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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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STATE OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLARENCE DUANE ABNEY,

APPELLANT

APPELLATE CASE NO 2016-002394

RECORD ON APPEAL

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1 State of South Carolina)
)
 2 County of Lexington)
)
 3 State of South Carolina,)
)
 4 Plaintiff,)
 vs.)
 5)
 6 Clarence Duane Abney,)
)
 7 Defendant.)
 _____)

In the Court
 Of General Sessions
 Indictment No.: 2016-GS-32-01845

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November 17, 2016

Lexington, South Carolina

BEFORE:

The Honorable Eugene C. Griffith, Junior, Judge

APPEARANCES:

Sutania A. Radlein, Assistant State Solicitor
 Attorney for the State

Walt Whitmire, Assistant Public Defender
 Sarah Mauldin, Assistant Public Defender
 Attorneys for the Defendant

ALSO PRESENT:

Clarence D. Abney

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1 Whereupon, the following proceedings were had,

2 (Whereupon, State's Exhibits #1 through #3 marked
3 for identification.)

4 BAILIFF: All rise. Court is now in session. The
5 Honorable Judge Eugene C. "Bubba" Griffith, Junior,
6 presiding.

7 THE COURT: I felt that coming on all day. Y'all be
8 seated.

9 THE CLERK: You're gonna miss that because this is
10 the last time.

11 THE COURT: He got me on that one. He told me he
12 was. All right. Y'all ready to go?

13 MS. RADLEIN: Yes, Your Honor. The State is
14 ready.

15 THE COURT: Okay. Mr. Whitmire, are you ready?

16 MR. WHITMIRE: The only motion is a motion to
17 sequester the witnesses.

18 THE COURT: I have no problem with that. You get to
19 keep your investigating officer. She gets to stay.

20 MS. RADLEIN: Yes. The investigator can stay.

21 THE COURT: All right. Mr. Whitmire, your client is
22 Clarence Duane Abney?

23 MR. WHITMIRE: He is, Your Honor.

24 THE COURT: We are ready to go on this indictment
25 which is 2016-GS-32-01845 and your client has waived his

1 right to have his trial by a jury of his peers?

2 MR. WHITMIRE: He has, Your Honor. We have
3 discussed the difference between a trial by the bench and
4 by the jury and pursuant to my legal advice and
5 explanation he has selected this option in front of you.

6 THE COURT: Okay. Fair enough. You know, I've had that
7 done three times and all in this same courtroom. Isn't
8 that amazing? Seriously. Yesterday was the second one.
9 The first one was a death penalty case. Lynch. Golly, I
10 thought that would last forever. Ready to go.

11 MS. RADLEIN: Correct, Your Honor, just for
12 formality in terms of structure, this is my first bench
13 trial. Is there opening, closing?

14 THE COURT: No. Call your witness. We'll summarize
15 it. I got the gist of it.

16 MR. WHITMIRE: It's a PCR hearing.

17 THE COURT: Simple enough.

18 MS. RADLEIN: Thank you, Your Honor. The State
19 calls William Keeble.

20 THE COURT: And if y'all have stipulated or agreed
21 on certain facts, let me know.

22 MR. WHITMIRE: Your Honor, we have stipulated to her
23 exhibits and we have also stipulated to chain of custody
24 as far as having the 911 audio coming in just to speed
25 things up.

WILLIAM KEEBLE - DIRECT BY MS. RADLEIN

5

1 Thereupon,

2 WILLIAM KEEBLE

3 after having been first duly sworn, testified as follows,

4 THE CLERK: Please have a seat. After you're
5 seated, please state your full name spelling your last
6 name for the record.

7 THE WITNESS: William Keeble, K-e-e-b-l-e.

8 DIRECT EXAMINATION

9 BY MS. RADLEIN:

10 Q. Mr. Keeble, where are you currently employed?

11 A. Waffle House, Incorporated.

12 Q. How long have you been employed there?

13 A. At the current location for three years.

14 Q. What type of establishment is Waffle House?

15 A. A fast food restaurant.

16 Q. Would it be considered a public place?

17 A. Yes, ma'am.

18 Q. So anyone is welcomed in there?

19 A. Yes, ma'am.

20 Q. Where exactly is this Waffle House located?

21 A. On 130 West Church Street in Batesburg, South
22 Carolina.

23 Q. Is that within Lexington County?

24 A. Yes, ma'am.

25 Q. The reason why we are here, we're just gonna try and

1 streamline it and jump straight to it, you mentioned that you
2 were employed for three years. Were you working last year
3 February 13th, 2015?

