

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
J. Derham Cole, Circuit Court Judge

Appellate Case No.:2016-001633

Case No.: Sex/Indecent Exposure 14-GS-11-01085; Sex/Indecent Exposure 15-GS-11-00938

DOSSIE FAISON, JR.,

Appellant,

Versus

STATE,

Respondent.

RECEIVED

APR 21 2017

SC Court of Appeals

RECORD ON APPEAL



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April 19, 2017

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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
ADMINISTRATIVE LAW COURT

The Honorable J. Derham Cole

Case No.: Obscene/Exposure of Private Parts in a Lewd and Lascivious Manner
2014A1120100023

DOSSIE FAISON, JR.,

Appellant,

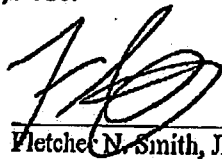
Versus

STATE,

Appellee.

NOTICE OF INTENT TO APPEAL

Comes now the Appellant, Dossie Faison, Jr., by and through his undersigned attorney hereby appeals from a decision and order of the Honorable rendered on August 3, 2016 and filed with the Clerk of Court on August 3, 2016.



Fletcher N. Smith, Jr.
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Greenville, South Carolina

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
ADMINISTRATIVE LAW COURT

The Honorable J. Derham Cole

Case No.: Obscene/Exposure of Private Parts in a lewd and Lascivious Manner
2014A1120100023

DOSSIE FAISON, JR.,

Appellant,

Versus

STATE,

Appellee.

CERTIFICATE OF SERVICE

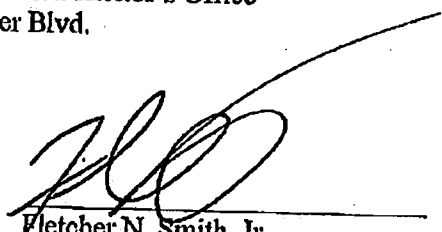
I, Fletcher N. Smith, Jr., hereby certify that I have this 5, day of August, 2016, served a copy of the herein below listed documents to the addressees listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

NOTICE OF INTENT TO APPEAL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk of Court
P.O. Box 11629
Columbia, SC 29211

The Honorable Brandy McBee
Cherokee County Clerk of Court
Seventh Judicial Circuit
P.O. Box 2289
Gaffney, SC 29342

Kim Leskanic, Esquire
Assistant Solicitor, Cherokee County
Seventh Judicial Circuit Solicitor's Office
125 East Floyd Baker Blvd.
Gaffney, SC 29340



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Attorney for Appellant
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Greenville, SC 29603
(864) 232-6541 Office
(864) 232-6756 Fax

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Cherokee

VS.

Dossie Falson Jr

AKA:

Race: WHITE Sex: M Age: 68

DOB: 03-24-1948 SS#: 218-46-5222

Address: 208 W Carolina St. Apt 4

City, State, Zip: Blacksburg, SC 29702-1107

DL#: 101928653 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said Indictment comes now the Defendant who was
TO: Indecent exposure [0-3 years]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS1100938

A/W#: 2015GS1100938

Date of Offense: 9/1/2014

S.C. Code §: 16-15-0130

CDR Code #: 0091

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-0130

of the S.C. Code of Laws, bearing CDR Code # 0091

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

LBSANIC, KIM

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 3000; provided that upon the service of 18 days/months/years and/or payment

of \$ 100; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100

§ 56-5-2995 (DUI Assessment) \$12

§ 56-1-286 (DUI Breath Test) \$25

Proviso 61.6 (Public Def/Probation) \$500

§ 14-1-212 (Law Enforce. Funding) \$25

§ 14-1-213 (Drug Court Surcharge) \$150

§ 50-21-114 (BUI Breath Test Fee) \$50

§ 56-5-2942(J) (Vehicle Assessment) \$40/cn

3% to County (if paid in installments) \$ 9.90

TOTAL

\$ 342.48

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

NOTE: follow treatment recommend-
ation; no contact w/ victim;
sex offender registration 23-3-430.☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

WITNESSES

Blacksburg Police Dept.

Michael Vandy

ARREST WARRANT NUMBER

2014AT120100023

ACTION OF GRAND JURY

TRUE BILL

Wayne Atkins
Foreperson of Grand Jury

Date: 11-20-14

VERDICT

Foreperson of Petit Jury

14-GS-11-01085

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 20 2014

TERM

THE STATE

VS.

DOSSIE FAISON JR.

Indictment for

SEX/INDECENT EXPOSURE

SC Code: 16-15-130

CDR Code: 0091

Class MIS-A

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 NOV 20 AM 10 17
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

NOV 20 2014

At a Court of General Sessions, convened on _____ the
Grand Jurors of Cherokee County present upon their oath:

SEX/INDECENT EXPOSURE

That Dossie Faison Jr., did in Cherokee County, South Carolina, on or about
September 2, 2014, willfully, maliciously, and Indecently expose his person in a
public place or property of others or to the view of any person on a street or
highway; to wit: by exposing himself in view of Barbara Humphries, in violation of
§16-15-130, THE CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Blacksburg Police Dept.

Maria D. [Signature]

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *Oct 7, 2015*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **15-GS-11-00938**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

Oct 8, 2015

TERM

THE STATE

vs.

DOSSIE FAISON, JR.

Indictment for

SEX/INDECENT EXPOSURE

SC Code: 16-15-130

CDR Code: 0091

Class MIS-A

FILED IN THE OFFICE
CLERK OF COURT
2015 OCT -1 A.M. 15
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on 09/01/15 the
Grand Jurors of Cherokee County present upon their oath:

SEX/INDECENT EXPOSURE

That Dossie Faison, Jr. did in Cherokee County, South Carolina between September 1, 2014, and September 2, 2014, willfully, maliciously, and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway; to wit: by exposing himself at a convenience store in view of Barbara Humphries, in violation of §16-15-130, THE CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Kimberly J. Faison
ASSISTANT SOLICITOR

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
ADMINISTRATIVE LAW COURT

The Honorable J. Derham Cole

Appellate Case No.: 2016-001633
Case No.: 14-GS-11-01085 and 15-GS-11-00938

Dossie Faison, Jr.,

Appellant,

Versus

State of South Carolina,

Appellee.

DESIGNATION OF MATTER

1. NOTICE OF INTENT TO APPEAL
2. INDICTMENT OF NOVEMBER 20, 2014
3. INDICTMENT OF OCTOBER 1, 2015
4. MOTION TO QUASH INDICTMENT
5. TESTIMONY OF BARBARA HUMPHRIES
6. TRANSCRIPT PAGES 28, 29, 30, 32, 51-94,
7. TRANSCRIPT NO. 2. PAGES 47-52



Fletcher N. Smith, Jr.
Attorney for Appellant
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Greenville, South Carolina
November 22, 2016

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
ADMINISTRATIVE LAW COURT

The Honorable J. Derham Cole

Appellate Case No.: 2016-001633
Case No.: 14-GS-11-01085 and 15-GS-11-00938

DOSSIE FAISON JR.,

Appellant,

Versus

STATE,

Appellee.

CERTIFICATE OF SERVICE

I, Fletcher N. Smith, Jr., hereby certify that I have this 22 day of November, 2016, served a copy of the herein below listed document(s) to the addressees listed below by via facsimile and by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

Initial Brief
Designation of Matter

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk
P.O. Box 11629
Columbia, SC 29211

J. Benjamin Aplin, Esquire
Senior Assistant Deputy Attorney General
Post Office Box 11549

Columbia, SC 29211-1549

Alan McCrory Wilson, Esquire
Post Office Box 11549
Columbia, SC 29211-1549

The Honorable Brandy McBee
Cherokee County Clerk of Court
Seventh Judicial Circuit
P.O. Box 2289
Gaffney, SC 29342

Kim Leskanic, Esquire
Assistant Solicitor, Cherokee County
Seventh Judicial Circuit Solicitor's Office
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Greenville, South Carolina
November 22, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
J. Derham Cole, Circuit Court Judge

Appellate Case No. 2016-001633

THE STATE, ...RESPONDENT

v.

DOSSIE FAISON, JR., ...APPELLANT.

DESIGNATION OF MATTER

In addition to the matter designated by Appellant, Respondent proposes the following matter to be included in the Record on Appeal:

- (1) Indictment and Sentence sheets;
- (2) August 2, 2016 transcript pages 1-12; 33-46; 94-98; 101-105; 107-120;
- (3) August 3, 2016 transcript pages 4-40; 42-52.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers. The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

BY: 
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
March 23, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
J. Derham Cole, Circuit Court Judge

Appellate Case No. 2016-001633

THE STATE, ...RESPONDENT

v.

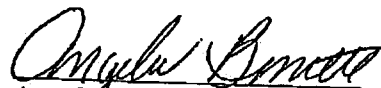
DOSSIE FAISON, JR., ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Initial Brief of Respondent* and *Designation of Matter*, both dated March 23, 2017, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Fletcher N. Smith, Jr., Esquire
P.O. Box 10496
Greenville, South Carolina 29603

I further certified that all parties required by Rule to be served have been served. This 23rd day of March, 2017.


Angela Bennett
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

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STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS
	)	COURT OF THE SEVENTH
COUNTY OF CHEROKEE	)	JUDICIAL CIRCUIT
	)	
	)	
THE STATE OF	)	
SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	TRANSCRIPT OF RECORD
	)	2015-GS-11-0938
vs.	)	
	)	
DOSSIE FAISON, JR.,	)	Day One of Trial
	)	
Defendant.	)	
	)	

August 2nd, 2016
Gaffney, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, Judge.

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

KIMBERLY LESKANIC, SOLICITOR
For Plaintiff

FLETCHER N. SMITH, ESQUIRE
For Defendant

ORIGINAL

Julie A. Ashbrook,
Circuit Court Reporter
Seventh Judicial Circuit

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By Mr. Smith

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By The Court

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EXHIBITS

		<u>MARKED</u>	<u>ENTERED</u>
1			
2			
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4			
5	PLAINTIFF'S EXHIBIT NO. 1, Page of Photographs	7	57
6	PLAINTIFF'S EXHIBIT NO. 2, Page of Photographs of Car	7	58
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17	PLAINTIFF'S EXHIBIT NO. 8, Photo of Store Taken at 22:12:02 on 9/1/14	7	65
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23	PLAINTIFF'S EXHIBIT NO. 11, Photo of Car Taken at 22:04:37 on 9/1/14	8	66
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EXHIBITS

	<u>MARKED</u>	<u>ENTERED</u>
1		
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THE STATE VS. DOSSIE FAISON, JR., DAY 1 OF TRIAL

(Whereupon, State's Exhibits No. 1, Page of Photographs, was marked for identification.)

(Whereupon, State's Exhibit No. 2, Page of Photographs of Car, was marked for identification.)

(Whereupon, State's Exhibit No. 3, CD, was marked for identification.)

(Whereupon, State's Exhibit No. 4, Photo of Store Taken at 22:08:37 on 9/1/2014, was marked for identification.)

(Whereupon, State's Exhibit No. 5, Photo of Store Taken at 22:08:37 on 9/1/2014, was marked for identification.)

(Whereupon, State's Exhibit No. 6, Photo of Store Taken at 22:08:49 on 9/1/2014, was marked for identification.)

(Whereupon, State's Exhibit No. 7, Photo of Store Taken at 22:11:19 on 9/1/14, was marked for identification.)

(Whereupon, State's Exhibit No. 8, Photo of Store Taken at 22:12:02 on 9/1/14, was marked for identification.)

(Whereupon, State's Exhibit No. 9, Photo of Store Taken at 22:15:19 on 9/1/14, was marked for identification.)

1 (Whereupon, State's Exhibit No. 10, Photo of Car
2 Taken at 22:04:31 on 9/1/14, was marked for
3 identification.)

4 (Whereupon, State's Exhibit No. 11, Photo of Car
5 Taken at 22:04:37 on 9/1/14, was marked for
6 identification.)

7 (Whereupon, State's Exhibit No. 12, Photo of Car
8 Taken at 22:05:07 on 9/1/14, was marked for
9 identification.)

10 (Whereupon, State's Exhibit No. 13, Photo of Car
11 Taken at 22:09:32 on 9/1/14, was marked for
12 identification.)

13 (Whereupon, State's Exhibit No. 14, Photo of Car
14 Taken at 22:10:01 on 9/1/2014, was marked for
15 identification.)

16 (Whereupon, State's Exhibit No. 15, Photo of Car
17 Taken at 22:10:07 on 9/1/14, was marked for
18 identification.)

19 (Whereupon, State's Exhibit No. 16, Photo of Man
20 Taken at 22:10:10 on 9/1/2014, was marked for
21 identification.)

22 (Whereupon, State's Exhibit No. 17, Photo of Man
23 Taken at 22:10:21 on 9/1/14, was marked for
24 identification.)

25 (Whereupon, State's Exhibit No. 18, Photo of Gas

1 Station Taken at 22:11:55 at 9/1/14, was marked for
2 identification.)

3 (Whereupon, State's Exhibit No. 19, Photo of Car
4 Taken at 22:11:59 on 9/1/14, was marked for
5 identification.)

6 (Whereupon, State's Exhibit No. 20, Photo of Food
7 Mart, was marked for identification.)

8 (Whereupon, State's Exhibit No. 21, Photo of
9 Parking Lot, was marked for identification.)

10 (Whereupon, State's Exhibit No. 22, Photo of Gas
11 Station, was marked for identification.)

12 THE COURT: All right. Are we ready to begin the
13 trial?

14 MS. LESKANIC: The State's ready, Your Honor.

15 MR. SMITH: Yes, sir, Your Honor.

16 THE COURT: All right. Ladies and gentlemen of
17 the jury panel, we are ready to begin with jury
18 selection in the first case. It's going to require some
19 of your participation. The title of the case is the
20 State versus Dossie Faison, Jr.

21 Mr. Faison has been accused by the State, that is
22 through the prosecutor's office, with having committed
23 the crime of indecent exposure. The State alleges by
24 way of an indictment -- an indictment is the charging
25 paper. It's like an arrest warrant. It's the charge

1 that's brought against the defendant. It's not evidence
2 of anything. It doesn't prove anything, but it does
3 serve as the way by which a person is brought into this
4 court and formally accused of a crime. And, of course,
5 it serves to put a defendant, a person charged with a
6 crime, on notice as to what crime the State claims they
7 have committed. But the State has the burden of proving
8 the allegations and the crime against the defendant
9 beyond a reasonable doubt.

10 But in this case the indictment alleges that Mr.
11 Faison committed the crime of indecent exposure. The
12 State alleges in the indictment that the defendant did
13 here in Cherokee County between September the first of
14 2014 and September the 2nd of 2014, willfully,
15 maliciously, and indecently expose his person in a
16 public place, on the property of others, or to the view
17 of any person on a street or highway. And they
18 specifically allege that Mr. Faison did expose his
19 genitalia at a convenience store in the view of Barbara
20 Humphries here in Cherokee County.

21 As to those allegations and as to that charge,
22 the Defendant has entered a plea of not guilty. A plea
23 of not guilty places upon the State, the prosecutor, the
24 burden of proving the allegations that they have made,
25 the burden of proving each of the essential elements of

1 the crime they allege against the defendant. And,
2 therefore, the burden is upon the State to establish the
3 Defendant's guilty to the satisfaction of 12 jurors
4 beyond a reasonable doubt before any verdict of guilty
5 could be returned.

6 And so we're gonna be selecting 13 of you.
7 There'll be 12 primary jurors and one additional juror
8 to serve as an alternate. And by way of your
9 participation you're gonna be called upon to listen to
10 the testimony that will come from the witness stand to
11 consider any other evidence that might be introduced
12 during the trial, to listen to the lawyers' arguments,
13 to listen to the Court's instruction on the law, and to
14 deliberate the case, determine the facts, apply the law
15 and arrive at a fair and just decision, whatever that
16 decision may be.

17 Before we can begin with jury selection, I've got
18 some folks to introduce to you, as well as some
19 questions to ask of you. The reason these people are
20 being introduced is to find out if you have any
21 connection with them, do you know anybody involved in
22 the trial of this case or anybody connected with them.
23 And then I'll ask you some other additional questions
24 designed to determine whether or not you have some bias
25 or prejudice or you have some reason why you could not

1 be fair and impartial if selected as a juror in this
2 particular case.

3 And so, as these folks are introduced, if you
4 have any connection with them I'll ask you to please
5 stand so we can identify what that connection is. And
6 if you need to respond to any other question, I'll ask
7 that you please stand so that we can receive that
8 information and determine whether or not you can be fair
9 and impartial.

10 Now, in the case, as I've told you, the person
11 who is accused of the crime, the person the State claims
12 committed this offense, is Dossie Faison, Jr. Mr.
13 Faison, if you'll stand and face the jury panel, please,
14 sir. Yeah, just turn and face the panel. Turn so they
15 can see you.

16 (Whereupon, Mr. Faison stood and faced the jury
17 panel.)

18 THE COURT: All right, thank you. Be seated.
19 Seated with Mr. Faison at defense table is Fletcher
20 Smith. He's Mr. Faison's lawyer. He'll be assisting
21 him in the trial of this case.

22 (Whereupon, Mr. Fletcher stands and faces the
23 jury panel.)

24 The person who is alleged to have been the victim
25 of this event is Barbara Humphries. She's seated behind

1 (Whereupon, jury leaves the courtroom.)

2 Are there any matters to be addressed regarding
3 jury selection by the State?

4 MS. LESKANIC: No, Your Honor.

5 THE COURT: By the defendant?

6 MR. SMITH: None from the defendant.

7 THE COURT: Those who are not selected you are
8 excused for the balance of the afternoon. Please call
9 back tonight after 6 o'clock to the number that you have
10 on the front of the juror information pamphlet. That's
11 the number in the black box. Call that number after 6
12 o'clock this evening to receive further reporting
13 information. Have a good afternoon. Thank you for your
14 participation.

15 (Whereupon, jury panel leaves the courtroom.)

16 Any matters to address before the jury is sworn?

17 MS. LESKANIC: Do you want to address that issue
18 or ---

19 MR. SMITH: No, Your Honor. We're just
20 challenging the indictment as being unconstitutional on
21 the basis of the Court's statement. We believe that the
22 term when it says in the indictment "did maliciously,
23 indecently expose his person". Person is not specific
24 enough to actually demonstrate that it covers anything
25 like private parts or non-private parts. It's so broad

1 and it's vague and, therefore, constitutionally invalid
2 because of due process bars it under the 14th amendment
3 and of the South Carolina constitution as well.

4 THE COURT: All right. Ms. Leskanic?

5 MS. LESKANIC: May it please the Court. Your
6 Honor, I believe in cases like this that the Court has
7 interpreted that to mean the genitalia and that's what
8 we have in the facts of this case. The statute itself
9 is set out as indecent exposure. Used in common terms
10 we've used that for the private parts.

11 And, actually, looking at the requests to charge
12 book from Ralph King Anderson, Jr., it even states in
13 those after setting forth the elements: "Indecent
14 exposure involves the exposure of the private parts to
15 public view." So, I believe that in the cases that have
16 come down involving indecent exposure it involves the
17 genitalia, which is what we normally allege and in this
18 case is contained in the discovery and everything has
19 been provided to the attorneys.

