court did not clearly err in concluding that Smith failed to establish a *prima facie* case of discrimination because he could show no other evidence of discrimination other than the fact that two black jurors had been struck. The court was within its discretion to consider the stricken juror’s *voir dire* responses and those responses compared to the other juror’s responses in

determining if there was a *prima facie* case of discrimination, and we give the district court's decision great deference. *Robertson*, 736 F.3d at 1325-27; *Ochoa-Vasquez*, 428 F.3d at 1044. Thus, as the court did not clearly err in finding that the stricken juror had a unique background compared to the other potential jurors that connected to the facts of Smith's case, the fact that both stricken jurors were black is not enough to demonstrate a *prima facie* case of discrimination.

2) The sufficiency-of-the-evidence issue.

When the defendant has challenged the sufficiency of the evidence by an appropriate motion for judgment of acquittal, we review *de novo* whether there is sufficient evidence to support a conviction and we view the record in the light most favorable to the government, resolving all reasonable inferences in favor of the verdict. *United States v. Jiminez*, 564 F.3d 1280, 1284 (11th Cir. 2009).

We assume the jury made all credibility choices in support of the verdict. *Id.* at 1285. The evidence will be sufficient if a reasonable trier of fact could find that the evidence established the defendant's guilt beyond a reasonable doubt. *Id.* at 1284-85. Accordingly, it is not enough for a defendant to put forth a reasonable hypothesis of innocence, as the issue is not whether a jury reasonably could have acquitted, but whether it reasonably could have found the defendant guilty. *Id.* at 1285. This test for sufficiency is the same, regardless of whether the evidence is direct or circumstantial, but where the government relied on circumstantial

evidence, “reasonable inferences, not mere speculation, must support the conviction.” *United States v. Martin*, 803 F.3d 581, 587 (11th Cir. 2015) (quotation marks omitted). Credibility questions are the sole province of the jury. *United States v. Schmitz*, 634 F.3d 1247, 1269 (11th Cir. 2011).

To convict a defendant of conspiracy to commit the sex trafficking of a minor, the government must have proven that (1) two or more people agreed to violate § 1591, (2) the defendant knew of that conspiratorial goal, and (3) the defendant voluntarily assisted in accomplishing that goal. *United States v. Mozie*, 752 F.3d 1271, 1287 (11th Cir. 2014). An agreement can be inferred from two people’s conduct and the government need not prove that a defendant knew every detail or participated in every stage of the conspiracy. *Id.*; *United States v. Jones*, 913 F.2d 1552, 1557 (11th Cir. 1990).

Based on this evidence, a reasonable jury could convict Smith of conspiring with Clark to commit sex trafficking of a minor. The record evidence is sufficient to show that (1) at least Smith, Clark, and AA’s mother agreed to entice, harbor, obtain, and solicit AA—a minor—to engage in a commercial sex act, (2) Smith knew of the goal to entice, harbor, obtain, and solicit AA to engage in a commercial sex act, and (3) Smith voluntarily assisted in the goal to entice, harbor, obtain, and solicit AA to engage in a commercial sex act.



Having resolved the challenges to Smith's conviction, we address the sentencing issues he presents.

1) The Guideline level enhancements issues.

We review the district court's application of the Sentencing Guidelines *de novo* and its findings of fact for clear error. *United States v. Bane*, 720 F.3d 818, 824 (11th Cir. 2013). A two-level sentencing enhancement applies if "a participant otherwise unduly influenced a minor to engage in prohibited sexual conduct . . . ." U.S.S.G. § 2G1.3(b)(2)(B). A "Participant" is "a person who is criminally responsible for the commission of the offense, but need not have been convicted." § 3B1.1, comment. (n.1). "In determining whether subsection (b)(2)(B) applies, the court should closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior." § 2G1.3, comment. (n.3(B)). The district court may consider whether the defendant's conduct displayed "an abuse of superior knowledge, influence and resources." *United States v. Blake*, 868 F.3d 960, 977 (11th Cir. 2017), *cert. denied*, 138 S. Ct. 1580 (2018) (holding that "superior knowledge" was demonstrated by the defendant's management of the prostitution ring, advertisement of the business, and facilitation of transport). Where a participant is at least ten years older than the minor, a rebuttable presumption of undue influence is triggered. *Id.*; § 2G1.3, comment. (n.3(B)).

