

APPENDIX

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14169
Non-Argument Calendar

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.

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

(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

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

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:

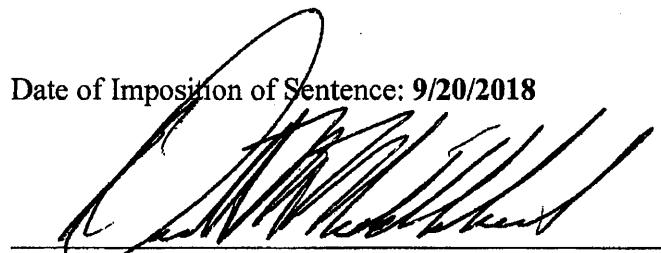
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. §1591(a)(1),(b)(2),(c) and §1594(c)	Conspiracy to recruit, entice, harbor, transport, provide, obtain, maintain and solicit a minor to engage in a commercial act.	03/13/2018	1

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:

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>

* 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.

CASE NUMBER	TOTAL AMOUNT	JOINT AND SEVERAL AMOUNT
DEFENDANT AND CO-DEFENDANT NAMES (INCLUDING DEFENDANT NUMBER)		

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

Appendix E

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, AFPD and Anthony Natale, AFPD Counsel for Defendant

9:00 a.m. - Jury trial

X Jury Selection/Voir dire began.

X Jury empaneled & sworn

X Opening statements to the jury

X Jury trial held and continued to: Tuesday, 7/10/2018 @ 9:00 am

 Closing Arguments to the jury

 Jury Instructions

 Jury deliberating

 Jury trial continued to: _____.

 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

9:00 a.m. - Jury trial
____ Jury Selection/Voir dire began.
____ Jury empaneled & sworn
____ Opening statements to the jury
X Jury trial held and continued to: Wednesday, 7/11/2018 @ 9:00 am
____ Closing Arguments to the jury
____ Jury Instructions
____ Jury deliberating
____ Jury trial continued to: _____
____ 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 #: 3

DATE: July 11, 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, AFPD and Anthony Natale, AFPD Counsel for Defendant

9:00 a.m. - Jury trial

Jury Selection/Voir dire began.

Jury empaneled & sworn

Opening statements to the jury

Jury trial held and continued to: _____ **(@ 9:00 am)**
X Closing Arguments to the jury
X Jury Instructions
X Jury deliberating. **Deliberations continue on Thursday, 7/12/2018 at 9:00**

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**

Judge Middlebrooks,

When in reference to Count 1 and 2.

PLEASE SIGN
PRINT:

July, 10th 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 #1.

1. Harbor — to afford lodgings, 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."

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 - 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?

Q32

PLEASE SIGN
PRINT: _____

DATE

July 10th 2018

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 H 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. ~~Defendant~~ Since the object of the conspiracy would be trafficking AA, 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 Garry 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~~ 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, AFPD and Anthony Natale, AFPD 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

PRINT: _____

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

Tom M. McGehee Jr.

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: *z*

July 12th 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 11th 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
PRINT:

July 12th 2018
DATE

Question 1: With respect to ~~1A~~
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.

David M. McElroy
McElroy Law, P.A.

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
PRINT:

July 12th 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, ^{transport}, 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 13th 2018
DATE

1. We will prepare a transcript of
Angela Lilly'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 ~~something~~ Prostitution of a minor, or can it just be prostitution.
- Can the "Johns / Dates" be the "person" in element 1 of Count 1?

PLEASE SIGN
PRINT:

July 13th 2018
DATE

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

2. Yes. But the John Dates 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.

Don Middlebush

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 13th 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 Exhib. #5
audio of where A.A. says she met
the "Yatchies"?

The time stamp is approximately at 23:00

PLEASE SIGN
PRINT:

July 13th 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^{of the} count.

PLEASE SIGN
PRINT: *111-216*

July 13th 2018
DATE

Have you reached unanimous
agreement on the other two counts.
If so, leave the court, 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 13th 2018
DATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MINUTES - CRIMINAL JURY TRIAL

CASE NO.: 18-80062-CR-MIDDLEBROOKS

DAY #: 5

DATE: July 13, 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, AFPD and Anthony Natale, AFPD 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.

Jury trial continued to: _____
X Jury returned a verdict. See verdict form.

Comments:

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 13th 2018

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

UNITED STATES OF AMERICA,

Plaintiff,
vs.

JULY 9, 2018

CHARLES EDWARD SMITH,

Defendant.

WEST PALM BEACH, FLORIDA

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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.

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.