20 MR. SMITH: Your Honor, the only other thing is I
21 believe the criminal statute, the ordinance must be
22 sufficiently definitely to one citizen of common
23 intelligence of the particular acts which it offends,
24 and I don't believe that this statute on its face tells
25 what specific acts are forbidden, it just says person.

1 THE COURT: All right. I note your exception and
2 your objection and I'm going to deny your motion to
3 dismiss based upon the unconstitutionality of the
4 statute, based upon the fact that in my view while an
5 alien might come to earth and not know what is meant by
6 expose his person, I think everybody else who already
7 resides on earth accepts the fact that exposing your
8 person means to expose your genitalia in a public place.
9 And based upon that common acceptance I'm gonna deny
10 your motion for dismissal.

11 MR. SMITH: Thank you, Your Honor.

12 THE COURT: All right. What else?

13 MS. LESKANIC: I have the motion in limine, Your
14 Honor. I don't know if you wanted to handle that prior
15 to the jury being sworn.

16 THE COURT: The reference to the phone call?

17 MS. LESKANIC: Yes, sir, Your Honor.

18 THE COURT: All right. Mr. Smith, is it your
19 position that that is not to be mentioned until and
20 unless the defendant were to testify in the case, and at
21 that time we'll address that issue?

22 MR. SMITH: Yes, sir. Yes, sir.

23 THE COURT: Did you ---

24 MR. SMITH: I won't mention it in the opening
25 statement.

1 THE COURT: All right. Let's take ten minutes
2 before we start.

3 (Whereupon, a recess was had from 11:36 a.m. -
4 11:53 a.m.)

5 MS. LESKANIC: Your Honor, the only thing I would
6 request, we didn't prepare a direct indictment for
7 indecent exposure. That was true billed by the grand
8 jury during the October 1st, 2015, term and we would
9 request that the defendant be arraigned on that
10 indictment prior to starting the trial.

11 THE COURT: Mr. Smith, does your client need to
12 be arraigned or does he waive arraignment?

13 MR. SMITH: We waive reading of the indictment.

14 THE COURT: Okay. You've been over the
15 indictment with him?

16 MR. SMITH: Yes, sir.

17 THE COURT: You've explained to him the Charge?

18 MR. SMITH: Yes, sir.

19 THE COURT: He understands what they've brought
20 against him?

21 MR. SMITH: Yes, sir.

22 THE COURT: And you've told him what the
23 potential sentence is?

24 MR. SMITH: Yes, sir.

25 THE COURT: All right. You understand all that,

1 Mr. Faison?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. All right. Any other matters
4 we need to address before the jury is brought in?

5 MS. LESKANIC: Not by the State, Your Honor.

6 MR. SMITH: Nothing by the defense.

7 THE COURT: All right. Bring them in. Ask Mr.
8 Cooper to take the foreperson's seat. Cooper.

9 (Whereupon, jury enters the courtroom at 11:56
10 a.m.)

11 THE COURT: All right. Ladies and gentlemen, we
12 are ready to begin with the trial of the case for which
13 each you have been selected. Mr. Cooper, I'm going to
14 ask you to serve as the foreperson of the jury. As the
15 foreperson you'll have three specific duties that none
16 of the other jurors have.

17 Number one, you're asked to serve as the
18 spokesperson for the jury. And that just means that if
19 something arises during the course of the trial that
20 needs to be brought to my attention, you or one of your
21 fellow jurors has some difficulty, problem or question
22 you let me know either through the bailiff if you're
23 outside the courtroom or directly to me if you're inside
24 the courtroom.

25 Secondly, you'll also preside over jury

1 deliberations when the time comes for those
2 deliberations. That, of course, won't be until the end
3 of the trial after all of the evidence has been received
4 and I've instructed you on the law that's applicable in
5 the case. But when the time does come for jury
6 deliberations, you will preside over that process in the
7 jury room simply to ensure that those deliberations are
8 carried out in some orderly fashion.

9 And, thirdly, you'll write the decision of the
10 jury, whatever that decision may be. You'll write that
11 on a verdict form that I will provide you at the trial's
12 conclusion when you go back. And on that verdict form
13 you'll indicate the jury's unanimous decision as to the
14 charge.

15 The foreperson has those specific duties that
16 I've just indicated. That doesn't mean, however, that
17 he's any more important than any of you other jurors.
18 And that's because the decision of a jury is the
19 unanimous consensus opinion of all 12 jurors. And so
20 all of you and each of you will have an equal say and an
21 equal vote in what the ultimate decision will be in this
22 case.

23 Someone simply has to be delegated those
24 responsibilities that I've just indicated, and I have
25 delegated those to Mr. Cooper in appointing him as a

1 foreperson. But all of you jurors are equally important
2 so far as the ultimate decision in this case is
3 concerned because, as I've stated, the verdict has to be
4 unanimous. All 12 of you must be in agreement.

5 Ms. Harrison, you've been selected as an
6 alternate juror. And the function of an alternate juror
7 is to take the place of one of the original 12. If
8 during the trial one of these 12 cannot continue to
9 serve for some reason; that is, one's called away
10 because of an emergency or an illness or some other
11 reason that precludes their continued participation,
12 then you are the person that would take that person's
13 place.

14 In that event you would become the 12th juror.
15 And in that event you would participate throughout the
16 trial, including the jury deliberations at the trial's
17 conclusion. If, however, when the time does come for
18 jury deliberations the original 12 are able to
19 participate, your service ends and you don't participate
20 any further. And that's because the decision of a jury
21 is the decision of 12 and no more than 12 are permitted
22 to engage in that deliberation process.

23 But it is important that you pay just as careful
24 attention, as we ask of all of the jurors in the case,
25 because it does occur from time to time for one reason

1 or the other one of these 12 may be unable to continue,
2 and in that event you become the 12th. So we do
3 appreciate your participation as an alternate juror,
4 just as we appreciate the participation of each of you
5 jurors who have been selected for the purpose of
6 deciding the verdict in this particular case.

7 You may swear the panel.

8 THE CLERK: Mr. Foreman, ladies and gentlemen,
9 please stand and raise your right hands. Please raise
10 your right hands. (Complies.)

11 Do you solemnly swear you will truly try the
12 issues joined in this case in true verdict rendered
13 according to the law and evidence so help you God?

14 (All jurors answer in the affirmative.)

15 THE CLERK: Okay, you may be seated.

16 THE COURT: Ladies and gentlemen, as you know you
17 have been selected to decide the verdict in the case of
18 the State versus Dossie Faison, Jr. As you also know,
19 Mr. Faison has been accused by the prosecutor by way of
20 this indictment with having committed the crime of
21 indecent exposure.

22 The State, again, alleges that the defendant did
23 willfully, maliciously and indecently expose his person
24 in a public place or on the property of others or to the
25 view of some other person on a street or highway. They

1 specifically allege that he exposed his genitalia at a
2 convenience store in the view of Barbara Humphries.

3 As I've also told you, as to the charge and the
4 allegations made in the indictment, the defendant has
5 entered a plea of not guilty. A plea of not guilty
6 places upon the State, because they brought the
7 accusation, the burden of proving the allegations that
8 they have made, the burden of proving each of the
9 essential elements of the crime charged; and, therefore,
10 the burden of proving the defendant's guilt to the
11 satisfaction of you 12 jurors beyond a reasonable doubt
12 before any verdict of guilty could be returned.

13 Every person accused of a crime is always
14 presumed to be innocent. And that presumption of
15 innocence remains with any defendant, as it does with
16 this defendant. From the time that he is placed under
17 arrest and throughout the course of the criminal process
18 and even throughout the course of the actual trial in
19 the case. That presumption of innocence will be with
20 Mr. Faison even when you go back into your jury room to
21 begin with your deliberations at the trial's conclusion.
22 And that presumption of innocence will be with him in
23 that jury room and it will be with him forever, unless
24 you 12 jurors determine that he's no longer entitled to
25 that presumption of innocence.

1 In other words, after you've carefully considered
2 all the evidence in the case and from that evidence you
3 determine what you believe to be the facts as they
4 relate to these allegations, and after deciding those
5 facts you apply the law that I will have provided you,
6 if you 12 jurors unanimously determine that his guilt
7 has been proven beyond a reasonable doubt, then he would
8 no longer be entitled to that presumption of innocence.
9 But it is only if and unless and until you are satisfied
10 of his guilt beyond a reasonable doubt that the
11 presumption of innocence would no longer be applicable.

12 Now, the way the trial will proceed is that in a
13 moment the lawyers are going to address you in what are
14 called opening statements. What the lawyers tell you in
15 those statements is not evidence in the case. You're
16 not to consider their statements as being any evidence
17 upon which you will base your decision. And that's
18 because the lawyers don't know anything about this case
19 of their own personal knowledge or perception like
20 witnesses will be testifying to when the witnesses
21 testify from that witness stand.

22 The lawyers aren't gonna take the witness stand.
23 They're not gonna be placed under oath. They're not
24 gonna be subjected to direct and cross-examination like
25 every witness will be that testifies during the trial.

1 And so what the lawyers tell you should not be construed
2 by you as any evidence upon which you will base your
3 decision.

4 But you should listen to what the lawyers have to
5 say because those statements do serve a purpose. The
6 opening statements serve to provide you with a basic
7 understanding into what this case is about from both the
8 perspective of the State and of the defense so that
9 you'll have some context in which to place the evidence
10 that we will be receiving shortly thereafter.

11 The lawyers are again permitted to make closing
12 statements after all of the evidence have been received
13 -- has been received. But keep in mind, as I've
14 indicated, those statements, again, are not evidence,
15 but it does afford the lawyers an opportunity to discuss
16 with you the evidence that you have seen and heard
17 during the trial of the case.

18 And through that discussion each will be trying
19 to persuade you or to convince you that the evidence in
20 the case does or does not support a particular decision.
21 And it's in between the opening and the closing
22 statements accomplished by the lawyers that we actually
23 receive the evidence upon which you will base your
24 decision.

25 As you've been told, the State has the burden of

1 proof, so the State will go forward first in its
2 presentation of evidence. Once the State has concluded,
3 a defendant has the same opportunity to testify or call
4 a witness or introduce evidence. After all of the
5 evidence has been received, you'll hear the final
6 summations of the lawyers and then I will instruct you
7 fully on the law as it relates to the criminal law
8 generally and as it relates to this particular crime
9 specifically. After which, you'll be asked to go back
10 and to begin with your deliberations.

11 And through that process you're simply gonna be
12 called upon through the exercise of good judgment and
13 common sense conscientiously applied to the testimony
14 and evidence received during the trial to determine the
15 facts of the matter as they relate to the allegations.
16 Once you decide those facts you apply the law and you
17 render a fair and impartial decision, whatever that
18 decision may be.

19 Now, it's your exclusive duty to determine what
20 the facts are. And that means you also are the judges
21 of the facts in the case. And because you are the
22 judges of the facts you're, therefore, necessarily the
23 sole judges of the credibility of each witness that
24 testifies during the trial. And you may believe
25 everything the witness testified to, you may choose to

1 believe none of it. You may believe some portion of a
2 witness's testimony and reject some other portion of
3 that same witness's testimony.

4 You could believe one witness as opposed to
5 several or several as opposed to one. But in order for
6 you to be in a proper position to fairly evaluate a
7 witness's credibility by the information they provided,
8 it's important that you give every witness the same
9 degree of attention as they testify so that when you do
10 go back to begin your deliberations in the case you'll
11 be in a proper position to be able to fairly evaluate
12 each witness's testimony in light of not just that
13 witness's testimony, but in light of all of the
14 testimony and all of the evidence received during the
15 course of the trial.

16 It's also important that you keep an open mind
17 throughout the course of a trial. And that simply means
18 that you are not to begin making up your minds or
19 formulating your opinions as to what you think the
20 ultimate decision ought to be in this case until all of
21 the evidence has been received, until I have instructed
22 you on the law that's applicable in the case, and until
23 you've been asked to go back in to begin with your
24 deliberations.

25 That is the process. It has been designed over

1 the last 240 years to ensure that you can arrive at a
2 fair and just decision in any case. So I do want to
3 thank you in advance for your participation, as well as
4 for your careful attention. Please give the lawyers
5 your attention now as they give you their opening
6 statements.

7 Ms. Leskanic.

8 MS. LESKANIC: May it please the Court?

9 THE COURT: Yes, ma'am.

10 MS. LESKANIC: Thank you, Your Honor.

11 **OPENING STATEMENT BY THE STATE:**

12 MS. LESKANIC: Good afternoon, ladies and
13 gentlemen. I'm Kim Leskanic and I'm one of the
14 prosecutors here in Cherokee County. My job as the
15 State, as the judge told you, the State goes first and
16 we present the evidence in the case. This opening
17 statement is just an opportunity for me to give you a
18 little bit of a road map about what I think you're going
19 to hear on the witness stand so you have some idea of
20 why you're here.

21 As you know, Mr. Faison has been charged with the
22 crime of indecent exposure. In this case it's exposing
23 his penis at a convenience store in Blacksburg known as
24 the Quick Quack or Harry's Food Mart, if you're familiar
25 with that. And he did that to Barbara Humphries. She

1 stood up. She's the victim in this case.

2 It was around 10 o'clock back in September of
3 2014. It was on September 1st. Barbara was working at
4 Sumino Textile, third shift at the time, and she was
5 stopping by the Quick Quack to pick up a pack of
6 cigarettes and go to work. And as she gets out of her
7 car, the defendant is there and he is talking with
8 another man.

9 She walks by him, she goes into the store, she
10 makes a purchase. And as she is leaving the store,
11 walking back to her car, the defendant gets her
12 attention and asks her for a cigarette. So she's gonna
13 give him a cigarette. And then he says, well, that's
14 not my brand. And she says, okay, I'll give you a
15 dollar and you can go in the store and just buy a single
16 cigarette, trying to be nice, trying to help him out.

17 She gives him a dollar. She goes into her purse
18 looking for a lighter, she wants to smoke a cigarette on
19 the way to work. At that point the defendant then pulls
20 his penis out and he starts, according to Barbara and
21 the way I believe she'll describe it to you, is flopping
22 it in and out of his pants and says my name is Dick or
23 Dicky and I do work for people, I do work for women.

24 You're gonna have a video and I'm gonna let you
25 see how she responds, but I want you to know that this

1 is, this is what she went through. She is able then, as
2 he walks off, to get in her vehicle and she sits there
3 for a minute because she's a little bit in shock. She
4 didn't expect that to happen when she goes to get a pack
5 of cigarettes, but she decides I need to go tell
6 somebody.

7 So she gets out of her vehicle, she walks back
8 into the store, and she goes to see Mr. Patel who owns
9 the store. And it's explained to him what happened
10 outside and he offers to call 911 for her. He walks
11 outside with her to approach the defendant and then she
12 just says I'm not gonna call 911 now, I've got to go to
13 work.

14 So she gets to work and her friend, Lori
15 Culbreath, who you're also gonna hear from, says when
16 Barbara got to work that night she was a mess. She was
17 shaking, she was upset. And Lori had to ask her what
18 has happened. She explained to her what happened and
19 they decided at that time to call the police together.

20 So they called on September 1st, make a report
21 over the phone. Barbara goes to the police department
22 the next morning when she gets off of work on September
23 the second and files a formal report. She doesn't know
24 who the defendant is, so she can't say Dossie Faison did
25 this. She gives a description of him. She gives a

1 description of the vehicle she thinks she is -- he was
2 riding in because he was standing next to that vehicle.
3 And she gives this information to Detective Vanderburg
4 of the Blacksburg Police Department.

5 Based on that information, they get an idea of
6 who it may be and they put the defendant in a lineup.
7 They bring her back on September the 11th, nine days
8 later, and they show her the lineup and she is able to
9 immediately pick the defendant out as the person that
10 exposed himself to her. She was also able to identify
11 the vehicle that he was driving. Police took
12 photographs of his vehicle and she was able to say, yes,
13 that's the vehicle that was there and this was the man
14 that pulled his penis out in front of me at the
15 convenience store.

16 Those are the facts of the case. It is the
17 State's job to convince you beyond a reasonable doubt.
18 That's our standard of proof in this case. And we'll
19 talk more about that at the closing and at the close of
20 the case, but the question will be are you firmly
21 convinced of what happened that night.

22 And we have video from the convenience store.
23 There are several different angles. There is a video
24 camera outside and there's a video camera inside. And I
25 will show you those portions of the video. But I'm

1 gonna tell you the indecent exposure is not on there.
2 There is an angle of the video where you cannot see the
3 defendant and where he is standing. So you're gonna
4 have to listen to Barbara and you're gonna have to
5 listen to what she tells you happened that night.

6 But what you will be able to see on that video is
7 her reaction. You will be able to watch whether you
8 think she knew him, whether you think he called her over
9 to him, and how she reacts when he starts walking
10 towards her.

11 And as the judge said, at the conclusion of the
12 case we're gonna ask that you use your good judgment and
13 your common sense and you weigh the credibility of the
14 witnesses on the stand, listen carefully to their
15 testimony. Listen to Barbara. Listen to her friend
16 Lori, the officer who investigated the case. And I
17 believe that at the conclusion of the case you will be
18 firmly convinced that back in September of 2014 Dossie
19 Faison exposed himself to Barbara Humphries. Thank you.

20 MR. SMITH: Your Honor, may it please the Court?

21 THE COURT: Mr. Smith.

22 MR. SMITH: Thank you, Your Honor.

23 **OPENING STATEMENT OF THE DEFENSE:**

24 MR. SMITH: Mr. Foreman, ladies and gentlemen of
25 the jury, my name is Smith, Fletcher Smith. I have the

1 MS. LESKANIC: Thank you, Your Honor.

2 BARBARA HUMPHRIES,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. LESKANIC:

6 Q. Will you please introduce yourself to the ladies
7 and gentlemen of the jury.

8 A. My name is Barbara Humphries.

9 Q. Okay. And where do you live, Ms. Humphries?
10 Just what town do you live in?

11 A. Blacksburg.

12 Q. Okay. Have you always lived in Blacksburg?

13 A. I moved in '98.

14 Q. All right. Where did, where did you live before
15 1998?

16 A. Kings Mountain.

17 Q. Okay. But you've been living in Blacksburg since
18 1998. I want to take you back to 2014 when this
19 happened, okay?

20 A. (Nods head up and down.)

21 Q. Where were you working at the time?

22 A. Sumino, Gaffney.

23 Q. All right. And what were you doing at Sumino?

24 A. Inspection on third shift.

25 Q. Okay. How long had you been employed at Sumino

1 back in September of 2014?

2 A. Approximately six-and-a-half, going on seven
3 years.

4 Q. Can you tell us a little bit more about what your
5 job was there.

6 A. It was inspecting car interior, where I inspected
7 the cloth.

8 Q. Okay. And you were working third shift back on
9 September 1st, 2014?

10 A. Yes, ma'am.

11 Q. Okay. Did you stop at the convenience store on
12 East Cherokee Street in Blacksburg on September 1st,
13 2014?

14 A. Yes, ma'am.

15 Q. All right. Do you know is that store located
16 here in Cherokee County?

17 A. Yes.

18 Q. Okay. Why did you stop there?

19 A. To get a pack of cigarettes on the way to work.
20 I didn't have any, so I stopped to get a pack of
21 cigarettes.

22 Q. All right. And what happened? If you'll walk
23 the jury through what, what happened that night.

24 A. I just stopped to get a pack of cigarettes. And
25 I went in, got the cigarettes, came back out. He asked

1 for a cigarette, so I gave him a cigarette. I offered
2 him a cigarette.