Section 2G1.3(b)(4)(A) of the guidelines applies when the offense “involved the commission of a sex act or sexual contact,” an enhancement that we have held applies only “where a sex act or sexual conduct actually did occur.” *Blake*, 868 F.3d at 977.

The district court did not err by applying either enhancement because Smith did not overcome the rebuttable presumption that he exerted undue influence over AA and testimonial evidence supported the finding that a sex act had been committed. *See Blake*, 868 F.3d at 977; U.S.S.G. § 2G1.3, comment. (n.3(B)) and 2G1.3(b)(4)(A).

3) The reasonableness issue.

We review the substantive reasonableness of a sentence for abuse of discretion. *United States v. Osorio-Moreno*, 814 F.3d 1282, 1287 (11th Cir. 2016). “The party challenging a sentence has the burden of showing that the sentence is unreasonable in light of the entire record, the § 3553(a) factors, and the substantial deference afforded sentencing courts.” *United States v. Rosales-Bruno*, 789 F.3d 1249, 1256 (11th Cir. 2015). The district court must impose a sentence that is “sufficient, but not greater than necessary, to comply with the purposes” listed in 18 U.S.C. § 3553(a)(2), and shall consider the need to: reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense; deter criminal conduct; and protect the public from the defendant’s future

criminal conduct. 18 U.S.C. § 3553(a)(2). The court must also consider the nature and circumstances of the offense and the history and characteristics of the defendant. *Id.* at (a)(1). We have held that a district court is not required to state on the record that it has explicitly considered or discussed each § 3553(a) factor; rather, the district court's acknowledgment that it considered the § 3553(a) factors and the defendant's arguments is sufficient. *United States v. Docampo*, 573 F.3d 1091, 1100 (11th Cir. 2009).

A district court can abuse its discretion when it “(1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors.” *United States v. Irey*, 612 F.3d 1160, 1189 (11th Cir. 2010) (*en banc*). We will not second guess the weight that the district court gave to a § 3553(a) factor as long as the sentence is reasonable in light of all the circumstances. *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008). The district court is permitted to attach great weight to one § 3553(a) factor over others. *United States v. Overstreet*, 713 F.3d 627, 638 (11th Cir. 2013). We will only vacate a sentence if we are “left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” *Irey*, 612 F.3d at 1190 (quoting *Pugh*,

515 F.3d at 1191). Although we do not presume that a sentence falling within the guideline range is reasonable, we ordinarily expect such a sentence to be reasonable. *United States v. Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008).

Smith has not satisfied his burden to prove that his sentence is substantively unreasonable because the court considered the § 3553(a) factors and gave them proper weight in its determination. While Smith argues that these factors should not have resulted in his sentence at the high-end of the advisory guidelines, the court did not (1) fail to consider other relevant factors, (2) give too significant a weight to any one factor, or (3) unreasonably consider the factors. *Irey*, 612 F.3d at 1189. Accordingly, his conviction and sentence are

**AFFIRMED.**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 18-14169-EE

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CHARLES EDWARD SMITH,  
a.k.a. Suncoast,

Defendant - Appellant.

---

Appeal from the United States District Court  
for the Southern District of Florida

---

ORDER:

Appellant's "Letter Motion Seeking Rehearing of Denial of Appeal and Appointment of Counsel" is DENIED.

Appellant may file a petition for rehearing within twenty-one days of the date of this Order.