3 I don't remember exactly how the details was. I
4 do remember that I gave him a cigarette, he said it's
5 not my brand, so I offered him a dollar. And then when
6 at some point he was pulling his penis out at me. He
7 said, my name is Dicky, I work for women, I really do.
8 And then at that point I was just trying to back away
9 from him.

10 And I get in my car and he goes around the
11 building, across the road. And I sat there for a minute
12 and kind of decided that I'm gonna go in and say
13 something because I do not like what just happened to
14 me. I feel like I had been violated. I was upset. I
15 was mad. And I just wanted to do something.

16 But -- and I ran and told the guy and then he
17 came around, he came back around to his car. And he
18 said, do you want me to call 911 now? And I said, no,
19 I just want to go to work. I just want to get out of
20 here. I just -- I, you know, I just want to go to work.

21 Q. Okay. And did you leave from the convenience
22 store ---

23 A. I took ---

24 Q. --- without calling 911?

25 A. Yes. And I did go to work. And when I got to

1 work, you know, I said I'm gonna work and just shake
2 this off, it'll be all right. You know, just go to work
3 and forget about it. And a friend of mine was there and
4 she saw me. She said -- and she asked me what was wrong
5 within me, and I told her what had happened. And she
6 was the one who told me let's call and, and report it.

7 Q. Okay.

8 A. And so that's what we did. We called the
9 Blacksburg Police Department, told them what happened,
10 and they told me to come by the next morning.

11 Q. And did you go by the police department ---

12 A. Yes.

13 Q. --- the next morning?

14 A. Yes.

15 Q. Were you able to give them a name of the
16 individual who ---

17 A. No.

18 Q. --- of the individual who did this to you?

19 A. I didn't know his name. I never saw him before.

20 Q. All right. When you first arrived at the
21 convenience store, was he already outside the store or
22 was he already there or do you remember?

23 A. I, I don't really remember. I think there was
24 two guys. Well, I'm not gonna say there were two men.
25 I was just, you know, getting out of my car. All I'm

1 thinking about is getting a pack of cigarettes.

2 Q. Okay. So you don't know the individuals that are
3 standing outside?

4 A. No.

5 Q. Do you know the defendant?

6 A. No.

7 Q. Did you ever see him before in your life?

8 A. No.

9 Q. Okay. So your goal is just to go in and get your
10 cigarettes and go to work?

11 A. (Witness nods head up and down.)

12 Q. Okay. After you came back out of the store, how
13 did -- did he get your attention or did you speak to him
14 first?

15 A. He got my attention. I think he asked for a
16 cigarette.

17 Q. Okay. And were you upset about having to give
18 him a cigarette?

19 A. No. No, I would give anybody a cigarette.
20 That's just the type of person I am. If you ask me for
21 a cigarette and I got one I'll share it, you know?

22 Q. And did he ask you for a dollar or did you offer
23 a dollar?

24 A. No, I -- he had said something about it's not my
25 brand and I said, well, I'll give you a dollar. You can

1 -- lots of places sell single cigarettes, so I said I'll
2 give you a dollar.

3 Q. Okay. So you offered him the money?

4 A. Yeah.

5 Q. All right. What were you thinking and feeling
6 after he exposed himself to you?

7 A. I felt violated. I felt disgusted. I felt like
8 I'm 58 years old, I'm old, I should be over this by now.
9 I shouldn't be having to deal with stuff like flopping
10 their peter out at me, you know.

11 Q. All right. And was it Lori Culbreath that you
12 spoke with at your office?

13 A. At work, yes.

14 Q. Okay. And did you give the police a description
15 of the person who did this?

16 A. Yes.

17 Q. All right. But at that time when you went to the
18 police department on September 2nd you didn't know who
19 he was?

20 A. (Witness shakes head back and forth.)

21 Q. All right. Did the police call you? Did
22 Detective Vanderburg call you back on September the 11th
23 to show you some photographs?

24 A. Yes.

25 Q. All right. Let me show you State's Exhibit 1.

1 MR. SMITH: No objection, Your Honor.

2 THE COURT: Submitted without objection.

3 (Whereupon, State's Exhibit Number 1 was entered
4 into the record.)

5 MS. LESKANIC: Thank you, Your Honor.

6 BY MS. LESKANIC:

7 Q. I'm gonna show you what's been Marked State's
8 Exhibit 1. Do you recognize that?

9 A. Yes.

10 Q. And what is that?

11 A. That's the pictures they showed me and I picked
12 him out ---

13 Q. Okay.

14 A. --- from the pictures.

15 Q. Who showed you the lineup?

16 A. The detective.

17 Q. Detective Vanderburg?

18 A. (Nods head up and down.)

19 Q. Now, did he tell you definitely the person that
20 exposed himself was going to be in one of the
21 photographs?

22 A. No.

23 Q. What did he tell you?

24 A. That he was gonna show me some photographs and if
25 I recognize the person to tell him who, who it was.

1 Q. All right. And when you looked at the photograph
2 were you able to quickly tell or recognize the
3 individual?

4 A. Yes.

5 Q. And how certain are you that the person you
6 circled in this picture is the person that exposed
7 himself to you on September the 1st?

8 A. A hundred percent positive that's the person.

9 Q. Okay. Were you also shown photographs of a
10 vehicle?

11 MR. SMITH: No objection.

12 THE COURT: State's Exhibit 2.

13 THE WITNESS: Yes.

14 MS. LESKANIC: We would offer for admission as
15 evidence.

16 THE COURT: Admitted without objection.

17 (Whereupon, State's Exhibit Number 2 was entered
18 into the record.)

19 MS. LESKANIC: Thank you, Your Honor.

20 BY MS. LESKANIC:

21 Q. Were you shown these photographs of the vehicle?

22 A. Yes.

23 Q. And were you able to positively identify this as
24 the vehicle that you saw the defendant standing next to
25 the night that this happened?

1 A. Yes, I was.

2 Q. All right. Did you tell police that this was
3 definitely his car?

4 A. I couldn't tell him it was definitely his car.
5 It was just the car he was beside. That don't mean, you
6 know, that was his car.

7 Q. Okay. So you didn't see him in the car and you
8 didn't try to say for sure this is his car, you just
9 said this was the car he was standing next to; is that
10 correct?

11 A. You know, I could tell you that I'm not sure what
12 I told the police officer. I know that he was beside a
13 black car.

14 Q. Okay.

15 A. And whether it was his or not, I don't know.

16 Q. Okay. But you identified that ---

17 A. A black car ---

18 Q. --- as the car that was at the convenience store;
19 is that correct?

20 A. Yes.

21 Q. Okay. All right. Were you able to watch the
22 video footage from the convenience store?

23 A. Yes.

24 Q. Have you been able to see all of that?

25 A. Yes.

1 Q. And does it accurately show what happened that
2 night as far as what the cameras will pick up?

3 A. Yes. But that one part did not show because I
4 don't know.

5 MS. LESKANIC: All right. I'm gonna offer
6 State's Exhibit 3 for admission.

7 MR. SMITH: No objection, Your Honor.

8 THE COURT: It's admitted.

9 (Whereupon, State's Exhibit Number 3 was entered
10 into the record.)

11 MS. LESKANIC: May I publish, Your Honor?

12 THE COURT: You may.

13 MS. LESKANIC: Thank you.

14 (Whereupon, State plays video, no audio heard.)

15 BY MS. LESKANIC:

16 Q. And as best you can tell, Ms. Humphries, is this
17 the video footage from outside this convenience store?

18 A. Yes, that is.

19 Q. Is that your vehicle pulling in?

20 A. Yes, ma'am.

21 Q. Is that the defendant standing to the left of
22 your vehicle?

23 A. Yes, ma'am.

24 Q. Did you have any conversation with either of
25 those men as you walked into the store?

1 A. No.

2 Q. At that time you go into the convenience store to
3 make your purchase; is that correct?

4 A. Yes.

5 Q. I'm going to fast forward this until you come out
6 of the store. Is that you walking back to your vehicle?

7 A. Yes, ma'am.

8 Q. What are you handing him there?

9 A. A dollar.

10 Q. Do you know what made you approach him again?

11 A. I don't know what he says. That's when he was
12 around and the point back there is where ---

13 Q. Now, where was he when he exposed himself to you?

14 A. He was right there. There was a light fixture, a
15 light thing right there. (Indicating.) And he was like
16 leaned up and exposing. He was speaking to me. And as
17 he was speaking to me, he was saying my name is Dicky, I
18 work for women, I really do. And ---

19 Q. How certain are you that what you saw was a
20 penis, was his penis?

21 A. I was very certain of what I saw.

22 Q. And what are you doing here? (Indicating.)

23 A. That's when I go back in the store and tell him.

24 Q. And then does Mr. Patel come out with you ---

25 A. Yes.

1 Q. --- after you talked with him inside the store?

2 A. Yes, he came outside. That's him coming around.

3 Q. Is that you and Mr. Patel walking out?

4 A. Yes.

5 Q. Is that you leaving?

6 A. Yes.

7 Q. And from there you went to work; is that correct?

8 A. (Witness nods head up and down.)

9 Q. I want to show you now the video inside the
10 store.

11 (Whereupon, plays another video, no sound.)

12 I'm fast forwarding. Is that you walking into
13 the store, Ms. Humphries?

14 A. Yes.

15 Q. And what are you looking for?

16 A. That's where they have flavors for vapor
17 cigarettes. They have different flavors.

18 THE COURT: Please speak into the microphone when
19 you speak, ma'am.

20 THE WITNESS: I'm sorry.

21 (Whereupon, ends that video and starts another
22 video, no sound.)

23 BY MS. LESKANIC:

24 Q. Do you smoke regular cigarettes or vapor
25 cigarettes or both?

1 A. Both.

2 Q. Did you end up purchasing a pack of cigarettes
3 from the store that night?

4 A. Yes, I did.

5 Q. And you've seen the video. You walk outside,
6 that's where he exposes himself to you, correct?

7 A. Yes.

8 Q. And then you're sitting in the car and then you
9 come back into the store?

10 A. Yes, ma'am.

11 Q. Did you try to explain to Mr. Patel what had
12 happened outside?

13 A. Yes, ma'am.

14 Q. And then the two of you had seen the video, gone
15 back outside to speak with Mr. Faison, correct?

16 A. Yes, ma'am.

17 (Whereupon, video ends.)

18 Q. Now, you said that he was sitting on something
19 outside the store?

20 A. Like a light thing right there. When I was
21 talking to him he was leaning on a light thing.

22 Q. I'm gonna show you State's Exhibit 21. Do you
23 recognize that?

24 A. Yeah. I seen the --

25 COURT REPORTER: I can't hear you, ma'am. I

1 didn't hear.

2 THE WITNESS: He seen that block there. That's
3 where he was at.

4 BY MS. LESKANIC:

5 Q. All right. Does this photograph substantially
6 show what the outside of the store looked like on the
7 night that this happened?

8 A. Yes.

9 MS. LESKANIC: Your Honor, we would offer State's
10 Exhibit 21 for admission.

11 MR. SMITH: No objection, Your Honor.

12 THE COURT: It's admitted.

13 (Whereupon, State's Exhibit Number 21 was entered
14 into the record.)

15 BY MS. LESKANIC:

16 Q. So are you parked close to this concrete block?

17 A. Somewhere close to that.

18 Q. And where was the defendant when he exposed
19 himself?

20 A. Right in front of my car. And as I was speaking
21 to him and I looked down and he was (indicating). And
22 from that point I really was just trying to get away
23 from him. You know, I didn't really know who what to do
24 at that point other than just to get away from him.

25 Q. Was it in this area, the concrete ---

1 A. Yes.

2 Q. --- block that you're ---

3 A. Yes.

4 Q. --- talking about where he was standing ---

5 A. Yes.

6 Q. --- or leaning against it?

7 A. And he was kind of leaning or standing against
8 that.

9 Q. Okay. I want to show you what's been marked
10 State's Exhibits 4, 5, 6, 7, 8 and 9. Tell me if you
11 recognize those.

12 A. In the parking lot. I was leaving. That's when
13 I came back in. This one is where he was going back out
14 with me. (Indicating:)

15 Q. Are those still photographs from the video that
16 the jury was just able to view?

17 A. Uh-huh. Yes.

18 MS. LESKANIC: Okay. Your Honor, at this time we
19 would offer State's Exhibits 5 through 9 for admission.

20 MR. SMITH: No objection.

21 MS. LESKANIC: Excuse me, 4 through 9 for
22 admission.

23 THE COURT: They're admitted.

24 MS. LESKANIC: Thank you, Your Honor.

25 (Whereupon, State's Exhibit Numbers 4-9 were

1 entered into the record.)

2 BY MS. LESKANIC:

3 Q. I'd also like to show you what's been marked
4 State's Exhibit 10, 11, 12, 13, 14, 15, 16, 17, 18 and
5 19. If you'll take a look at those, please, Ms.
6 Humphries, and tell me if you recognize those.

7 A. Yes, ma'am.

8 Q. Okay. And what are those?

9 A. Pictures of the car. This is a picture of him
10 when he was running away.

11 Q. Okay. Are these some still photographs ---

12 A. Yes.

13 Q. --- from the video that we just watched?

14 A. Yes.

15 MS. LESKANIC: Okay. Your Honor, we would offer
16 these for admission as evidence.

17 MR. SMITH: No objection.

18 THE COURT: They're admitted.

19 MS. LESKANIC: Thank you, Your Honor.

20 (Whereupon, State's Exhibits 10-19 were entered
21 into the record.)

22 BY MS. LESKANIC:

23 Q. Now, Ms. Humphries, now when you originally spoke
24 with Detective Vanderburg and gave him a statement, was
25 that on September the 11th of 2014?

1 A. I'm not sure exactly what day, but yes.

2 Q. Was it the same day that you were able to pick
3 the defendant out of the photo lineup and identify the
4 car? Is that the same day that you sat down with
5 Detective Vanderburg?

6 A. My first statement with Mr. Vanderburg was the
7 next morning after it happened. And then he called me
8 in for the -- to do the pictures to see if I recognized
9 him. Yes, that was it, but I think I made the statement
10 the next morning.

11 Q. All right. And in that statement, Mr. Smith went
12 into in his opening that you stated you were back in
13 your vehicle.

14 A. Yes, ma'am.

15 Q. Can you explain what was going through your mind
16 and what you recall about that incident?

17 A. After he exposed himself to me, I really, I don't
18 have details. All I know is I wanted to get away from
19 him. And then when I got back in my car I had thought
20 about it and then went back in and told them what had
21 happened.

22 Q. Okay. And in watching the video, were you back
23 in your vehicle when he exposed himself?

24 A. No.

25 Q. Okay. Did you get back in your vehicle after the

1 exposure and sit there for a moment?

2 A. Yes.

3 Q. All right. And then you went back into the store
4 to make a report?

5 A. Yes.

6 Q. And I think you told the officer that two men
7 came outside with you; is that correct?

8 A. Yes.

9 Q. Do you know if there were two men working in the
10 store that night?

11 A. I'm not sure if there was.

12 Q. Okay. But Mr. Patel did come back outside?

13 A. Yes, he did.

14 Q. Is that correct? We see that on the video; is
15 that right?

16 A. Yes.

17 Q. All right. And you told Detective Vanderburg,
18 not a name of a person but a description of a person
19 that pulled his penis out and said my name is ---

20 MR. SMITH: Your Honor, now she's -- she's
21 leading the witness now. I've been kind of patient.

22 THE COURT: Sustained.

23 BY MS. LESKANIC:

24 Q. Did you give the police the name of the
25 individual who exposed himself?

1 A. No.

2 Q. All right. Did you tell the officer that a man
3 exposed himself to you that night?

4 A. Yes.

5 Q. And did you give the officer a description of
6 that person?

7 A. Yes.

8 Q. Did you pick that individual out of a lineup?

9 A. Yes.

10 Q. And how certain are you that that individual
11 exposed his penis to you?

12 A. A hundred percent.

13 Q. Do you see that person in the courtroom now?

14 A. Yes.

15 Q. And can you identify him for the record, please.

16 A. Sitting right over there. (Indicating.)

17 Q. What's he wearing? What color shirt does he have
18 on?

19 A. He has a yellow shirt.

20 MS. LESKANIC: Okay. Your Honor, I'd ask the
21 record reflect that she identified the defendant.

22 THE COURT: It shall.

23 BY MS. LESKANIC:

24 Q. Were you afraid of the defendant when he first
25 asked you for a cigarette?

1 A. No.

2 Q. Were are you afraid of him when you gave him a
3 dollar?

4 A. No.

5 Q. At any point did you become afraid of him?

6 A. When I realized what he was doing, yes, I was
7 very afraid.

8 MS. LESKANIC: All right. Thank you. Please
9 answer any questions the defense may have.

10 THE COURT: Let me see you up here.

11 (Whereupon, a bench conference was held off the
12 record.)

13 THE COURT: All right. Ladies and gentlemen, we
14 will continue the cross-examination of the witness by
15 defense counsel, but we'll do that after lunch because
16 of the time. So, while you are gonna be excused now for
17 lunch, keep in mind that you cannot talk about the case.
18 You can't discuss it with anybody, including your fellow
19 jurors until it's time to begin jury deliberations, and
20 that won't be until the end of the trial after all of
21 the evidence has been received and I've instructed you
22 on the law and you've been instructed to begin
23 deliberations. So, no discussions about the case.

24 Also, you can never conduct any research or do
25 your own investigation of any issue related to the

1 trial. You have to base your decision about what you
2 see and hear during the trial. You can't supplement
3 your wealth of knowledge by conducting any outside
4 research or investigation. Also, do not permit anyone
5 to try to discuss the case with you.

6 Do have a good lunch. You're excused now.
7 Please report to the jury room at 2:30, 2:30 this
8 afternoon. When you come back, you'll be reporting to
9 the side door of the courthouse from the parking lot.
10 If you're in the parking lot, you come to the right-hand
11 side. The entrance is directly across the back of the
12 church. Come in that side door. A bailiff will be
13 waiting for you down there and they'll bring you up to
14 the jury room. So have a good lunch. We'll see you
15 this afternoon at 2:30, 2:30 this afternoon.

16 (Whereupon, jury leaves courtroom at 12:56 p.m.)

17 THE COURT: Do we know who Mr. Faison's bond is
18 with?

19 MR. SMITH: Ms. McClain.

20 MS. LESKANIC: Cherokee Bonding, Your Honor.

21 MR. SMITH: Cherokee Bonding.

22 MS. LESKANIC: Cherokee Bonding.

23 THE COURT: Okay. I'm going to permit him to be
24 with you during lunch.

25 MR. SMITH: Yes, sir.

1 THE COURT: But in order to stay out on bond,
2 I've got to have somebody from Cherokee Bonding to tell
3 me that they're willing to continue their obligation,
4 otherwise that bonding is extinguished.

5 And, Mr. Faison, you understand that you have an
6 obligation under your bond to be here for the duration
7 of the trial. If you fail to report back or you are
8 tardy or late in court against a violation of my order
9 you could be held in contempt. The trial will proceed
10 whether you're present or not. Do you understand?

11 THE DEFENDANT: (Nods head up and down.)

12 THE COURT: The trial has started and it will
13 continue ---

14 THE DEFENDANT: Yeah.

15 THE COURT: --- until its conclusion. Whether
16 you show up on time or you don't, we're still going to
17 continue with the trial on my schedule. Do you
18 understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: But you have an obligation to be
21 here. If you fail to appear, you're in violation of my
22 order as well as the condition of your bond.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you'll need to talk to Cherokee
2 Bonding.

3 MR. SMITH: Yes, sir. Thank you, Your Honor.

4 THE COURT: All right. Ms. Humphries, you can
5 step down from the witness stand. You cannot discuss
6 your testimony during the lunch recess; therefore,
7 you're still on the witness stand.

8 THE WITNESS: Yes, sir.

9 THE COURT: So don't discuss your testimony
10 during the lunch break, okay.

11 THE WITNESS: No, sir.

12 THE COURT: Court is in recess until 2:30.

13 MR. SMITH: Thank you, Your Honor.

14 MS. LESKANIC: Thank you, Your Honor.

15 (Whereupon, a lunch recess was had from 12:57
16 p.m. - 2:45 p.m.)

17 THE COURT: All right. Are we ready for the
18 jury?

19 MS. LESKANIC: Yes, Your Honor.

20 MR. SMITH: Yes, Your Honor.

21 THE COURT: Bring them in, please.

22 (Whereupon, jury enters the courtroom at 2:49
23 p.m.)

24 THE COURT: Good afternoon, ladies and gentlemen.
25 As you know, when we recessed for lunch Ms. Humphries

1 was on the witness stand. She had just completed the
2 direct examination by the prosecutor, so we'll continue
3 now with the cross-examination by defense counsel.

4 Ms. Humphries, if you'll please come back around,
5 you're still under oath, and resume your seat on the
6 witness stand. You can adjust that microphone if you
7 need to.

8 All right, Mr. Smith.

9 MR. SMITH: Thank you, Your Honor, may it please
10 the Court?

11 THE COURT: (Nods head up and down.)

12 **CROSS-EXAMINATION**

13 BY MR. SMITH:

14 Q. Ms. Humphries, you didn't know there was a video
15 out there that night, did you?

16 A. No, sir.

17 Q. And I take it when you gave your statement to the
18 police the next day, that was the next day, that was
19 when the incident was fresh in your mind, correct?

20 A. Yes, sir, it was fresh in my mind.

21 Q. Okay. And the reason you wanted to give that
22 statement that day is so that you could be able to
23 recall it and refresh your recollection when you got in
24 front of a jury, correct?

25 A. Yes, sir.

1 Q. Right. So when you told the police on that day
2 -- and Mr. Faison, he was not in the police station at
3 the time, was he?

4 A. No, sir.

5 Q. All right. And that was just between you and
6 Mr. Vanderburg, correct?

7 A. Yes.

8 Q. And Mr. Vanderburg was seated there asking you
9 questions and then you did a written statement and you
10 signed it too, didn't you?

11 A. Yes, sir.

12 Q. And I believe it's a two-page statement.

13 If I may approach the witness, Your Honor?

14 THE COURT: You may.

15 BY MR. SMITH:

16 Q. And it's a two-page statement that you, yourself,
17 gave to the police, correct?

18 A. Yes, sir.

19 Q. And when you gave that statement to the police
20 you were trying to be truthful, weren't you?

21 A. Yes, sir.

22 Q. And you didn't tell the police at the time in
23 your statement that you didn't remember the details, did
24 you?

25 A. No, sir.

1 Q. Right. And in the details that you spoke of that
2 day, you said -- you said: (Reading.) I went into the
3 store and got cigarettes. When I came out of the store
4 a black man I picked out of the photo lineup asked me
5 for a cigarette, correct?

6 A. Yes.

7 Q. And so when you said today that he showed his
8 penis to you off camera, that's something that you
9 didn't put in your statement, did you?

10 A. Whether it was off camera or not he showed it.

11 Q. I understand, ma'am, but you did not put that in
12 your statement that he showed his penis while he was off
13 camera, did you?

14 A. How was I to know he was off camera?

15 Q. Right.

16 A. I didn't know there was a camera out there.

17 Q. Okay, good point. How would you know? That's
18 right. So when you gave this story, you said:
19 (Reading.) I handed him a cigarette, he said it wasn't
20 his brand, so I gave him a dollar which he took. Do you
21 agree with that?

22 A. Yes, sir.

23 Q. And you said: (Reading.) I got in my car,
24 correct?

25 A. Yes, sir. And I realized after watching the

1 video and after he approached me and he had his penis
2 out at me ---

3 Q. Right.

4 A. --- that I was so distraught that I backed all
5 the way up, got into my vehicle and I was very upset.
6 And, yes, sir, I agree that my statements were not
7 exactly the same.

8 Q. Okay.

9 A. But I do know what I saw.

10 Q. I understand. So let's keep going through your
11 statement that you said that you were under no pressure
12 to give no statement. You was in there with the police
13 officer, you weren't in crying or anything that day.
14 You just wrote that written statement, didn't you?
15 Didn't you?

16 A. Excuse me?

17 Q. When you were sitting down there, Officer
18 Vanderburg, right here -- right here. (Indicating.) I
19 keep calling him that, but he's with the Solicitor.
20 This man right here, this officer.

21 A. Yes, sir.

22 Q. To enforce the law. He didn't put no pressure on
23 you to give a statement, did he?

24 A. No, sir.

25 Q. You could have said whatever you wanted to,

1 couldn't you?

2 A. Yes, sir.

3 Q. You could have told him whatever, correct?

4 A. Yes, sir. But I don't go around accusing people
5 of doing things like that unless it happens to me.

6 Q. Ma'am, you could have told the policeman whatever
7 you want and you could have put it in your statement,
8 couldn't you?

9 A. I told him what happened, what I thought had
10 happened and what I saw that happened.

11 Q. Yes, ma'am. So let's go through it. You say:
12 (Reading.) I got in my car and I rolled down my window
13 and smoked. Do you agree with that?

14 A. After watching the video I know how it happened.
15 But after coming out of the store and I give a man a
16 cigarette and he starts talking to me and he starts
17 flipping his penis at me, I don't know how it went from
18 there.

19 Q. Okay.

20 A. But I do know what I saw.

21 Q. All right. So let me ask it again. Did you
22 state in your statement: (Reading.) I got in my car,
23 rolled down my window to smoke?

24 A. I don't think that's -- I mean, I'm just saying I
25 was stressed out. Yes, I did write that in my

1 statement.

2 Q. Okay. And you said: (Reading.) I was looking
3 down for a lighter when I noticed movement, correct?

4 A. Yes, sir, that's what the statement says, but I'm
5 also telling you I know what I saw.

6 Q. I understand. But I'm asking you, you wrote this
7 down in your statement, correct?

8 A. Yes, sir.

9 Q. Right. The police wasn't holding your hand
10 saying say what the police want you to say, did they?

11 A. No. I told -- I did -- even though I did say I
12 told him exactly what the man said to me.

13 Q. Okay.

14 A. And I can repeat that a hundred times if you want
15 me to.

16 Q. That's fine, but I'm on cross-examination. I
17 need to ask you a few questions. Can I do that, ma'am?

18 A. Yes, sir.

19 Q. Okay. And you said: (Reading.) When I looked
20 up he said my name is Dick and I do work, correct?

21 A. He said, my name is Dick and I do the work for
22 women.

23 Q. Well, you put that -- you said I do work and then
24 you didn't put the women in there.

25 A. Well, excuse me. I'm sorry.

1 Q. Okay. So, now let me see if I can get this
2 straight. You say your memory was most correct on
3 September the 2nd when you wrote that statement.

4 A. No. My memory is most correct of what I saw.

5 Q. All right. So, now you add the word women to
6 your statement, correct?

7 A. You know what I'm here for is because a man
8 approached -- I go out and be nice and being nice to
9 somebody he takes his penis out at me and say I do work
10 for women. And I'm backing up. Yes, I might not say it
11 exactly the way it happened, excuse me, but I know what
12 I saw.

13 Q. Okay, I understand. But what you were telling in
14 the statement was that you saw him at your car flopping
15 his penis out at you while you were smoking inside your
16 car. That's what you were saying in your statement,
17 ma'am. Isn't that a fact?

18 A. Well, like I told you, I know what I said -- saw.
19 Whether it was when I was in the car or outside the car,
20 I had just been traumatized by somebody pulling their
21 penis at me, so whether I say of whether I was in the
22 car or out of the car, excuse me.

23 Q. Okay.

24 A. But I know what I saw.

25 Q. So, ma'am, I'm gonna ask it again because I need

1 many people were there. All I know is what I saw.

2 Q. Okay. Well, the key is were they in view of the
3 camera or out of view of the camera?

4 A. The people?

5 Q. Yeah, the two men that you said were speaking to
6 Mr. Dossie Faison in your statement to the police, to
7 Mr. Vanderburg?

8 A. Okay. When I reviewed and watched the video,
9 yes, I said, like I told you before, what I said the
10 next day and what happened after reviewing the video,
11 yes, sir, my statements were not totally accurate.

12 Q. Okay.

13 A. But I will tell you I know what I saw.

14 Q. All right. Well, where were these two
15 individuals that were talking to Mr. -- the two Asian
16 individuals that were talking to Mr. Faison, where are
17 they?

18 A. The one that's here today, he's the one who came
19 outside with me. Then he asked me did I want to call
20 911. And I was so -- I was trying to go to work. I was
21 afraid of being late for work. I just wanted to put
22 this out of my head and go to work.

23 Q. Yes, ma'am.

24 A. And that's what I did.

25 Q. And there was another black individual out there

1 that you said was talking to Mr. Faison, correct?

2 A. After reviewing the video, it wasn't another
3 black man, it was a white man.

4 Q. Okay.

5 A. As we went into the store. As we were going into
6 the store, as you watch the video, I'm pulling up at the
7 same time he does. I walk right past these two guys
8 who, when you watch the video, they stay sitting. I'm
9 going right into the store.

10 Q. Okay. So let me see if I can get this correct.
11 You can't tell the difference between a black man and a
12 white; is that correct?

13 A. When I'm going in a store and I'm just going in
14 to get a pack of cigarettes, I'm not paying attention to
15 what color you are.

16 Q. I got you. And so -- okay. So there was a white
17 man that spoke to him now; is that correct?

18 A. Yes, sir, after watching the video.

19 Q. And then there were two other individuals besides
20 this man who was the proprietor of the store that you
21 said was talking to Mr. Faison out there that night,
22 correct?

23 A. I said there two men out there, whereas there was
24 just one, excuse me.

25 Q. Okay. So you looked at the video and after you

1 looked at the video you knew you had to change your
2 story to make it work, didn't you?

3 A. I'm not changing my story any. I'm just telling
4 you that what I saw, that he terrified me, and I'll have
5 that the rest of my life in my mind when what he did to
6 me.

7 Q. All right. So ---

8 A. And who was out there and who wasn't out there I
9 can't tell you until watching the video because I wasn't
10 trying to pay attention to who was out there. All I can
11 tell you, sir, is what the man did to me.

12 Q. Right. Which is not on the video, correct?

13 A. Yes, sir, it's not on the video. But I will tell
14 you, and I'll tell you a hundred times, the same man,
15 that man right over there, he pulled his penis out at me
16 and he shook it and told me I work for money.

17 (Indicating.)

18 Q. Okay.

19 A. I work. Whatever. However you want to take it.

20 Q. All right.

21 A. There's a voided area over there and he could
22 have took a child over there and raped a child. He
23 could have done anything. If he's willing to pull his
24 penis out at me, what else was the man capable of doing?

25 Q. Okay. So, now you're accusing him of raping a

1 child across the street?

2 A. No, I'm not accusing him of raping nobody. I'm
3 accusing him -- I'm saying what he did to me, and if
4 he's willing to do that to a 58-year-old woman what is
5 he willing to do to somebody else?

6 Q. Okay. Well, did he attempt ---

7 A. He exposed himself to me.

8 Q. All right. Did he attempt to rape you, ma'am?

9 A. Sir, when he was coming at me I didn't know what
10 he was attempting.

11 Q. All right. So he didn't attempt to rape you, did
12 he?

13 A. No, sir.

14 Q. All right. Now, the other thing, too, is these
15 photographs that my -- the prosecutor introduced.
16 There's nothing in these photographs that you looked at
17 on the stand that shows or corroborates your testimony
18 that he pulled his penis out and was flapping it at you,
19 is there?

20 A. There's one picture, a picture of him when he got
21 out of his car, his shirt tail was down.

22 Q. Okay.

23 A. And there's a picture of him right after the
24 incident his shirt tail is in half of his -- half inside
25 of his pants.

1 Q. Okay. So where is his penis?

2 A. I don't know. I guess it's back in his pants.

3 Q. Okay then. Now, show me in those pictures where
4 the penis is.

5 A. Sir, you know I can't show you where his penis
6 is.

7 Q. All right. So basically those pictures are
8 useless, correct?

9 A. They might not show it, but I know what I saw.

10 Q. Right. And there's nobody else out of the white
11 man that you said was out there, who could have been a
12 black man, he's not -- you can't -- he's not in here to
13 corroborate your testimony today, is he?

14 A. Nobody is here who saw it but me.

15 Q. And this gentleman right here is not in here to
16 corroborate your testimony about the penis flipping out,
17 right? (Indicating.)

18 A. No, sir, nobody saw it.

19 Q. This lady right here, Ms. Culbreath, she's not in
20 here to testify and corroborate your testimony in that
21 regard, is she?

22 A. No.

23 Q. And the lady that was in the store that you saw
24 in the video, the black lady that was in the store, you
25 saw that?

1 A. I didn't pay attention to her.

2 Q. She can't corroborate your testimony either, can
3 she?

4 A. No, sir.

5 Q. And the police officer seated right here, he has
6 no personal knowledge of what went on out there that
7 night either, does he?

8 A. No, sir. But Mr. -- he knows what he did.

9 Q. I understand. But ---

10 A. Yes, sir. I agree that maybe nobody saw it but
11 me and him.

12 Q. Right.

13 A. But he knows what he did.

14 Q. Right. And you're the person who said in your
15 direct testimony to the prosecutor that you can't
16 remember the details that night, correct?

17 A. I'm telling you that when he approached me and I
18 noticed what was going on, no, I cannot tell you details
19 but I know what I saw.

20 MR. SMITH: Thank you, no further questions.
21 Your witness.

22 MS. LESKANIC: Nothing further, Your Honor.

23 THE COURT: Okay, you may step down.

24 (Whereupon, Witness leaves witness stand.)

25 MS. LESKANIC: May it please the Court, the State

1 calls Lori Culbreath.

2 THE CLERK: Please raise your right hand and
3 place your left hand on the Bible. (Complies.)

4 Do you solemnly swear or affirm the testimony you
5 give to this Court will be the truth, the whole truth
6 and nothing but the truth so help you God?

7 THE WITNESS: I do.

8 LORI CULBREATH,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. LESKANIC:

12 Q. Can you please introduce yourself to the ladies
13 and gentlemen of the jury.

14 A. Hey, I'm Lori Culbreath.

15 Q. And where do you live, Ms. Culbreath?

16 A. I reside in Gaffney now, but at the time in
17 Blacksburg.

18 Q. Okay. So, back in September of 2014 when this
19 happened you were living in Blacksburg?

20 A. Yes, ma'am.

21 Q. All right. Where were you working at the time?

22 A. At ---

23 COURT REPORTER: I'm sorry?

24 BY MS. LESKANIC:

25 Q. And were you working there ---

1 COURT REPORTER: I'm sorry, I didn't hear where
2 she was ---

3 THE COURT: You're gonna have to speak up.

4 THE WITNESS: Sumino Textile America.

5 BY MS. LESKANIC:

6 Q. And did Ms. Humphries work there with you?

7 A. Yes, ma'am.

8 Q. All right. On September 1st, 2014, were your
9 working third shift with Ms. Humphries?

10 A. Yes, ma'am.

11 Q. All right. And did you see her come into work
12 that night?

13 A. Yes, ma'am.

14 Q. Did you notice anything different about her when
15 she arrived at work that night?

16 A. Yes, ma'am.

17 Q. Can you explain to the jury what you saw.

18 A. I was the first one to see Barbara when she came
19 to work and she was shaking all over. She was crying.
20 She was physically upset. I mean, and I asked her, I
21 said, Barbara, what's wrong. And she couldn't tell me
22 at that moment because she was so upset.

23 When I finally got her calmed down, she told me
24 what happened at the store, that someone shook his penis
25 at her. And she started crying again. And I got her

1 up, took her in another room at work. I got her calmed
2 down and called Blacksburg Police Department.

3 Q. Now, were you all able to speak to an officer
4 that night and make a report or do you remember?

5 A. Yes. She talked to him and then she went in the
6 next morning. She was wanting to finish up what she
7 told me.

8 Q. Okay.

9 A. And I went with her to the police department the
10 next day as well.

11 Q. All right. And did you also go back with her on
12 the 11th when she was shown the photo lineup?

13 A. No, ma'am, I never went back. No, ma'am.

14 Q. Okay. Was that out of character for her to be
15 behaving that way when she arrived at work?

16 A. Yes. Barbara was always in a good mood when she
17 came in. Like when she comes to work she's always happy
18 go lucky and people would go to her and, like, she's
19 always in a good mood. That night she couldn't even
20 talk.

21 MS. LESKANIC: All right. Thank you very much.
22 Please answer any questions anyone else has.

23 CROSS-EXAMINATION

24 BY MR. SMITH:

25 Q. When did she go to the psychiatrist for this

1 incident?

2 A. I'm not sure about that.

3 Q. Oh, she hadn't told you that?

4 A. No.

5 Q. So, I mean, this person who's been so upset about
6 this incident to your knowledge hasn't gone to a
7 psychiatrist, correct?

8 A. To my knowledge, no.

9 Q. And the other thing, too, is she didn't tell you
10 there was a video out there that night, correct?

11 A. No.

12 Q. Right. She didn't tell you that what she said in
13 her statement was going to be totally different than
14 what the video was going to show, did she?

15 A. No.

16 Q. She didn't tell you that the video was not going
17 to show that anybody flashed their penis out at her that
18 night, did she?

19 A. No.

20 Q. She didn't tell you that night that she was gonna
21 have the details in her head for the evening, did she?

22 A. No.

23 Q. And you are a friend of hers, too, right?

24 A. Right, yes.

25 Q. So you don't really -- I mean, being a friend

1 doesn't mean you're gonna say anything wrong, but the
2 key is you have no personal knowledge as to what went on
3 out there that night, do you?

4 A. No, sir, I was not there.

5 MR. SMITH: Thank you very much. I appreciate
6 you participating.

7 REDIRECT EXAMINATION

8 BY MS. LESKANIC:

9 Q. What did she tell you happened that night?

10 A. She told me that she got out to get her a pack of
11 cigarettes at the store. And she came out, a guy
12 approached her, a black male approached her, and asked
13 her for a cigarette. She was gonna give him one and he
14 said that's not my brand. And she gave him a dollar
15 and he pulled his penis out. That's what she told me.