/s/ Gerald Bard Tjoflat  
UNITED STATES CIRCUIT JUDGE

Appendix B

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 18-14169-EE

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CHARLES EDWARD SMITH,  
a.k.a. Suncoast,

Defendant - Appellant.

---

Appeal from the United States District Court  
for the Southern District of Florida

---

BEFORE: TJOFLAT, BRANCH and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by CHARLES EDWARD SMITH is DENIED.

ORD-41

Appendix C

# UNITED STATES DISTRICT COURT

Southern District of Florida  
West Palm Beach Division

UNITED STATES OF AMERICA

v.

CHARLES EDWARD SMITH

JUDGMENT IN A CRIMINAL CASE

Case Number: 18-80062-CR-MIDDLEBROOKS

USM Number: 17323-104

Counsel For Defendant: M. Caroline McCrae  
Counsel For The United States: Lothrop Morris  
Court Reporter: Jill Felicetti

**The defendant was found guilty on count(s) One of the indictment.**

The defendant is adjudicated guilty of these offenses:

<u>TITLE &amp; SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. §1591(a)(1),(b)(2),(c) and §1594(c)	Conspiracy to recruit, entice, harbor, transport, provide, obtain, maintain and solicit a minor to engage in a commercial act.	03/13/2018	1

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

**Count(s) Two is dismissed on the motion of the United States.**

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: 9/20/2018

  
Donald M. Middlebrooks  
United States District Judge

Date: 9/21/18

Appendix D

DEFENDANT: **CHARLES EDWARD SMITH**  
CASE NUMBER: **18-80062-CR-MIDDLEBROOKS**

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **TWO HUNDRED THIRTY-FIVE (235) MONTHS** as to **Count One**.

**The court makes the following recommendations to the Bureau of Prisons:**

- 1. The Defendant be designated to a facility in or as close to South Florida as possible.**

**The defendant is remanded to the custody of the United States Marshal.**

**RETURN**

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

\_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL



**DEFENDANT: CHARLES EDWARD SMITH**  
**CASE NUMBER: 18-80062-CR-MIDDLEBROOKS**

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **LIFE as to Count One**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

**The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.**

**The defendant shall cooperate in the collection of DNA as directed by the probation officer.**

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### **STANDARD CONDITIONS OF SUPERVISION**

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

**DEFENDANT: CHARLES EDWARD SMITH**

**CASE NUMBER: 18-80062-CR-MIDDLEBROOKS**

**SPECIAL CONDITIONS OF SUPERVISION**

**Adam Walsh Act Search Condition** - The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, include retrieval and copying of all data from the computer(s) and any internal or external peripherals and effects at any time, with or without warrant by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

**Employment Requirement** - The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training or other acceptable reasons. Further, the defendant shall provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer.

**Financial Disclosure Requirement** - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

**No Contact with Minors** - The defendant shall have no personal, mail, telephone, or computer contact with children/minors under the age of 18 or with the victim.

**No Involvement in Youth Organizations** - The defendant shall not be involved in any children's or youth organization.

**Restricted from Possession of Sexual Materials** - The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adults engaged in sexually explicit conduct.

**Sex Offender Registration** - The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

**Sex Offender Treatment** - The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

**Substance Abuse Treatment** - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

DEFENDANT: **CHARLES EDWARD SMITH**  
CASE NUMBER: **18-80062-CR-MIDDLEBROOKS**

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
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\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

\*\*Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: **CHARLES EDWARD SMITH**  
CASE NUMBER: **18-80062-CR-MIDDLEBROOKS**

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

**A. Lump sum payment of \$100.00 due immediately.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE**  
**ATTN: FINANCIAL SECTION**  
**400 NORTH MIAMI AVENUE, ROOM 08N09**  
**MIAMI, FLORIDA 33128-7716**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES</u>		<u>AMOUNT</u>
<u>(INCLUDING DEFENDANT NUMBER)</u>		

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

## Trial Minutes, Jury Questions and Verdict Form

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**MINUTES - CRIMINAL JURY TRIAL**