16 Q. Was that the focus of what she was telling you
17 about?

18 A. Yes.

19 MS. LESKANIC: All right. Thank you, nothing
20 further.

21 THE COURT: All right. You may step down.

22 (Whereupon, Witness left witness stand.)

23 MS. LESKANIC: The State calls Mr. Patel.

24 THE CLERK: Please raise your right hand.

25 (Complies.)

1 Do you solemnly swear or affirm the testimony you
2 give to this Court be the truth, whole truth and nothing
3 but the truth so help you God?

4 THE WITNESS: Yes.

5 THE COURT: Watch your step.

6 PRAKASHBHAI PATEL,
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. LESKANIC:

10 Q. Can you please state your full name for the
11 ladies and gentlemen of the jury.

12 A. Yeah.

13 Q. Can you give them your name.

14 A. Prakashbhai Patel.

15 Q. Mr. Patel, do you own the Quick Quack or Harry's
16 Food Mart located in Blacksburg?

17 A. Yes, ma'am.

18 Q. Is that in Cherokee County?

19 A. Yes, ma'am.

20 Q. Were you working on September 1st of 2014?

21 A. Yes, ma'am.

22 Q. Do you remember seeing Ms. Humphries come into
23 your store to make a purchase that night?

24 A. Yes, ma'am.

25 Q. All right. Do you remember her leaving the store

1 and then coming back in?

2 A. Yes, ma'am.

3 Q. Can you tell the jury if you noticed any -- well,
4 let me ask you, did you notice any difference in the way
5 she was acting when she first came into the store and
6 then when she returned to the store?

7 A. Yeah. When I see her, looked upset when she came
8 back the second time and she was upset.

9 Q. Okay. And did she tell you anything?

10 A. She tried to tell me, but I don't understand.
11 But I told her that if you want to call the law I can
12 call the law for you. And she said she don't want to
13 call. She was just like told me of what happened. That
14 was somebody was standing, sitting or standing outside,
15 so I go with her and I told him if you don't want to buy
16 anything you don't want anything, I told him to leave
17 the property. That's it.

18 Q. Okay. Did she try to tell you what happened that
19 night?

20 A. I don't know. I didn't understand much, but I --
21 she seemed upset and tried to, you know, and offer to
22 come and get him.

23 Q. Okay. Do you have a hard time understanding
24 English sometimes?

25 A. Yes. Yes.

1 Q. All right. And did you have a hard time
2 understanding what she was trying to explain to you?

3 A. Yes. Yes, ma'am.

4 Q. All right. Were you able to determine whether or
5 not she had had a problem at your store or on your
6 property?

7 A. Yeah, I can tell. But you know I try to do
8 whatever I can to help my customer, so I tried to speak
9 to her, she was upset, so I had someone standing on my
10 property and do whatever. I don't know what to say, but
11 I told him if you don't want to buy something leave my
12 property, don't stand there without reason, you know.

13 Q. You were in here when I showed the video from the
14 store. Is that the video from your store that you
15 provided to police?

16 A. That's really from my store, but I don't do
17 anything with it, but that's from my store.

18 Q. Okay. So that was provided from you to the
19 police?

20 A. Yeah. My -- I'm not sure I carry, but all they
21 can, the police officer, anybody come and they want the
22 video for the case, so they come in many times. But I
23 don't know who exactly when I get it who's the person,
24 you know?

25 Q. Who made the actual copy?

1 A. Yeah.

2 Q. But is that a video from your store?

3 A. Yeah, that's correct.

4 Q. Okay. The outside and the inside ---

5 A. Yeah.

6 Q. --- show your store?

7 A. Yeah. All video from my store.

8 Q. Okay. And that's an accurate copy, it wasn't
9 tampered with in any way showing what happened that
10 night; is that correct?

11 A. No. Yeah, you're right, it's actual video.

12 Q. Okay. Did you -- you walked outside with Ms.
13 Humphries?

14 A. Yes, ma'am.

15 Q. And did you see the defendant, Mr. Faison,
16 outside by his car?

17 A. Yes. Uh, one time outside not in his car.
18 Everybody out in the parking lot, not in car.

19 Q. Not in his car but outside?

20 A. Yeah.

21 Q. Okay. And then you spoke to him about needing to
22 leave the property; is that correct?

23 A. Yeah, at that time we went out to speak to them
24 it was on TV. She was there too.

25 Q. Okay. Did she appear different the second time

1 she came into your store?

2 A. Yeah, look upset, you know.

3 Q. Okay. And did she ask you to go outside with
4 her?

5 A. No, but that's what my tactic. Obviously it's my
6 property, you know, so I go and need to know what's
7 going on.

8 Q. Did she tell you that she had had a problem with
9 someone on your property?

10 A. Yeah. She tried to tell me, but I don't
11 understand English, everything, you know, but I tried to
12 just be there and straight for it.

13 Q. Okay. But you have a difficult time
14 understanding?

15 A. Yeah, that's correct.

16 MS. LESKANIC: Thank you, Mr. Patel. Please
17 answer any questions Mr. Smith has.

18 CROSS-EXAMINATION

19 BY MR. SMITH:

20 Q. Mr. Patel, those two employees that she
21 identified and the police later identified, it was you
22 and Damal Patel?

23 A. Yeah.

24 Q. Damal Patel was your brother?

25 A. No, he's like one of my family, but he stopped

1 give to this Court to be the truth, the whole truth and
2 nothing but the truth so help you God?

3 THE WITNESS: I do.

4 DETECTIVE MARK VANDERBURG,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. LESKANIC:

8 Q. Would you please introduce yourself to the jury.

9 A. I'm Mark Vanderburg with the Blacksburg Police
10 Department, investigator.

11 Q. And how long have you been with Blacksburg Police
12 Department?

13 A. A little over three years.

14 Q. Okay. And were you employed in law enforcement
15 prior to that?

16 A. Yes. For 20 years with the Cherokee County
17 Sheriff's Office.

18 Q. And how much of that time did you spend in
19 investigations?

20 A. I was with Cherokee County for 10 years as an
21 investigator.

22 Q. And then three years now with Blacksburg; is that
23 correct?

24 A. Yes, ma'am.

25 Q. How did you become involved in this case,

1 Detective?

2 A. I was called by the officer that did the report
3 on the first of August.

4 Q. What date?

5 A. Yeah, in September. I'm sorry, September.

6 Q. Okay. So was there -- there was a report taken
7 how? What's your information? How did you get
8 involved?

9 A. They took a report over the telephone and asked
10 Ms. Humphries to come back the next day.

11 Q. Okay. And then when she came back on the second,
12 did she actually return to you on September 2nd?

13 A. She did, and she gave her a copy of the victim
14 notification form we give out to all victims. And she
15 gave me a description of the person that pulled their
16 penis out.

17 Q. Did she give you a name?

18 A. She did not.

19 Q. So just a physical description?

20 A. Yes, ma'am.

21 Q. All right. And did she tell you where this
22 occurred?

23 A. Yes, ma'am, Quick Quack in Cherokee County.

24 Q. Okay. Now, based on the information that she
25 gave you, the description, what did you do with that?

1 A. I talked to, the next day on the third, I talked
2 to my lieutenant and another officer. And he gave me a
3 description that Ms. Humphries gave me and one of the
4 officers believed it and thought that it sounded like
5 Mr. Faison.

6 Q. Okay.

7 A. Along with the description of the vehicle.

8 Q. Okay. So what did you do with that information?

9 A. I went and took pictures of Mr. Faison's car.
10 And on the 6th of September I made a request to SLED,
11 South Carolina Law Enforcement Division, for a photo
12 lineup.

13 Q. Okay. And did they send you a lineup?

14 A. They did on the 8th of September.

15 Q. Okay. I'm going to show you State's Exhibit 1
16 that's already been admitted, as well as State's
17 Exhibit 2. Is that the photo lineup that you received
18 as well as a picture of the photographs you took of the
19 defendant's vehicle?

20 A. Yes, ma'am.

21 Q. And once you received the lineup from SLED, what
22 did you do?

23 A. I called Mrs. Humphries and asked her to come in
24 and view the photo lineup.

25 Q. What day did she come back in?

1 A. She came in on the 11th of September.

2 Q. Okay. And what is the procedure of showing her
3 the lineup?

4 A. Whenever we have a photo lineup, I always tell
5 the person viewing the photo lineup the person may or
6 may not be in here. We do not, you know, we don't tell
7 them who the person is. We tell them it may or may not
8 be in there. And if the person's in there, circle that
9 person that committed the crime.

10 Q. And was she able to pick someone out?

11 A. She did.

12 Q. Did you make any suggestions to her about ---

13 A. No, I did not.

14 Q. And how certain was she that that was the correct
15 person?

16 A. She was a hundred percent.

17 Q. Did you also show her photographs of the vehicle?

18 A. I did.

19 Q. And was she able to recognize that vehicle?

20 A. She did, yes, ma'am.

21 Q. Did she sign both of those in your presence?

22 A. She did.

23 Q. And what was the date of that?

24 A. September the 11th, 2014.

25 Q. Is that the date you also took a written

1 statement from her?

2 A. Yes, ma'am.

3 Q. So that was on September the 11th; is that
4 correct?

5 A. Yes, ma'am.

6 Q. Did you go back to the convenience store to get
7 the security footage from Mr. Patel or another employee
8 there?

9 A. Yes. On September 6th, 2014, I went to the store
10 and Mr. Patel put it on a flash drive.

11 MS. LESKANIC: I think that's the only thing I
12 have for you, Detective. If you will answer any
13 questions Mr. Smith has.

14 CROSS-EXAMINATION

15 BY MR. SMITH:

16 Q. Officer, I don't have any questions for you. I
17 mean, I don't have any questions, but the long and short
18 of it, you went out there that night, correct?

19 A. Correct.

20 Q. You didn't -- you don't have any personal
21 knowledge about this incident at all, do you?

22 A. Correct.

23 Q. The fact is you just took her word for it,
24 correct?

25 A. Yes, sir.

1 A. Yes, sir.

2 MR. SMITH: No further.

3 THE COURT: You may step down.

4 (Whereupon, Witness leaves witness stand.)

5 MS. LESKANIC: The State rests, Your Honor.

6 THE COURT: Ladies and gentlemen, that is all the
7 testimony or evidence to be offered by the State, at
8 least in their case in chief. Before we go further I've
9 got some matters I need to address and then we'll bring
10 you back and continue the trial. So please go to your
11 jury room right now but do not discuss the case. I'll
12 bring you back shortly.

13 (Whereupon, jury leaves courtroom at 3:24 p.m.)

14 Any motions or other matters to address before we
15 go further?

16 MR. SMITH: Yes, sir, Your Honor. I make a
17 motion for, even looking at the evidence in the light
18 most favorable to the honorable state, we move for a
19 directed verdict. We don't believe that the facts rise,
20 based on her statement and the video, doesn't
21 demonstrate that this man flashed his penis out at her
22 on September the 2nd, 2014, and committed the crime of
23 indecent exposure.

24 THE COURT: Ms. Leskanic?

25 MS. LESKANIC: September the 1st, 2014, the

1 victim has testified that he did pull his penis out and
2 she knows it was a penis. It was in view to a person
3 and it was on public property of a convenience store. I
4 believe that's sufficient evidence to go forward, Your
5 Honor.

6 THE COURT: All right. It is. Motion for a
7 directed verdict is denied. Anything else?

8 MR. SMITH: Nothing else, Your Honor.

9 THE COURT: Is the defendant going to testify?

10 MR. SMITH: If you could instruct him, Your
11 Honor, please.

12 THE COURT: Have you talked to him about it?

13 MR. SMITH: Yes, sir, I've talked to him a number
14 of times.

15 THE COURT: Mr. Faison.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you talked to Mr. Smith about
18 your right to testify as well as not testify during the
19 trial of this case?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And did he explain to you that when
22 you're charged with a crime you have an absolute right
23 to remain silent, which means nobody can make you take
24 the witness stand, nobody can make you provide a
25 statement, nobody can require that you answer the

1 questions that related to this charge that's been
2 brought against you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You have an absolute right to remain
5 silent and to require the State to come into court with
6 sufficient evidence to establish your guilt to the
7 satisfaction of the jury beyond a reasonable doubt and
8 you don't have to assist the State in their effort to
9 prove your guilt by you taking the witness stand and
10 answering questions that might tend to prove your own
11 guilt. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: At the same time, if you want to
14 testify, you want to provide this jury with any
15 additional information you've got a right to testify.
16 It's your choice, it's your decision. But if you choose
17 to take the witness stand and testify, you've got to
18 answer not only your lawyer's questions, but you've got
19 to answer all the prosecutor's questions to the extent
20 that they're relevant, even if the responses might tend
21 to prove you guilty.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you and Mr. Smith discussed the

1 advantages as well as the disadvantages of testifying as
2 well as not testifying?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you appreciate what those
5 advantages and disadvantages are?

6 THE DEFENDANT: I represent the law, sir. I
7 appreciate it.

8 THE COURT: Do you understand what the advantages
9 and disadvantages are ---

10 THE DEFENDANT: Yes, sir.

11 THE COURT: --- of testifying as opposed to not
12 testifying?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And have you and Mr. Smith discussed
15 your decision?

16 THE DEFENDANT: Yes, sir, we have.

17 THE COURT: And you've made one?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: What is your decision?

20 THE DEFENDANT: I will not testify.

21 THE COURT: And is that a decision that you made
22 of your own free will and accord?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did anybody force you into that
25 decision?

1 THE DEFENDANT: No, sir, Your Honor.

2 THE COURT: Has anybody suggested that that's the
3 -- has anyone suggested that is the decision you should
4 make?

5 THE DEFENDANT: No, sir.

6 THE COURT: You made that decision on your own?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: After having plenty of time to
9 reflect upon it?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you're satisfied with your
12 decision not to testify?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Do you have any other witness?

15 MR. SMITH: Yes, sir.

16 THE COURT: More witnesses you'd like to call?

17 THE DEFENDANT: That's on, that's on him, sir.

18 THE COURT: Sir?

19 THE DEFENDANT: I cannot, I cannot respond to
20 that. I would answer you, sir. I'm thinking that's on
21 him. I'll be telling him as my lawyer, I think it's on
22 him to make that decision, sir, as far as witnesses are
23 concerned.

24 THE COURT: Oh, well, he gets to make
25 recommendations to you. He just represents you, but you

1 control the case. He might tell you he's got somebody
2 he thinks you ought to call as a witness, but you still
3 could say no I don't want you to. Just like you get the
4 right to testify or not, you make that decision. You
5 can make the same decision about anyone else. You can
6 tell him to do something or not do something.

7 THE DEFENDANT: Yes, sir. Yes, sir, I
8 understand. I'll let Mr. Smith make that decision.

9 THE COURT: So you're just gonna rely on him to
10 decide if he wants to call somebody else?

11 THE DEFENDANT: Yes, sir. I, I've got respect
12 for my lawyer.

13 THE COURT: Okay.

14 THE DEFENDANT: Because it's respect for him.
15 That's what I've got for my lawyer.

16 THE COURT: I hear you. So you would just agree
17 with whatever decision he makes about calling other
18 witnesses or introducing evidence, you agree with him?

19 THE DEFENDANT: Yes, sir. I put my life, I put
20 my trust in him. I put my life in his hands, sir.

21 THE COURT: Okay. So y'all talked about it and
22 he's discussed with you what his strategy is and what he
23 thinks you ought to do and you agree with him?

24 THE DEFENDANT: No, there's no argument, no, sir.
25 I haven't agreed with everything, sir.

1 THE COURT: You haven't?

2 THE DEFENDANT: No, sir. What I'm saying, sir,
3 and all due respect to you, sir, and this court, if it
4 pleases, I'd like for Mr. Smith to take control.

5 THE COURT: Okay. Well, my point is if he calls
6 a witness to testify, is that something you've agreed to
7 or did you disagree with it?

8 THE DEFENDANT: Whatever action, the course of
9 action he takes, sir, I agree.

10 THE COURT: Okay. Well, you told me just a few
11 minutes ago that you didn't agree with everything and
12 you were arguing.

13 THE DEFENDANT: On some issues. No, sir, I would
14 like him to take control, sir, whatever decision he
15 makes.

16 THE COURT: All right. So if he calls a witness
17 you're in agreement ---

18 THE DEFENDANT: Yes, sir.

19 THE COURT: -- with him calling that witness?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Okay. All right, you can have a seat
22 there.

23 THE DEFENDANT: Thank you, Your Honor.

24 THE COURT: We'll take ten minutes and then we'll
25 continue.

1 (Whereupon, a recess was had from 3:24 - 3:36
2 p.m.)

3 MR. SMITH: Your Honor, Kim just wanted me to
4 proffer -- Kim wants me to proffer testimony of another
5 witness that I may have, just to make sure it's relevant
6 to what this trial is about.

7 THE COURT: Okay.

8 MR. SMITH: Come on up Miss.

9 THE CLERK: Please raise your right hand.
10 (Complies.)

11 Do you solemnly swear or affirm the testimony you
12 give to this court to be the truth, the whole truth and
13 nothing but the truth so help you God?

14 THE WITNESS: I do.

15 (Whereupon, witness takes witness stand.)

16 LISA BICKERS RANDOLPH,
17 after having been duly sworn, testified as follows:

18 **PROFFER TESTIMONY**

19 BY MR. SMITH:

20 Q. Would you state your name.

21 A. Lisa Bickers Randolph.

22 Q. Where do you live, Ms. Randolph?

23 A. In Blacksburg. It's 2013 West Carolina Street.

24 Q. Okay. Are you married?

25 A. Yes, I am. My husband's right back there.

1 (Indicating.)

2 Q. What's his name?

3 A. George Wes Randolph.

4 Q. And have you ever been on the South Carolina
5 highway patrol?

6 A. Yes, sir. I was a South Carolina state trooper
7 back in the '90s.

8 Q. Okay.

9 A. Early '90s.

10 Q. And you know Dossie Faison?

11 A. Yes. I've known Dossie Faison since 2008, 2009.

12 Q. Now, with regard to this incident on September
13 the 1st, 2014, you have no personal knowledge about
14 this?

15 A. No, I don't. I just know him.

16 Q. You know him and you know about the accident that
17 he received at, was it Brown Packing?

18 A. Yes. Well, I take him to the doctor, he's on
19 medication. He's on -- can I say what he's on?

20 Q. Yeah.

21 A. He's on hydrocodone and he's on Lyrica.

22 Q. On what?

23 A. Lyrica. Two different medications that he's on.

24 Q. And what is the hydrocodone?

25 A. It's for pain and the other one is for nerve

1 damage.

2 Q. All right. And did you help him recover from the
3 injury?

4 A. Yes, he stayed at our house.

5 Q. And does he still have a T.E.N.S. unit on?

6 A. Yes, he does. And he still goes to the doctor
7 monthly.

8 Q. So you let him stay at your house a while? He
9 doesn't stay at that house anymore?

10 A. No, he's -- when he -- now he doesn't stay with
11 us, but he needed -- he was badly burned and he needed
12 his dressing changed and I did that for him in my house.

13 THE COURT: That's all I have, Your Honor.

14 MS. LESKANIC: I just object, Your Honor. I
15 don't see the relevancy of this testimony. I think if
16 it's for the T.E.N.S. unit or the testimony that he ran
17 off, they could see on the video and determine whether
18 or not that was -- he was running off. He appeared to
19 pick up speed, but I don't see the relevance of this
20 testimony. She doesn't have any knowledge of what
21 happened on September 1st, 2014.

22 THE COURT: What's the relevance?

23 MR. SMITH: I just wanted to demonstrated to them
24 that what I said to them was true, that he did have a
25 T.E.N.S unit on, on that day.

1 THE COURT: What you said?

2 MR. SMITH: Yes, sir.

3 THE COURT: Well your statements aren't evidence.

4 MR. SMITH: All right, sir. Yes, sir.

5 THE COURT: What's the relevance of that to this
6 case?

7 MR. SMITH: We believe that how she described Mr.
8 -- tends to prove or not prove that that might not have
9 been Mr. Faison on the, on the camera.

10 THE COURT: I don't think that establishes that
11 or that it even intends to establish it.

12 MR. SMITH: Thank you, Your Honor.

13 THE COURT: So I sustain the objection to it.

14 MR. SMITH: Thank you, Your Honor.

15 THE COURT: You may step down.

16 (Whereupon, proffer witness leaves witness
17 stand.)

18 THE COURT: All right. Any other witnesses?

19 MR. SMITH: No, sir, we rest too.

20 THE COURT: All right. We'll argue charge in the
21 morning.

22 MR. SMITH: Thank you, Your Honor.

23 THE COURT: All right, bring the jury in.

24 (Whereupon, jury enters the courtroom at
25 3:48 p.m.)

1 THE COURT: All right. Ladies and gentlemen, as
2 you know the State has concluded in their presentation
3 so we'll now proceed with them, if any, to be offered by
4 the defense.

5 Mr. Smith, does the defense wish to offer any
6 additional evidence?

7 MR. SMITH: No additional evidence, Your Honor.

8 THE COURT: All right. The defense has rested,
9 so what that means the remainder of the trial will
10 consist of the lawyers' final summations, after which
11 I'll instruct you on the law, and then you'll begin with
12 your deliberations. Because of the time, we're gonna
13 conclude in the morning. We'll begin at 9:45.

14 Keep in mind my cautions I've previously given
15 you. No discussions about the case, no research, no
16 investigation, don't let anyone try to discuss it with
17 you and don't you discuss it until you come back in the
18 morning when you're sitting. You can only do that once
19 you begin with jury deliberations and that won't take
20 place until after the final summations and my
21 instructions and then you'll begin those deliberations,
22 okay?

23 Have a good evening. Please report to your jury
24 room at 9:45, 9:45 in the morning. Have a good
25 afternoon.

1 (Whereupon, jury leaves courtroom at 3:49 p.m.)

2 THE COURT: Mr. Smith, what did you learn from
3 your discussions with Cherokee Bonding?

4 MR. SMITH: The clerk contacted them for me and I
5 think she didn't have any problem with him being out.

6 THE CLERK: That's correct.

7 THE COURT: You talked to Ms. McClain?

8 THE CLERK: Yes.

9 THE COURT: And she's agreed to stay on the bond?

10 THE CLERK: Yes.

11 THE COURT: Okay. Do y'all have any instruction
12 requests?

13 MR. SMITH: No, sir.

14 MS. LESKANIC: No, sir.

15 THE COURT: I think the instructions are very
16 fair especially, you know, weighed heavy on the
17 reasonable doubt, presumption of innocence.

18 MS. LESKANIC: It always does.

19 MR. SMITH: I know it does.

20 THE COURT: Those are two very important concepts
21 to the defendant.

22 MR. SMITH: Yes, sir.

23 THE COURT: And they should be followed in this
24 trial as in any other.

25 MR. SMITH: Thank you, Your Honor.

1 THE COURT: All right. Mr. Faison, as I said
2 before lunch, your bondsman has agreed to remain on your
3 bond, so you're gonna be able to go back home tonight.
4 You will be required to return in the morning not later
5 than 9:45. Mr. Smith may need you here earlier than
6 that, but from for my purposes you've got to be in your
7 seat not later than 9:45. Do you understand?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. Who is on the next case? Is
10 that you?

11 MR. LESKANIC: No, it's not him. Josh Schultz.

12 Mr. BAIN: Yeah, Kim has one and I have one
13 backing it up.

14 THE COURT: Where is Mr. Kendall, is he here?

15 MS. LESKANIC: He is. He's in the office. Do
16 you want me to go get him?

17 THE COURT: Please.

18 (Whereupon, bench conference was held off the
19 record.)

20 Court is in recess until 9:45 in the morning.

21 MR. SMITH: Thank you, Your Honor.

22 (Whereupon, Court concluded at 3:49 p.m.)
23

24 --- THIS ENDS DAY ONE OF TRIAL ---
25

1 THE STATE VS. DOSSIE FAISON, JR., DAY 2 OF TRIAL

2 THE COURT: Good morning.

3 MS. LESKANIC: Good morning.

4 MR. SMITH: Good morning, Your Honor.

5 THE COURT: Any matters to address before the
6 jury's brought in?

7 MS. LESKANIC: Not by the State.

8 MR. SMITH: None by the defense.

9 THE COURT: Okay. Bring them in, please.

10 (Whereupon, jury comes into the courtroom.)

11 THE COURT: Good morning, ladies and gentlemen.

12 As you know, when we recessed yesterday all of the
13 evidence has been received and, therefore, what remains
14 to be heard is the lawyers' final summations and then
15 I'll instruct you on the law and then you can go to the
16 jury room for your deliberations. So, please, give the
17 lawyers your attention as they give you their final
18 summations.

19 MS. LESKANIC: May it please the Court?

20 THE COURT: Ms. Leskanic.

21 MS. LESKANIC: Thank you, Your Honor.

22 **CLOSING STATEMENT BY THE STATE:**

23 Good morning, ladies and gentlemen. In this case
24 I want you to ask yourself a question, what makes sense?
25 Use your common sense. It's one thing that you were

1 able to bring in here with you. The judge won't let you
2 bring a pad and a pen to take notes, but you did bring
3 your good judgment and your common sense.

4 And what does that lead you to? Is Ms. Humphries
5 here almost two years later because she got mad that she
6 had to give the defendant a dollar, like Mr. Smith
7 asserted in his opening? That's why we're here because
8 he wanted a cigarette. It wasn't his brand. And he
9 said the evidence was going to show that then she had to
10 give him a dollar and she was mad about that, so she
11 went in and said he exposed himself.

12 Or does it make more sense that we're here almost
13 two years later because back in September of 2014 Ms.
14 Humphries stopped at the convenience store in Blacksburg
15 to pick up a pack of cigarettes and go to work her
16 third-shift job? And on her way outside she tried to do
17 something nice. She offered a stranger a cigarette and
18 when he didn't want it. She gave him a dollar and then
19 he exposed himself. My name is Dick and I do work, I do
20 work for women.

21 She sits in her car and then she goes back inside
22 the store. She needs to be at work. It's 10 o'clock at
23 night and she needs to get to her third-shift job. And
24 she goes into the store to see Mr. Patel. Said there's
25 a man outside that just exposed himself to me. So

1 Mr. Patel goes outside with her.

2 And then she gets to work and her friend, Lori,
3 says what on earth is wrong with you, you never act like
4 this. Well, when I went to the convenience store
5 tonight this man exposed himself to me. So they say
6 let's call the police, so she calls the police
7 department. This man exposed himself to me.

8 The next morning she goes to the police
9 department. This man exposed himself to me. And then
10 ten days later she goes back to the police department
11 again to pick him out of the lineup, to pick out the car
12 that he was standing next to.

13 And she even testified, she said, I couldn't tell
14 them that was his car. I'm not trying to lie on
15 somebody. I'm just saying this is the car he was
16 standing next to. I'm not trying to give you false
17 information, but this is what he was standing next to.
18 I don't know if it was his or not. As you'll see on the
19 video it was his, and that's on Mr. Faison's car. And
20 she gave her statement ten days later.

21 I want to go through the video with you. I know
22 that you saw that briefly during Ms. Humphries'
23 testimony, but I'd like to go through it with you, point
24 out things that I think are important. The entire video
25 is in evidence, so you will have an opportunity to take

1 that back to the jury room with you. Watch it as much
2 as you want or don't watch it at all. It's up to you,
3 but it's into evidence. I'm gonna show you portions of
4 it, but I'm not trying to limit what you see. You
5 decide what facts you need to determine and you use the
6 evidence that is in to make that determination. But I'd
7 like to go over parts of the video with you.

8 (Whereupon, plays video, no audio.)

9 I'm gonna start with the defendant pulling into
10 the convenience store. You'll see his vehicle come in
11 here and pull in. And then we see Ms. Humphries coming
12 in from the opposite direction pulling in a space away
13 from him. This gentleman is walking here as Mr. Faison
14 gets out of his vehicle. And there's some sort of
15 exchange between the two of them, if you will watch.
16 (Indicating.)

17 Ms. Humphries is out of her car by herself,
18 there's no recognition of those two individuals as she
19 is going into the store. That male walks away and Mr.
20 Faison waits by Ms. Humphries' vehicle. He arrives at
21 the convenience store but he does not go in.

22 She is -- I'm going to fast forward. She's going
23 to come back out. Here she's leaving the store going to
24 her car and he gets her attention, asking her for the
25 cigarette. She has her cigarette pack in her hand. She

1 testifies that he tells her that's not his brand, and so
2 she offers him a dollar so he can go and buy a single
3 cigarette. Not something that he asked for, something
4 that she offered.

5 She testified that he started talking to her
6 again. And at that point she realized that he had his
7 penis out of his pants and she begins to back away. And
8 as he comes closer, she continues to back away out of
9 fear. And then she gets into her vehicle. And she's
10 going to go in the store.

11 I'd like to bring one other thing to your
12 attention that when Mr. Faison gets out of his vehicle,
13 his shirt is untucked completely. But after -- she says
14 at that point he's flopping his penis in and out of his
15 pants. And she used that gesture yesterday, flopping it
16 in and out of his pants.

17 You will see when he walks away from her half his
18 shirt is tucked in. And that's because his pants were
19 down so that he could get his penis out, ladies and
20 gentlemen. And when he's flopping it in and out his
21 shirt gets stuck in his pants. His shirt was untucked
22 until he had contact with Ms. Humphries, until he
23 exposed himself to her.

24 She is going to go back into the store. He still
25 didn't go into the store. He trotted off, went around

1 the store and across the road. You'll see him. If you
2 look up here, you'll see movement. And he's coming back
3 and running across the street. Probably hoping after he
4 exposed himself she would just leave. But he didn't go
5 into the store. He didn't go in there and make a
6 purchase. He exposed himself, then went around the
7 store, across the street. And Ms. Humphries goes in and
8 gets Mr. Patel, and they come out to confront him.
9 (Indicating.)

10 Ms. Humphries is getting back into her van and
11 she is going to work when he's coming out. Mr. Patel
12 testified that he went out and spoke with the defendant
13 and told him to leave his property. And then you'll see
14 him. This is the rest of that video. He gets in his
15 car and he leaves. He never went into the store.

16 He had an exchange with that man that walked up
17 there, he saw Ms. Humphries, and then he waited on her
18 to come back out. And he got her attention, give me a
19 cigarette, not my brand, here's a dollar. And then he
20 exposed himself. And you see her reaction backing up to
21 the back of her car almost.

22 No reason, there's no motive for her to make it
23 up. No motive at all. She doesn't know this man.
24 She's just going to the store to get a pack of
25 cigarettes and he waits there for her to come out and do

1 this to her.

2 And then he still doesn't go into the store. He
3 goes by the store, across the road, and then comes back
4 across. Why? Because he knew he just exposed himself
5 to a woman and he needs to get away, hoping she'll
6 leave, and then he can come back and get in his car and
7 leave. She went in and got Mr. Patel.

8 That's the only thing that makes sense. That's
9 all the evidence that's before you. Ms. Humphries
10 testified that this is what happened. You have an eye
11 witness testimony. This isn't a case where we think we
12 know what happened and we have to put lots of pieces of
13 the puzzle together to find out the truth. We have an
14 eye witness and she took the stand and she told you
15 exactly what happened.

16 We have another piece of the puzzle, though. We
17 have a video. And you don't look at those things
18 separately. I'm sure Mr. Smith is gonna say, well, you
19 don't see him expose himself on the video. You're
20 right. I told you that in my opening. It's off camera,
21 but that's why I have her because she's part of the
22 puzzle too.

23 Cases are about putting the pieces together. We
24 don't have to do it just with her. We don't have to do
25 it just with the video. We do it with everything. One

1 piece fits with another piece. Barbara took the stand
2 and she told you what happened. You see the video so
3 you get to see her reaction and his reaction.

4 Lori came in. She didn't say she was out there
5 that night because she wasn't, but she saw Barbara in a
6 crying, shaking state when she got to work that night.

7 Mr. Patel said she came back in the store upset
8 with something that happened outside. He said my
9 English isn't very good, I don't know exactly what it
10 was, but I knew she had a problem with a man outside and
11 I told him to leave, but she was clearly upset when she
12 came back in. It's not over a dollar, ladies and
13 gentlemen. That doesn't even makes sense. That doesn't
14 even make sense.

15 (Whereupon, plays video, no audio.)

16 Her reaction inside the store. She goes in and
17 she makes the purchase, but then after he exposes
18 himself she comes back in. She's coming back in the
19 door and she's looking for help. Watch her hand
20 movements. It's just like she described it to you,
21 flopping it in and out of his pants. (Indicating.)

22 (Whereupon, video ends.)

23 We have to prove for indecent exposure that
24 Dossie Faison willfully, maliciously and indecently
25 exposed his person of his genitalia in a public place on

1 the property of someone else or to the view of someone.
2 And in this case we know it's Dossie Faison. He was
3 picked out of a lineup. It's his vehicle.

4 We know he exposed himself. Ms. Barbara said so,
5 and she has no reason to come in here and lie.
6 Absolutely none. She's an eye witness to a crime. Not
7 only a victim, but an eye witness. She came in here,
8 she swore under oath to tell you what happened and she
9 did. She had the reaction. She went in to tell
10 Mr. Patel. She told Mr. Smith, no, I didn't think he
11 was going to rape me, but he exposed himself and that
12 wasn't right.

13 A woman should be able to go to a convenience
14 store at 10 o'clock at night to get a pack of cigarettes
15 and then go to work and earn a living for her family
16 without having some strange man pull his penis out at
17 her. So she wanted him to know that that's what
18 happened.

19 And we know it's a public place, it's a
20 convenience store. And it was on the property of
21 others, property belonging to Mr. Patel, and it was in
22 the view of Barbara Humphries. That's what we have to
23 prove. We have to prove that beyond a reasonable doubt
24 and there's no evidence that anything else happened.
25 That's it. That's all the evidence before you is that

1 the defendant exposed himself to Ms. Humphries.

2 We have to prove that beyond a reasonable doubt.
3 What does that mean? It doesn't mean beyond all doubt.
4 It means are you firmly convinced of that based on the
5 testimony that you have seen, based on the video that
6 you have seen. I will have still photographs from the
7 video. It may help you with times if you're looking for
8 something in particular, but you have those still
9 photographs to go through as well.

10 Are you firmly convinced that on September 1st of
11 2014 that man pulled his penis out at Ms. Humphries at
12 the convenience store? If so, he's guilty. And all of
13 the evidence points to that. There's nothing to the
14 contrary in evidence.

15 And Mr. Smith gets to go next and he is very
16 dynamic. He will probably be loud and he is dramatic
17 and theatric and a great attorney. And I don't know
18 exactly what he's gonna tell you, but I don't get to
19 stand up here and talk again. This is it. So I have to
20 kind of anticipate what he's going to do, try to address
21 those things now. I wish I would get a chance to stand
22 up again, but I don't so he gets the last argument.

23 What I do know is what he told you in his opening
24 and that is she made this up because she was mad that he
25 didn't want the cigarette and mad that she had to give

1 him a dollar. That's what he said the evidence was
2 going to show. And I don't think the evidence has shown
3 that at all. She wasn't afraid of him. She walked up
4 to him. She offered him a cigarette. She stayed there,
5 turned her back to him to give him then the dollar. But
6 that's what he told you the evidence was gonna show in
7 his opening.

8 He's also going to talk about her statement to
9 police. He said he was going to put this in evidence,
10 it's not in evidence. So I assume he may just talk
11 about certain parts of the statement instead of the
12 entire statement.

13 Parts of the statement he talked about when Ms.
14 Humphry testified is that she originally said that when
15 she walked into the store there were two black males
16 standing outside. It ends up being a black male and a
17 white male. But as you'll see, when she walks by she's
18 not even paying attention. She just walks by these
19 people to go into a store.

20 She said she was inside her car during the
21 exposure, and she was outside the car, but she got into
22 her car after it happened and then went in. She said
23 that two store employees came outside with her. Well,
24 there were two store employees working that night and
25 one came outside with her. It's on the video, so

1 there's not a question about that. But she gave the
2 statement ten days later on September the 11th.

3 One thing Mr. Smith won't tell you is that in
4 every single statement she gave to Mr. Patel, to her
5 friend Lori, to law enforcement that she called on
6 September the 1st, to Detective Vanderburg on September
7 the 2nd, and to you, ladies and gentlemen, yesterday is
8 that he exposed himself.

9 And I don't know if any of you have ever
10 experienced a traumatic event, but if you -- I'd ask you
11 to think that, too, because often the details get fuzzy,
12 but the event that happened that got your adrenaline
13 going that will forever be embedded in your mind you
14 won't forget it. You might forget what you were
15 wearing, where everybody was standing, exactly what time
16 of day it was, but that event you will never forget.

17 Ms. Humphries stated I'll never forget his face.
18 I'll never forget what he did. She was shaking and
19 almost crying on the stand yesterday still talking about
20 this. So she said, yes, I got some of the details wrong
21 ten days later, but the one thing that I didn't get
22 wrong and I'm telling you today, she said yesterday, is
23 he pulled his penis out. I know what a penis is, I know
24 what he did, and I'm here to tell you that he did and I
25 said that from 30 seconds after it happened to almost

1 two years later.

2 And testimony is evidence. Sometimes people
3 think, well, they didn't -- you know, we've got the
4 pictures and things, but what does that prove? As I
5 stated before, please look at this like a puzzle. The
6 testimony is a piece, photographs are a piece, video is
7 a piece, and when you put them all together it leads you
8 to only one conclusion, it leads you to the fact that
9 he's guilty of what he's charged of doing.

10 Please take your time and look at this. As I
11 stated, Mr. Smith is going to get up here and he's gonna
12 want you to look at maybe other things. The question
13 here is did Dossie Faison expose his genitalia at the
14 convenience store back in November of 2014. That's the
15 only question.