**CASE NO.:** 18-80062-CR-MIDDLEBROOKS

**DAY #:** 1

**DATE:** July 9, 2018

**REPORTER:** Diane Miller

**Court Interpreters:** N/A

**Courtroom Deputy:** Genevieve McGee

**STYLE:** United States of America  
vs.  
Charles Edward Smith (J)

**COUNSEL:** Lothrop Morris, AUSA and Ellen Cohen, AUSA

M. Caroline McCrae, AFD and Anthony Natale, AFD Counsel for Defendant

<u>9:00</u>	a.m. - Jury trial
<u>X</u>	Jury Selection/Voir dire began.
<u>X</u>	Jury empaneled & sworn
<u>X</u>	Opening statements to the jury
<u>X</u>	Jury trial held and continued to: <u>Tuesday, 7/10/2018 @ 9:00 am</u>
<u>      </u>	Closing Arguments to the jury
<u>      </u>	Jury Instructions
<u>      </u>	Jury deliberating
<u>      </u>	Jury trial continued to: _____.
<u>      </u>	Jury returned a verdict. See verdict form.

Comments:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**MINUTES - CRIMINAL JURY TRIAL**

**CASE NO.:** 18-80062-CR-MIDDLEBROOKS

**DAY #:** 2

**DATE:** July 10, 2018

**REPORTER:** Diane Miller

**Court Interpreters:** N/A

**Courtroom Deputy:** Genevieve McGee

**STYLE:** United States of America  
vs.  
Charles Edward Smith (J)

**COUNSEL:** Lothrop Morris, AUSA and Ellen Cohen, AUSA

M. Caroline McCrae, AFD and Anthony Natale, AFD Counsel for Defendant

<u>9:00</u>	a.m. - Jury trial
<u>      </u>	Jury Selection/Voir dire began.
<u>      </u>	Jury empaneled & sworn
<u>      </u>	Opening statements to the jury
<u>  X  </u>	Jury trial held and continued to: <u>Wednesday, 7/11/2018 @ 9:00 am</u>
<u>      </u>	Closing Arguments to the jury
<u>      </u>	Jury Instructions
<u>      </u>	Jury deliberating
<u>      </u>	Jury trial continued to: _____
<u>      </u>	Jury returned a verdict. See verdict form.

Comments:

Comments:



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

---

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

Judge Middlebrooks,

Please define the legal term of

- harbored                      - Commerce
- maintained

When in reference to Count 1 and 2.

\_\_\_\_\_  
PLEASE SIGN  
PRINT: \_\_\_\_\_

July, 10<sup>th</sup> 2018  
\_\_\_\_\_  
DATE

These definitions should be considered together with the instructions as a whole. These definitions do not replace the necessity of proof of each of the elements of instruction<sup>#</sup> 1.

1. Harbor — to afford lodging, shelter or refuge

2. Maintain — to support or provide for

3. Commerce — the exchange of goods and services. As noted in instruction # 12 you may consider the use of "means or facilities of interstate commerce such as telephones, the internet, or hotels that service interstate travelers."

Dev Middlebrooks

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

A - If you permit someone to store a gun in a  
Specified property, does that classify as  
Possession?

B - Does joint possession have to mean that both  
people are in ~~the~~ direct physical control of an item?

*Am*

\_\_\_\_\_  
PLEASE SIGN  
PRINT: \_\_\_\_\_

July 10<sup>th</sup> 2018  
DATE

The answer to B is No. Joint possession could include either actual or constructive possession. With respect to A, it would depend upon the factual circumstances. I can only suggest that you apply Instruction 4 to the facts as you find them.

Don Middlebrooks

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

---

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

A) - Can we have a laptop to look at  
the evidence disc of the CellBrights?

B) - Can A.A. be one of the "persons in  
some way agreed to try to accomplish a shared  
unlawful plan" even though she is a minor?

PLEASE SIGN  
PRINT:-

DATE

A. We are providing a laptop.

B. ~~Since~~ Since the object of the conspiracy would be trafficking A.A., she cannot be a co-conspirator.

If you choose to break for the evening do not discuss the case with anyone and wait until all of you are present to resume deliberations. Let Genny know what time you plan to resume in the morning.

If you prefer to continue for a while this evening you may do so but please be respectful of ~~each other's~~ all jurors obligations.

Don Middlebrooks

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**MINUTES - CRIMINAL JURY TRIAL**

**CASE NO.:** 18-80062-CR-MIDDLEBROOKS

**DAY #:** 4

**DATE:** July 12, 2018

**REPORTER:** Diane Miller

**Court Interpreters:** N/A

**Courtroom Deputy:** Genevieve McGee

**STYLE:** United States of America  
vs.  
Charles Edward Smith (J)

**COUNSEL:** Lothrop Morris, AUSA and Ellen Cohen, AUSA

M. Caroline McCrae, AFD and Anthony Natale, AFD Counsel for Defendant

9:00 a.m. – Jury Trial – Jurors continue deliberating  
\_\_\_\_ Jury Selection/Voir dire began.  
\_\_\_\_ Jury empaneled & sworn  
\_\_\_\_ Opening statements to the jury  
\_\_\_\_ Jury trial held and continued to: \_\_\_\_\_ @ 9:00 am  
\_\_\_\_ Closing Arguments to the jury  
\_\_\_\_ Jury Instructions  
X Jury deliberating. Deliberations continue Friday, 7/13/2018 at 9:00 am.  
\_\_\_\_ Jury trial continued to: \_\_\_\_\_  
\_\_\_\_ Jury returned a verdict. See verdict form.

**Comments:**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

- Does the "unlawful plan" in Count one  
part one, have to be a consistent  
long term plan or can it evolve with  
the circumstances to end at a relevant  
unlawful plan that is related to part 3.

\_\_\_\_\_  
PLEASE SIGN  
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\_\_\_\_\_  
DATE



There is no time requirement for the unlawful plan and the plan can evolve but the object of the plan must be as described in element # 3 of Instruction 11.

The transcript<sup>of AA's testimony</sup> is not presently available. It would take approximately 1-1½ hours to prepare it. Let me know if you want us to ~~go forward to~~ go forward to obtain it.

For Mr. [illegible]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

---

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

- may we have the transcribed testimony  
of A.A. for both days?

PLEASE SIGN  
PRINT: \_\_\_\_\_

July 12<sup>th</sup> 2018  
DATE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

---

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

We are hung ...

PLEASE SIGN.  
PRINT: \_\_\_\_\_

July 11<sup>th</sup> 2018  
DATE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

① - If you loan someone your property and they use it for an illegal purpose are you liable.

A - even as neglect?

B - if you have a general idea of their purpose of use.

② Is Crack interstate commerce

PLEASE SIGN  
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July 12<sup>th</sup> 2018  
DATE \_\_\_\_\_

Question 1: With respect to ~~the~~ 1A (neglect) the answer is no. With respect to 1B it would depend upon the the facts as you find them and your application of Instructions 11, 12 + 14.

Question 2: The illegal possession and sale of drugs, including crack cocaine affects interstate commerce.

Don M. Brooks

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

---

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

- In regards to Count one, part two  
does the defendant have to know  
that a minor is being prostituted [purpose]  
and that there was a plan to do so.

PLEASE SIGN  
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July 12<sup>th</sup> 2018  
DATE \_\_\_\_\_

The defendant must know the unlawful purpose of the plan and willfully join in it. The purpose of the plan must be "to recruit, entice, harbor, <sup>transport</sup> provide, obtain or maintain" the minor knowing that the minor would be caused to engage in a commercial sex act.