16 And knowing that he is going to come up here next
17 reminds me of a story I was told when I first became a
18 prosecutor and trying to understand the difference in
19 presenting the case as a prosecutor. There's a puddle
20 of water on the ground and there's a shiny coin in the
21 bottom of the puddle. You can't miss it. It's as clear
22 as day. And the prosecutor is standing there in the
23 puddle and the defense attorney walks up and says what
24 are you doing? I'm just standing here and I look down
25 and there's this beautiful shiny coin right in front of

1 my face, right in this puddle. The defense attorney
2 walks over, picks up a stick, comes over to the puddle,
3 stirs the water a little bit. He says I don't see
4 anything.

5 Ladies and gentlemen, the proof is still there
6 and the coin is still just as shiny at the bottom of
7 that puddle. And he's gonna try to stir the water. And
8 he is gonna try to make what is crystal clear cloudy in
9 your eyes. Take your time, use your good judgment and
10 common sense and you get a verdict that speaks the
11 truth. That's what verdict means, speak the truth. And
12 I ask you to return a verdict of guilty. Thank you.

13 **CLOSING STATEMENT OF DEFENSE:**

14 MR. SMITH: Mr. Foreman, ladies and gentlemen,
15 Your Honor, people in the courtroom, I'm delighted to be
16 here. I'm so happy she gave me that great introduction
17 that I'm going to be loud and dramatic and stuff like
18 that. Well, the fact of the matter is she's got no
19 case. You saw that from the beginning. I mean, she got
20 up here and she did the best job she could from what she
21 had. And I'm gonna tell you why I don't think she has a
22 case as I go through my closing statement.

23 But first of all, I wanted to tell you thank you
24 for your service for the better part of a day or more.
25 It's in the second day on this trial. And following

1 this closing statement -- and, you know, jury duty is,
2 other than serving in the military and police officers,
3 jury duty is one of the most important functions our
4 society has in a constitutional system that was designed
5 by us in this country in 1787. You have the greatest
6 system. You don't have to prove your innocence in
7 America. They've got to prove their guilt and that's
8 different.

9 If you were living in the Soviet Union or China
10 or anywhere like that, you as an individual citizen
11 would have to prove you're innocent and it would be a
12 stark chamber trial. It wouldn't be a trial where you
13 get to have a word in your case. But thank God we have
14 a system of justice, whether you're democrat, republican
15 or independent, we have a system that works for all the
16 people. And sometimes we get it wrong in history, but
17 eventually we get it right. And today I am thinking
18 that it is right because you have been selected to be
19 the jurors in this case. So, again, thank you.

20 Now, His Honor is going tell you that Mr. Faison
21 over here. Stand up, Mr. Faison. Come stand beside me
22 for a second. This is Mr. Faison. As she said, he's
23 been charged.

24 (Whereupon, Defendant stands up.)

25 MS. LESKANIC: Your Honor, I'm going to object.

1 This is his closing and I don't believe the
2 defendant ---

3 THE COURT: What is the purpose?

4 MR. SMITH: I'm just gonna have him stand here
5 and just introduce him to the jury.

6 THE COURT: Okay. He's been introduced. Okay,
7 you can have a seat.

8 (Whereupon, Defendant sits down.)

9 MR. SMITH: Thank you.

10 This is Mr. Faison, he's been charged with
11 indecent exposure. And His Honor's gonna tell you that
12 in a case you can believe some of what a witness says,
13 none of what a witness says or all of what a witness
14 says.

15 And here's a little story I have for Ms.
16 Leskanic. If you have a situation where you go into a
17 restaurant and you order some stew, some beef stew, and
18 you stick your fork in the plate when you're bringing
19 this to you, and you taste the piece of meat and it's
20 spoiled, and it's spoiled, you don't keep eating it.
21 You push the plate aside. You don't stick your fork
22 back into the plate looking for a piece of meat that is
23 not spoiled. You push the whole plate aside.

24 That's what you have to do with her testimony.
25 And the reason I'm saying that, and we're not picking on

1 Ms. Barbara Humphries, but if you'll notice she had over
2 two-and-a-half years to give the police the correct
3 information. Two-and-a-half years. She gave a detailed
4 statement about what happened that night.

5 We read parts of that statement back to her and
6 asked her questions about it. She said, when I went
7 into the store and got a cigarette, when I came out of
8 the store the black man I picked out of the photo lineup
9 asked me for a cigarette. I handed him a cigarette, he
10 said it wasn't his brand, so I gave him a dollar, which
11 he took. I got in my car ---

12 MS. LESKANIC: Your Honor, I'm gonna object. The
13 statement isn't in evidence.

14 MR. SMITH: No, but I asked the questions.

15 MS. LESKANIC: If it was ---

16 THE COURT: Well, it was covered during the
17 testimony. The document's not introduced into evidence,
18 but it was read during the examination.

19 MS. LESKANIC: Thank you, Your Honor.

20 MR. SMITH: (Begins reading.) I hand him a
21 cigarette, he said it wasn't his brand. So I gave him a
22 dollar, which he took. I got in my car, rolled down the
23 window to smoke. I was looking down for a lighter when
24 I noticed movement. When I looked up he said my name,
25 my name is Dicky, I do work. He had his penis in his

1 hand out of his pants and he was flopping his penis in
2 and out. (Ends reading.)

3 Now, I know why she's uncomfortable with me
4 reading that because you don't see that in the video.
5 And His Honor is gonna charge you on reasonable doubt.
6 That is a doubt for which you can give a reason, right?

7 He's supposedly standing at her window at her
8 car. She's gonna say 11 days later. Well, she had time
9 to calm down during those 11 days. She had time to calm
10 down during those 11 days and give them the correct
11 skinny. She didn't know there was a video out there
12 that night, so she exaggerated just like she exaggerated
13 her testimony.

14 Now when they found out that her statement
15 doesn't match up with the video, what's the next line of
16 attack? This thing that happened off the video. Well,
17 you can't believe either version, can you? The one that
18 she swore to under oath or this. (Indicating.) Because
19 she swore to this under oath when I was asking her
20 questions. And the ones she swore to by saying about
21 the dollar bill, that's contradictory statements that
22 gives you pause to say that that man is guilty beyond a
23 reasonable doubt of indecent exposure.

24 So then you ask yourself, all right, let's say it
25 happened. Well, we want to know one other thing. Is

1 there anything to corroborate because if somebody gives
2 you inconsistent information in a situation, then you
3 want the next step to be corroboration. Is there
4 anybody else that can back up her testimony? And in
5 this case there's nobody else to corroborate her
6 statement. Not even her own statement can corroborate
7 it.

8 Now, the prosecutor asked what motive does she
9 have? Well, that ain't you all's job to speculate. His
10 honor is going to instruct you, you can't speculate.
11 She's got to prove what the motive is. She's got to
12 prove beyond a reasonable doubt what Ms. Humphrey's
13 motives were for saying a man exposed himself. Some of
14 you might say, well, why didn't he testify? His Honor
15 is gonna testify (sic) that you can't even consider that
16 during your deliberations why he didn't testify.

17 Now, we do know something that she did point out,
18 and I think your common sense can lead you this way, is
19 that some kind of sale took place between him and the
20 white guy that was out there that night because, I mean,
21 she brought it out about the exchange. So the question
22 in your mind was he trying to sell something, if you get
23 my drift.

24 Now, the fact is a person like, a person who is
25 charged with some sort of crime like this usually has a

1 history. There's been no evidence in this case of this
2 gentleman, who we see ---

3 MS. LESKANIC: Objection, Your Honor.

4 THE COURT: Sustained.

5 MR. SMITH: Members of the jury, let's go down
6 the list of the witnesses. This is an honorable man
7 right here, this police officer. (Indicating.) Now,
8 the police officer, when he was doing his investigation,
9 and we brought this out from his testimony, did not have
10 access to the video because it wasn't working at the
11 time. Because if it had been working at the time, he
12 would have matched it up to her statement and said,
13 well, your statement doesn't match up to what the video
14 says.

15 But now we're down two-and-a-half years later
16 because once he loses the file it's not in his
17 possession anymore. I mean, he goes on to something
18 else. It's in the hands of the prosecution and the
19 defense, so he did the honorable thing, he gives all the
20 information to the prosecution. He goes on to the other
21 crimes he investigates. So we ain't blaming him for
22 nothing.

23 Lori Culbreath, the girl that -- those two are
24 friends. I don't know what they've been discussing for
25 two-and-a-half years or how this trial strategy was

1 developed after they caught the fact that this woman's
2 statement didn't match up with the video. So the key is
3 this is an important case to the State and it's
4 definitely an important case to Mr. Faison because he's
5 the criminally accused in this case and he doesn't have
6 to prove anything.

7 So if you've got a conflict in their testimony
8 and it cancels it out, right, and there's reasonable
9 doubt, as I told you in the beginning, there can only be
10 one verdict that speaks the truth and that's not guilty
11 because they have not proven their case beyond a
12 reasonable doubt.

13 The other thing, too, is there's one thing we do
14 know, the camera don't lie and that camera doesn't lie.
15 That camera showed everything that happened out there.
16 And the camera and the statement does not match up.
17 Now, you might want to help the prosecutor. You might
18 want to say, well, something happened off the camera,
19 but you can't do that, right, and be fair to the law
20 that the judge is gonna charge you because if there's
21 any reasonable doubt, any doubt for which you can give a
22 reason you have to find him not guilty.

23 You have to give him the benefit of the doubt,
24 and that's the way our system works. That's the system
25 that you, when you gave your oath, pledged to follow

1 yesterday. And when she tried to give y'all some
2 inflammatory -- I'm not talking about the prosecutor,
3 I'm talking about the lady yesterday -- about this black
4 man that she picked out of this photo lineup to go out
5 there and rape people and rape children and rape her, we
6 know where that goes back to. Don't let that
7 inflammatory sort of comment about rape of her and rape
8 of children, and I've got to admit that he didn't
9 attempt to rape her, inflame you to hang him up like
10 Frankenstein.

11 So members of the jury, you've got one situation.
12 I asked them about these pictures. You remember I asked
13 her about the pictures, she said they were worthless.
14 That's what she said. There was nothing in these videos
15 that showed anywhere where he was flopping his penis
16 out. She didn't talk about the fact that the man had on
17 -- whether he had on boxer briefs, whether the vein was
18 erect or flat or sunk inside. She didn't talk about any
19 of that.

20 Hang on while I look at my notes. Oh, I did ask
21 Mr. Patel, I asked Mr. Patel, I said Mr. Patel you don't
22 want panhandlers on your property, and then he said he
23 didn't understand what I was talking about. And then I
24 demonstrated the panhandler thing. He understood that.
25 He doesn't want people out there panhandling out there.

1 Personally I was not there, I don't know if that's what
2 happened. Ms. Kim Leskanic, she wasn't out there that
3 night, she doesn't know what happened. This officer was
4 not out there that night, he doesn't know what happened.

5 What we do know is that Mr. Faison and Ms.
6 Humphries was out there and Ms. Humphries said that it
7 happened at her car. When you look at the video there's
8 no evidence that he flopped his penis out at her, at her
9 car. So I leave it in your hands, members of the jury.
10 You bring back a verdict that speaks the truth, you
11 can't reward me, reward her, just do the job as God sees
12 fit for you to do it. Thank you very much.

13 **JURY CHARGE:**

14 THE COURT: Mr. Foreman, ladies and gentlemen of
15 the jury, you, of course, have heard and seen all the
16 evidence in the case. You've now heard the final
17 summations of the lawyers and so now I'm gonna instruct
18 you on the law that's applicable in the case. You'll
19 then be asked to go back into your jury room and to
20 begin with your deliberations. And through that process
21 you'll examine all of the evidence, you will decide the
22 facts, you'll apply the law and arrive at a fair and
23 just decision, whatever that decision may be.

24 It is your exclusive prerogative to determine
25 what the facts are. You do that based upon your own

1 exercise of common sense and good judgment applied to
2 the testimony and evidence received during the course of
3 the trial. And you 12 jurors alone will decide what
4 weight that in effect to give any particular witness's
5 testimony or other evidence in the case. Your sole
6 objective is to simply reach a fair and impartial
7 decision. You do that based upon your view of the
8 evidence and then your application of the law as I will
9 have provided it to you.

10 In this case, as you know, the defendant, Dossie
11 Faison, Jr., has been charged by the prosecutor with
12 independent exposure. The allegations of making that
13 charge are contained in the indictment. The indictment
14 is that document I referred to prior to and after your
15 selection in the case.

16 The indictment alleges that Mr. Faison did in
17 September the 1st or 2nd of 2014, willfully, maliciously
18 and indecently expose his person in a public place, on
19 the property of others, or to the view of any person on
20 the street or highway. And they specifically allege
21 that he did expose himself at a convenience store in the
22 view of Barbara Humphries.

23 As to those allegations and as to that charge
24 he's entered a plea of not guilty. A plea of not guilty
25 places upon the State the burden of proving the

1 allegations that they've made against the defendant.
2 The burden of proving each of the essential elements of
3 the crime that's alleged against the defendant. And,
4 therefore, the burden is upon the State to establish the
5 defendant's guilt to the satisfaction of you 12 jurors
6 beyond a reasonable doubt before any verdict of guilty
7 could be returned.

8 The burden is never upon a defendant or a person
9 accused of a crime to prove that they are not guilty or
10 to prove that they are innocent because in some cases
11 that might not be possible. The burden is always upon
12 the State because they brought the charge against the
13 defendant to establish his guilt beyond a reasonable
14 doubt.

15 You are instructed that it is a vital important
16 and cardinal rule of law that every defendant in the
17 criminal trial no matter how serious the offense might
18 be for which that person stands charged, that person
19 shall always be presumed innocent to the charge. And
20 that presumption of innocence remains with any
21 defendant, as it does with this defendant, from the time
22 that he is placed under arrest and throughout the course
23 of the criminal process and even throughout the course
24 of the trial in the case.

25 As I've told you, that presumption of innocence

1 will be with Mr. Faison even when you go back into your
2 jury room to begin with your deliberations at the
3 conclusion of this case. That presumption of innocence
4 will be with him in that jury room and it'll be with him
5 forever unless you 12 jurors determine that he's no
6 longer entitled to that presumption of innocence.

7 In other words, after you've exercised your good
8 judgment and common sense, you've applied it to the
9 testimony and evidence in the case, you've determined
10 what you believe to be the facts as they relate to these
11 allegations, you've applied the law that I've provided
12 you, if you 12 jurors unanimously determine that his
13 guilt has been proven beyond a reasonable doubt, then he
14 would no longer be entitled to that presumption of
15 innocence. But it is only if, unless, and until you are
16 satisfied of his guilt beyond a reasonable doubt that
17 the presumption of innocence would no longer be
18 applicable.

19 Now, while the State does have the burden of
20 proving the defendant's guilt to your satisfaction
21 beyond a reasonable doubt, that doesn't mean that they
22 have to prove his guilt beyond all doubt or beyond any
23 possible doubt, but it does require the State to prove
24 his guilt to your satisfaction beyond a reasonable
25 doubt.

1 The term reasonable doubt should be given as
2 plain and ordinary meaning. A reasonable doubt is the
3 kind of doubt that would cause a reasonable person to
4 hesitate to act upon the information provided. And a
5 defendant is entitled to any reasonable doubt that
6 arises from the evidence or lack of evidence in the
7 case.

8 And if upon any factual issue essential to a
9 finding of a verdict of guilty you have some reasonable
10 doubt as to how that issue should be resolved, it would
11 be your duty to resolve that reasonable doubt in favor
12 of the defendant. And, therefore, if upon your
13 consideration of the whole case you have a reasonable
14 doubt as to his guilt, you must resolve that doubt in
15 his favor and return a verdict of not guilty.

16 And at the same time, after you've carefully
17 considered all the evidence and decided the facts and
18 applied the law, if you have no reasonable doubt as to
19 his guilt, it would be your corresponding duty to find
20 him guilty where that guilt has been proven beyond a
21 reasonable doubt.

22 Now, as I've told you, you are the sole judges of
23 the facts in this case. You determine what the facts
24 are. You do that based upon your common sense,
25 examination and evaluation of the testimony and evidence

1 received during the course of the trial. You 12 jurors
2 alone will decide what weight, value and effect to give
3 any particular witness's testimony or portions of it.
4 But there are a number of factors which you should
5 consider in arriving at your assessment as to a
6 witness's credibility and believability, and I'm going
7 to list those factors for you.

8 You should consider the demeanor of the witness
9 as the witness testified from the witness stand. You
10 should consider whether or not the testimony of a
11 witness was consistent or inconsistent with that
12 witness's own testimony or other evidence received
13 during the trial.

14 You should consider how the witness came to know
15 the facts to which that witness has testified. In other
16 words, what opportunity did the witness have to perceive
17 the existence of those facts to which they have
18 testified by having previously used his or her
19 sentences. And then, what is their ability to be able
20 to come into court and to accurately recollect to you as
21 to what they have previously perceived.

22 You should consider any bias or prejudice or
23 interest that a witness might have with respect to the
24 case. And you should consider whether or not the
25 testimony of a witness is strengthened or is it weakened

1 by other testimony and other evidence received during
2 the trial.

3 You, as the finders of the fact, are permitted to
4 believe as much or as little of what a witness has
5 testified to, as you deem is appropriate. And so you
6 may believe everything that the witness testified to or
7 you may choose to believe none of it. You can believe
8 one portion of a witness's testimony and reject some
9 other portion of that same witness's testimony.

10 But whatever your good judgment and common sense
11 tells you is the most believable and credible testimony
12 is the testimony you should accept. And you should
13 reject in your testimony or evidence that you find not
14 to be credible or believable. Again, your sole
15 objective is to simply render a fair and impartial
16 decision.

17 The same law that provides that you are the
18 judges of the facts also provides that I am the judge of
19 the law, and that simply means that nobody's going to
20 tell you how to arrive at your determination of fact in
21 this case. You do that, as I've already stated, through
22 the exercise of good judgment and common sense
23 conscientiously applied to the testimony in evidence
24 received during the trial.

25 However, under your oath as a juror, you must

1 accept the law as I provide it to you as being the law
2 that you are to apply in the case. In other words,
3 you're not to concern yourself with what you thought the
4 law was before you came to serve as a juror this week or
5 what you think the law ought to be.

6 Under your oath as a juror, you must simply
7 accept the law as I provide it to you as being the law
8 that you are to apply in the case and then you take that
9 law and you apply it to the facts as you 12 jurors
10 determine those facts to be based upon your common sense
11 examination of the evidence presented during the trial.

12 In this case, as you know, the defendant is
13 charged with indecent exposure. Indecent exposure is a
14 statutory offense. Every year the legislature meets.
15 You'll see behind me some red and blue volumes. When
16 the legislature meets from January to June, they pass a
17 number of laws and rules and regulations that govern our
18 conduct in a variety of ways. Some of those statutes
19 that are passed are criminal penalty statutes, and that
20 just means the legislature sets forth conduct that we
21 are prohibited from engaging in.

22 As our representatives, they establish that
23 prohibited conduct. And where we are found to have
24 engaged in that conduct in violation of a statute, then
25 it subjects us to some form of punishment or penalty as

1 a result. But please keep in mind, however, that you
2 are never to be concerned with any punishment or
3 penalty. That's not something that you decide.

4 Your sole obligation and duty is to determine
5 whether or not the defendant has been proven guilty of a
6 violation of this particular statute, and you do that
7 without regard to any consequence of that decision.