Don Middlebrooks

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

- May we have Angela Lilly's testimony.
- May we have the definition for sex trafficking

  
\_\_\_\_\_  
PLEASE SIGN  
PRINT:

July 13<sup>th</sup> 2018  
DATE



1. We will prepare a transcript of Angela Lily's testimony. It will take about two hours.

2. Sex Trafficking is defined as "to recruit, entice, harbor, transport, provide, obtain, or maintain by any means...a person...who will be caused to engage in a commercial sex act." See Jury Instruction #12

Don Middlebrooks

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

QUESTION/NOTE FROM THE  
JURY TO THE COURT

- Does the unlawful plan have to start with ~~prostitution of a minor~~ Prostitution of a minor, or can it just be prostitution.
- Can the "Johns / Dates" be the "persons" in element 1 of count 1?

PLEASE SIGN  
PRINT:

July 13<sup>th</sup> 2018  
DATE

1. No. But at some point the object of the plan must include a minor and the defendant must know that and willfully join in it.

2. Yes. But the John Dater must know or act in reckless disregard of the fact that the person recruited, enticed, harbored, transported, provided, obtained or maintained was a person who had not attained the age of 18 years and would be caused to engage in a commercial sex act.

Dorr Middlebrooks

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

---

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

- What disc or evidence # is the audio recording of A.A. when she went to identify the boat?

\_\_\_\_\_  
PLEASE SIGN  
PRINT: \_\_\_\_\_

July 13<sup>th</sup> 2018  
\_\_\_\_\_  
DATE

Defense Exhibit # 5. It is  
an audio disc.

Don Middlebrooks

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

- What is the time stamp on Defence Exhibit #5  
audio of where A.A. says she met  
the "Yatchies"?

The time stamp is approximately at 23:00

PLEASE SIGN  
PRINT: \_\_\_\_\_

July 13<sup>th</sup> 2018  
DATE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

QUESTION/NOTE FROM THE  
JURY TO THE COURT

- After deep Consideration we are  
very hung on one <sup>of the</sup> count.

PLEASE SIGN  
PRINT: \_\_\_\_\_

July 13<sup>th</sup> 2018  
DATE

Have you reached unanimous agreement on the other two counts. If so, leave the count you cannot agree on blank, complete the remainder of the verdict form and you will be asked to return to the courtroom to present the verdict as to the agreed upon counts.

Don Middlebrooks



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

CHARLES EDWARD SMITH,

Defendant(s).

---

**QUESTION/NOTE FROM THE  
JURY TO THE COURT**

*We have reached a verdict*

\_\_\_\_\_  
PLEASE SIGN  
PRINT: \_\_\_\_\_

*July 13<sup>th</sup> 2018*  
\_\_\_\_\_  
DATE



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 18-CR-80062-MIDDLEBROOKS(s)(s)

UNITED STATES OF AMERICA,

vs.

CHARLES EDWARD SMITH,  
a/k/a Suncoast,

Defendant.

**VERDICT FORM**

We, the Jury in the above-captioned case, unanimously find the Defendant:

As to Count 1: NOT GUILTY \_\_\_\_\_ GUILTY ✓

As to Count 2: NOT GUILTY \_\_\_\_\_ GUILTY \_\_\_\_\_

As to Count 4: NOT GUILTY ✓ GUILTY \_\_\_\_\_

**SO SAY WE ALL**

\_\_\_\_\_  
**FOREPERSON NAME**

\_\_\_\_\_  
**FOREPERSON SIGNATURE**

Dated: July 13<sup>th</sup> 2018

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80062-CR-DMM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JULY 9, 2018

WEST PALM BEACH, FLORIDA

CHARLES EDWARD SMITH,

Defendant.

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS  
BEFORE THE HONORABLE DONALD M. MIDDLEBROOKS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:   LOTHROP MORRIS, AUSA  
                              ELLEN COHEN, AUSA  
                              Office of U.S. Attorney  
                              400 Australian Avenue  
                              West Palm Beach, Florida 33401

FOR THE DEFENDANT:    CAROLINE MCCRAE, AFPD  
                              ANTHONY NATALE, AFPD  
                              Office of U.S. Public Defender  
                              450 Australian Avenue  
                              West Palm Beach, Florida 33401

REPORTED BY:           DIANE MILLER, RMR, CRR, CRC  
                              Official Court Reporter  
                              701 Clematis Street  
                              West Palm Beach, Florida 33401  
                              561-514-3728  
                              diane\_miller@flsd.uscourts.gov

1 may not get to her, but we will see. If we get to her, we will  
2 need her.

3 Is that it from you all for cause?

4 MR. MORRIS: Yes.

5 THE COURT: Okay, let's take the peremptories one by  
6 one with the Government going first, no back striking, right?

7 MR. MORRIS: Right.

8 THE COURT: Number one, Nahidino, Government?

9 MR. MORRIS: We will accept Mr. Nahidino.

10 THE COURT: Defense?

11 MS. McCRAE: We will strike him, Your Honor.

12 THE COURT: Number two, Kanefield, Government?

13 MR. MORRIS: The Government will accept Kanefield.

14 THE COURT: Defense?

15 MS. McCRAE: We will accept.

16 THE COURT: Three is Rose, Government?

17 MR. MORRIS: We will accept Ms. Rose.

18 THE COURT: Defense?

19 MS. McCRAE: We will accept, Your Honor.

20 THE COURT: Four is Sexton, Government?

21 MR. MORRIS: We will accept Mr. Sexton.

22 THE COURT: Defense?

23 MS. McCRAE: We will accept.

24 THE COURT: Five is Robbins, Government?

25 MR. MORRIS: Strike.

Monday, July 9, 2018.

1 THE COURT: Number six is Pentler, Government?

2 MR. MORRIS: Accept.

3 THE COURT: Defense?

4 MS. McCRAE: Accept.

5 THE COURT: Number seven is Thomas, Government?

6 MR. MORRIS: Strike.

7 THE COURT: Number eight is Price, Government?

8 MR. MORRIS: Accept.

9 THE COURT: Defense?

10 MS. McCRAE: Strike.

11 THE COURT: Number nine is Karimi, Government?

12 MR. MORRIS: Accept.

13 THE COURT: Defense?

14 MS. McCRAE: Strike.

15 THE COURT: Number 10, Harley, Government?

16 MR. MORRIS: Strike.

17 MR. NATALE: Your Honor, this is the second  
18 African-American person who has been struck by the Government.

19 THE COURT: I'm not inclined, at this point. Thomas  
20 had a couple of issues which it was apparent, the foster care  
21 issue, he had another -- his mother's job; so I'm not, at this  
22 point.

23 But I do not want an all-white jury, Mr. Morris.

24 MR. MORRIS: We are going to make sure that doesn't  
25 happen.

Monday, July 9, 2018.

1 THE COURT: All right. I don't think, at this point,  
2 there is a basis for me to request a race neutral reason by the  
3 Government.

4 We are at 11, Nagle, Government?

5 MR. MORRIS: We are going to strike.

6 THE COURT: You are going to use all of your  
7 challenges before we get off the first page. So you used four  
8 already, you have two more.

9 And we are to Mehl, Government?

10 MR. MORRIS: We will accept.

11 THE COURT: Defense?

12 MS. McCRAE: Strike.

13 THE COURT: Thirteen is Mierzwa, Government?

14 MS. COHEN: The lawyer, it is up to you.

15 MR. MORRIS: I know, we are getting --

16 MS. COHEN: He is a labor lawyer. We don't want to  
17 lose --

18 MR. MORRIS: One, two.

19 MS. COHEN: We are up to -- this would be number  
20 five.

21 MR. MORRIS: I think we are at three, aren't we?

22 MS. COHEN: No, four.

23 THE COURT: You struck four already.

24 MS. COHEN: This would be number five, if you strike  
25 him.