8 But in this case, the statute that the defendant
9 is alleged to have violated is Section 16-15-130 of the
10 Code of Laws. And that statute provides, in its
11 pertinent and relevant parts, it is unlawful for a
12 person to willfully, maliciously and indecently expose
13 his person in a public place on property of others or in
14 view of any person on a street or highway. Again, the
15 statute says it is unlawful for a person to willfully,
16 maliciously and indecently expose his person in a public
17 place on property of others or in view of another person
18 on a street or highway.

19 The term "willfully" within the meaning of the
20 statute refers to an act which is done knowingly and
21 intentionally and not one that is committed by accident
22 in advertence or mistake.

23 The term "maliciously" within the meaning of the
24 statute, refers to a wrongful act which is done
25 intentionally and deliberately without just cause or

1 legal excuse.

2 The term "indecently" within the meaning of the
3 statute, refers to an act which is offensive to common
4 propriety, offending against modesty or decency, grossly
5 vulgar, obscene or unfit to be seen under the prevailing
6 circumstances.

7 The phrase "expose his person" within the meaning
8 of the statute, refers to the intentional exposure of
9 the naked body or the genitalia or sexual organ of a
10 person.

11 And the term "indecent exposure" refers to the
12 exhibition of a person's genitalia or sex organ in such
13 a manner and under such circumstances which instinctive
14 modesty, decency and respect for others would require to
15 be kept covered while in the presence of others.

16 And, therefore, in order for the defendant to be
17 proven guilty of indecent exposure in violation of this
18 particular statute, it would be necessary that the
19 evidence in this case has established to your
20 satisfaction beyond a reasonable doubt that the
21 defendant did willfully, maliciously and indecently
22 expose his genitalia or sexual organ in a public place
23 or on the property of others in such a manner that it
24 was to the view of any other person.

25 I further instruct you, and I emphasize to you,

1 that the fact that a defendant during the trial of a
2 criminal case does not take the witness stand and
3 testify during the trial of that case is not a fact that
4 may be considered by you jurors or during your
5 deliberations or in your determination as to whether or
6 not his guilt has been proven beyond a reasonable doubt.
7 You may not permit such a fact to weigh in the slightest
8 degree against the defendant.

9 As I've already told you, the burden is on the
10 State to prove the defendant guilty beyond a reasonable
11 doubt. The burden is not upon a defendant to prove that
12 he is not guilty or to prove that he is innocent,
13 because in some cases that might not be possible. And,
14 therefore, you are not to draw any inference nor reach
15 any conclusion from the fact that the defendant did not
16 testify during the trial of the case, nor may that fact
17 even be discussed while you are in your jury room and
18 engaged in your deliberations in this case.

19 Now, Mr. Foreman and ladies and gentlemen of the
20 jury, I am not in any way concerned with what your
21 decision is, but as I've told you the verdict has to be
22 unanimous. All 12 of you must be in agreement before
23 any decision may be reached.

24 Mr. Foreman, as you have been told, you will be
25 presiding over jury deliberations simply to ensure that

1 those deliberations are carried out in some orderly
2 fashion, but all jurors are to participate in those
3 deliberations because, as I've stated, the verdict of
4 the jury has to be unanimous. All of you have to be in
5 agreement.

6 But, Mr. Foreman, after you and your fellow
7 jurors have deliberated the case and after you have
8 arrived at a unanimous decision, I'm gonna ask that you
9 indicate that decision on the back of the indictment.
10 You'll have that in the jury room. On the back of the
11 indictment you'll see the word "verdict" and it's
12 beneath that word that you'll indicate the jury's
13 unanimous decision.

14 In this case you have two potential verdict
15 forms. Those potential verdict forms are guilty and not
16 guilty. So whatever that decision is, indicate it in
17 that space provided. You'll sign your name as a
18 foreperson and place the appropriate date. You are the
19 only juror that needs to sign the verdict form.

20 Now, during deliberations there may come a time
21 where you have a question about the testimony or the
22 evidence presented during the trial. In fact, you may
23 even wonder if there was something else you could have.
24 In other words, you might come up with something, well,
25 you know, if we had that, that might help us resolve the

1 case. Well, please understand that no additional
2 evidence can be introduced now that you're going back to
3 begin with your deliberations, so don't ask me about
4 something that you don't have unless it was introduced
5 in the trial.

6 We will verify all of the exhibits, and so they
7 should all be back there when you go back. So if it was
8 not introduced in the trial, it cannot be introduced now
9 even if it does exist. So don't ask me about something
10 that was not introduced, even though you'd might like to
11 have it because I can't permit it. I just can't let you
12 have it under any circumstances. That's just what the
13 law provides.

14 If, however, you have a question about a
15 witness's testimony and you think that question can be
16 answered by having testimony replayed in its entirety or
17 just in part, we can bring you back into the courtroom
18 for the court reporter to replay the testimony of a
19 witness in its entirety or just a portion of it, if
20 that's all you need. I don't have transcripts to send
21 back, but if you want to hear a witness's testimony, I
22 can bring you back into the courtroom for that purpose.

23 If at any time you have a question about the law
24 that's applicable in the case, I am permitted to answer
25 questions about that, so should you need a

1 re-instruction or an additional explanation or a
2 clarification of any point of law I provided, I'll be
3 happy to bring you back to provide you with that
4 re-instruction, additional explanation or clarification
5 as to the law.

6 I don't know if we have any smokers. If we do,
7 you can smoke during deliberations. You can't smoke in
8 the courthouse, you have to go outside. So if you need
9 to smoke or want to smoke, tell the bailiff, he'll take
10 those that want to outside to accomplish that purpose.
11 But you are instructed that deliberations have to stop
12 if any juror is absent for any authorized purpose.
13 Deliberations may only be engaged in when all 12 jurors
14 are present so that all are able to participate.

15 I don't know how long it will take you to
16 deliberate. We usually eat lunch between 12:30 and 1,
17 as you know. I don't know how long the deliberations
18 will take. You don't either until you get back there
19 and get started. But I'll tell you this, if you get to
20 a point in your deliberations where you think it's
21 desirable to order lunch, it usually takes about an
22 hour, maybe a little bit longer than that, to have your
23 lunch orders taken, ordered, prepared and then brought
24 to the jury room to -- for your benefit.

25 So, just keep that in mind as you go back to

1 deliberate. It takes a little over an hour to get that
2 lunch prepared and brought to the jury room, so if you
3 get to a point where you think that's appropriate let
4 the bailiff know and the Clerk of Court will take your
5 lunch orders.

6 I think that covers everything, but if it doesn't
7 I'm sure one of these lawyers will remind me that I
8 neglected to provide you with some information that I
9 should have. And if that's the case, I'll bring you
10 back to provide you with that additional information.
11 If I don't need to bring you back, I'll send word by way
12 of the bailiff that you may begin with your
13 deliberations. In that event, he will bring to the jury
14 room all of the exhibits which have been introduced
15 during the trial.

16 And to you, Mr. Foreman, he'll also bring the
17 indictment, which is there solely to serve as the
18 verdict form. So, please, with the exception of Ms.
19 Harrison, and I'll ask the 12 primary jurors to go with
20 the bailiff to the jury room, but do not begin
21 deliberations until I send you word to do so.

22 (Whereupon, jury leaves the courtroom at 10:59
23 a.m.)

24 THE COURT: Ms. Harrison, as you know, you're an
25 alternate juror and alternates cannot participate in

1 THE COURT: Are there any exceptions taken to the
2 instruction or request for additions to the instruction
3 by the State?

4 MS. LESKANIC: Your Honor, did you give the
5 firmly convince instruction?

6 THE COURT: I didn't. I did my usual reasonable
7 doubt instruction.

8 MS. LESKANIC: Okay, that's all I had.

9 THE COURT: Okay.

10 MR. SMITH: Your Honor, same thing I argued
11 earlier on my motion I'm gonna argue with regard to the
12 charge that the indecent exposure charge is
13 unconstitutional and you already ruled on that, but I
14 need to rebut that for the charge.

15 THE COURT: All right, I note that exception.

16 MR. SMITH: Thank you, Judge.

17 THE COURT: Let me ask you all to verify the
18 exhibits before they go back, please.

19 MS. LESKANIC: Is this 1 through 19 and 21. And
20 the computer also, Your Honor.

21 THE COURT: Okay. All the exhibits are verified
22 and accounted for?

23 MR. SMITH: Yes, sir.

24 MS. LESKANIC: Yes, Your Honor.

25 THE COURT: And you've got a computer to send

1 back?

2 MS. LESKANIC: Yes, sir.

3 THE COURT: Oh, you have it. Okay. All right,
4 take the exhibits and the verdict form back. Tell the
5 jury to begin deliberations, notify us when they've
6 concluded. And we'll be at ease while they deliberate.

7 MS. LESKANIC: Do we need to look at the verdict
8 form or is it just the indictment?

9 THE COURT: It's the indictment.

10 MS. LESKANIC: Just the indictment?

11 THE COURT: Uh-huh.

12 MS. LESKANIC: Okay, thank you, Your Honor.

13 (A recess was had at the hour of 11:03 a.m. -
14 12:46 p.m.)

15 THE COURT: All right. The jury has requested
16 some additional instruction and so I'm gonna bring them
17 back and provide them with additional information, and
18 then if they have further requests we'll address them.
19 Bring the jury in, please.

20 (Whereupon, jury enters the courtroom at 12:49
21 p.m.)

22 THE COURT: Mr. Foreman, I have your most recent
23 note and I understand that you wish to have further
24 explanation or instruction as to the concept of
25 reasonable doubt.

1 MR. FOREMAN: Yes, sir.

2 THE COURT: So I'm gonna reinstruct you on that
3 portion of the charge, and if you need additional
4 explanation or clarification or further instruction you
5 all will have to let me know when you go back. But I'm
6 happy to provide you as much further instruction as you
7 need, but I'm only going to provide you what you
8 request. If you need the whole instruction, I'm happy
9 to do that. If you just need some portion of it, you'll
10 just tell me what that portion is.

11 MR. FOREMAN: The reasonable doubt and common
12 sense, how it applies to this case. That's the two main
13 things we're torn on.

14 THE COURT: All right. Well, what I'm gonna do
15 is I'm going to reinstruct you on the concept of
16 reasonable doubt and then when you go back if that
17 doesn't help you make progress then you'll let me know.
18 One other thing, at no time are you to tell me if there
19 is a split, don't ever tell me what it is.

20 MR. FOREMAN: If there's a split?

21 THE COURT: Yeah. You can say we have come to a
22 unanimous decision or whatever, but don't, don't inform
23 me as to what the split might be. Okay?

24 MR. FOREMAN: (Nods head up and down.)

25 THE COURT: All right. With regard to reasonable

1 doubt, the State has the burden of proving the
2 defendant's guilt to your satisfaction beyond a
3 reasonable doubt. This does not mean the State has to
4 prove his guilt beyond all doubt or beyond any possible
5 doubt, but it does require the State to prove his guilt
6 to your satisfaction beyond a reasonable doubt.

7 The term "reasonable doubt" should be given its
8 plain and ordinary meaning. A reasonable doubt is the
9 kind of doubt that would cause a reasonable person to
10 hesitate to act upon the information provided. Proof
11 beyond a reasonable doubt is proof that leaves you
12 firmly convinced of the defendant's guilt.

13 There are very few things in this world that we
14 know with absolute certainty. And in criminal cases the
15 law does not require proof that overcomes every possible
16 doubt. If, based on your consideration of the evidence
17 in this case, you are firmly convinced that the
18 defendant is guilty of the crime for which he stands
19 charged, then it would be your obligation and duty to
20 find him guilty. If, on the other hand, you think there
21 is a real possibility that the defendant is not guilty
22 of the crime for which he stands charged, then it would
23 be your duty to resolve that reasonable doubt in his
24 favor and to return a verdict of not guilty.

25 Okay. Please return to your jury room and

1 continue with your deliberations and let me know if I
2 can assist you any further. Your lunch has already been
3 ordered, and they'll be preparing it and bring it to
4 you. Okay?

5 MR. FOREMAN: Okay.

6 (Whereupon, jury leaves the courtroom at 12:53
7 p.m.)

8 THE COURT: Are there any exceptions to that
9 additional instruction?

10 MS. LESKANIC: Not by the State, Your Honor.

11 MR. SMITH: Not from the defense, Your Honor.

12 THE COURT: All right. We'll continue to be at
13 ease while the jury is deliberating.

14 (Whereupon, Court's Exhibit Number 1, Note From
15 Jury, was marked for identification.)

16 (Whereupon, Court's Exhibit Number 2, Note From
17 Jury, was marked for identification.)

18 (Whereupon, Court's Exhibit Numbers 1 and 2 were
19 entered into the record.)

20 (Whereupon, a recess was had from 12:53 p.m. -
21 1:31 p.m.)

22 THE COURT: I'm told that the jury has reached a
23 decision, are we ready to receive it?

24 MR. SMITH: The defense is, Your Honor.

25 MS. LESKANIC: Yes, Your Honor.

1 THE COURT: Okay. Bring them in.

2 (Whereupon, jury enters courtroom at 2:39 p.m.)

3 THE COURT: Mr. Foreman, have you and your fellow
4 jurors reached a unanimous decision?

5 MR. FOREMAN: Yes, we have, Your Honor.

6 THE COURT: Have you reflected that decision on
7 the back of the indictment as requested?

8 MR. FOREMAN: Yes, we have.

9 THE COURT: Did you sign it and date it?

10 MR. FOREMAN: Yes, sir.

11 THE COURT: If you'll please hand that up by way
12 of the bailiff. (Handing.) You may publish the
13 verdict.

14 **THE VERDICT:**

15 THE CLERK: 2015-GS-11-938, the State versus
16 Dossie Faison, Jr., indictment for indecent exposure,
17 the jury responds guilty signed by foreperson James
18 Cooper, II.

19 Ladies and gentlemen of the jury, if this is the
20 verdict of you all please indicate by raising your right
21 hand.

22 (Whereupon, all jurors raise their right hand.)

23 Thank you.

24 THE COURT: All right. All the jurors responded
25 in the affirmative. Does the defendant wish to have the

1 jury polled?

2 MR. SMITH: No, sir, Your Honor.

3 THE COURT: All right, ladies and gentlemen,
4 that's gonna conclude your service for the trial of this
5 case and we don't have another jury trial for this
6 afternoon, but we might have one for tomorrow. So what
7 we'll ask you to do is call back after 6 o'clock this
8 evening to receive further reporting information, okay?
9 Thank you again for your participation. Have a good
10 afternoon.

11 (Whereupon jury leaves the courtroom at
12 2:41 p.m.)

13 All right. Mr. Smith, anything further prior to
14 me giving sentence?

15 MR. SMITH: Yes, sir, Your Honor. He's 68 years
16 old, I think.

17 THE DEFENDANT: Yes.

18 MR. SMITH: And he served in this United States
19 military, served in Vietnam. Grew up in mostly as
20 normal, but foster home to foster home, but he did make
21 something of his life. And then he, he got derailed
22 because of his own fault some years ago in 1973. But
23 once he got out of prison he did conduct himself
24 properly until this incident.

25 So if the Court could be -- I don't know what the

1 Court is gonna do, but we ask for mercy of the Court.
2 If the Court impose a fine or a combination of both. He
3 did conduct himself appropriately since he got out of
4 prison. We don't know what we're going to do.

5 THE COURT: All right. Mr. Faison, anything
6 you'd like to add?

7 THE DEFENDANT: No, sir, except for an apology of
8 my conduct except for restituted conviction. So I ask
9 of you to serve a fine, I guess I'm getting kind of
10 getting old, so time to provide for that fine.

11 MR. SMITH: Your Honor, he's been wearing a
12 monitor for --

13 THE DEFENDANT: Two years.

14 MR. SMITH: -- two years and didn't violate any
15 terms and conditions of that, and if you could give him
16 some credit for that.

17 THE COURT: All right. Ms. Leskanic?

18 MS. LESKANIC: Thank you, Your Honor. His prior
19 history is from 1973. It's my understanding this is
20 when he was in the military. There is a conviction for
21 burglary, larceny, robbery and abduction. It's my
22 understanding he's on parole for that abduction
23 kidnapping charge now out of Virginia. He does not have
24 any other convictions at this time, Your Honor.

25 THE COURT: I'm trying to find the sex offender

1 registry provision, should there be one. I've looked at
2 23-3-430. What's you all's position on whether or not
3 it requires registration?

4 MS. LESKANIC: Your Honor, I believe the statute,
5 I don't have it in front of me, but this is the
6 provision it specifically mentions indecent exposure and
7 says that it is in the Court's discretion. If the Court
8 makes a finding on the record that this case would
9 necessitate or the sex offender registry would be
10 appropriate.

11 THE COURT: Well, that was my impression, but I'm
12 having a hard time finding it. Can you look at it?

13 MR. SMITH: Yes, sir.

14 MS. LESKANIC: And the State is requesting
15 registry in this case, Your Honor, due to the facts
16 where he exposed himself to Ms. Humphries.

17 MR. SMITH: Your Honor, we take the presumptive
18 position he shouldn't be on the sex registry and ask
19 that you use your discretion not to place him on the sex
20 offender registry.

21 **SENTENCING OF THE COURT:**

22 THE COURT: On Indictment 2015-938, it's an
23 indictment for indecent exposure, wherein you have been
24 found guilty by the jury of that offense, the sentence
25 of the Court is you, Dossie Faison, Jr., be confined to

1 the South Carolina Department of Corrections for a
2 period of three years and pay a fine of \$3,000.
3 Provided, however, that sentence shall be suspended upon
4 the service of 18 months and the payment of a fine of
5 \$100 plus the costs and assessments. The balance is
6 suspended during the period of probation for five years.

7 Conditions of probation, you are to participate
8 in the mental health evaluation, follow all treatment
9 recommendations. You are to have no contact with the
10 victim.

11 And I find, based upon the circumstances of this
12 case, that the defendant should be required to register
13 pursuant to 23-3-430 on the sex offender registry.

14 Mr. Faison, you have the right to appeal the
15 verdict of the jury and the sentence of the Court. You
16 must file your notice of intent to appeal those
17 decisions within today's date -- ten days of today's
18 date. Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay.

21 MR. SMITH: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MS. LESKANIC: Thank you, Your Honor.

24 MR. SMITH: I need to make a motion of judgment
25 notwithstanding the verdict and make a motion for a new

1 trial.

2 THE COURT: Well, you would have to do that --

3 MR. SMITH: Yeah, let's bring him out.

4 THE COURT: Bring Mr. Faison back.

5 THE DEFENDANT: Sorry, Your Honor.

6 THE COURT: Mr. Smith, has got some motions to
7 make.

8 MR. SMITH: Your Honor, on behalf of the
9 defendant, Mr. Faison, we move for a judgment not
10 withstanding verdict. Looking at the evidence in light
11 most favorable to the State, we believe that there's no
12 evidence that he committed the crime of indecent
13 exposure and/or a new trial.

14 THE COURT: All right. Each of those motions are
15 denied.

16 MR. SMITH: Thank you.

17 THE COURT: Okay.

18 MS. LESKANIC: Thank you, Your Honor.

19 (Whereupon, Trial concluded at 2:45 p.m.)
20
21

22 --- THIS ENDS REQUESTED TRANSCRIPT ---
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25