4 A. Yes, ma'am.

5 Q. No.

6 A. This year.

7 Q. I apologize. This year. Earlier this year. And do
8 you recall the incident that occurred on that evening?

9 A. Yes, ma'am.

10 Q. What exactly do you recall? What were you doing on
11 that night?

12 A. I was cooking. We were -- I was cooking. We were
13 in the middle of being very busy. We had about 30 or 35
14 people come through at the same time and we always at 4:00 in
15 the morning it's always usually a little bit of a rowdy crowd
16 but you have give and take a little bit as long as they stay
17 within limits you can deal with it and get everybody fed. It
18 had been an exceptionally rowdy night. We had already called
19 the police for crowd control maybe 30 minutes before hand and
20 they had just left and got everybody - everybody got settled
21 down and we got back into everything and while I was in the
22 middle of cooking there started to become a louder commotion
23 than everybody else talking which was a gentleman arguing with
24 a woman at the high bar and things escalated from there to
25 almost a physical altercation which is when I called the

1 dispatch, the 911 for police assistance again.

2 Q. You mentioned that you called the police twice.
3 What is your position at the Waffle House?

4 A. Shift manager and lead cook at night.

5 Q. So you would have been responsible for the crowd?

6 A. Yes.

7 Q. And managing the restaurant?

8 A. And the safety of the employees.

9 Q. Okay. You mentioned that there was an altercation.
10 Do you recall who that altercation, who the parties in that
11 altercation was?

12 A. Yes, ma'am. I remember the male. The female was
13 amongst the crowd but the male was instigating most of the
14 arguing that was going on. She stayed placed in her seat and,
15 I mean, they exchanged words back and forth, but he started
16 getting aggressive and trying to actually get to, physically
17 get to her and that's when everyone else standing out there
18 started intervening and keeping him away from her while I
19 started calling 911.

20 Q. You mentioned that it was a large crowd. Can you
21 tell the Judge whether or not these two individuals, why did
22 these two individuals catch your attention when there was such
23 a large crowd in the Waffle House that evening?

24 A. Just after working in this line of work for so long
25 we deal with drunks. We deal with different inebriated

1 people. You hear the normal chitter chatter and then you
2 start to hear the raised voices and everyone, they start
3 cursing at each other and they start getting physical, like
4 threatening physical that it just stands out to you so
5 you turn around to see what's going on and you see two people
6 trying to fight each other. Well, mainly just --

7 Q. Arguing?

8 A. Yes.

9 Q. Do you recall what time of night this was?

10 A. It was between 4:00 and 4:20. Had to have been in
11 there. Probably more around 4:20.

12 Q. Around 4:20 in the morning?

13 A. Yeah.

14 Q. How would you describe the male individual?

15 A. Average male build. Had on very bright pants, like
16 suit on. It was a hoodie and pants combination suit. It was
17 black background with multi color popping all over it. It was
18 hard to miss. Long dreads. That gentleman over there. I'm
19 sorry. I don't know how I should to say it, but just with a
20 very bright combination suit on.

21 Q. You mentioned that gentleman over there. Are you -
22 who are you referring to?

23 A. The gentleman sitting all the way to the left
24 nodding.

25 Q. So do you recognize him here in the courtroom

1 today?

2 A. Oh, yeah. Yes, ma'am.

3 Q. How was the lighting in the Waffle House?

4 A. About as bright as this.

5 Q. Was there anything obstructing your view of the
6 individual?

7 A. There was glass between us and there were people
8 standing around but there was nobody blocking me from being
9 able to see him.

10 Q. Inside the restaurant?

11 A. Yes.

12 Q. Was there glass blocking you?

13 A. No. I was looking through -- Well, he was in the
14 restaurant first, yes, ma'am.

15 Q. So in the restaurant?

16 A. In the restaurant. He was right there on the other
17 side of the cash register. The lady he was arguing with was
18 at the high bar right there maybe three foot away from each
19 other.

20 Q. Approximately how far away from you? Use me as an
21 example.

22 A. A little closer. Right about there probably. This
23 would be me right behind the counter.

24 Q. Nothing obstructing your view of his face?

25 A. No, ma'am.

1 Q. Anything obstructing your view of his attire?

2 A. No, ma'am.

3 Q. You mentioned glass or being outside. Tell the
4 Judge what happened next.

5 A. Well, after everything started getting heated, I
6 asked everyone to calm down or I was going to have to call the
7 police and things kept escalating, kept escalating so I got on
8 the phone with 911. They were instructing me about officers
9 were gonna be coming to the scene and as all this is going on
10 the crowd actually pushes him outside because he was just
11 starting so many problems they pushed him outside and once he
12 got outside he started instigating the crowd through the
13 window and that's when he started swinging and hitting the
14 window, punching it as hard as he could repeatedly. I say it
15 on the call as well that they are listening to everything
16 that's going on while I'm talking to them, but all this still
17 refusing to leave the property and trying to destroy the
18 property because he had a ring on. I honestly thought he was
19 going to break the window.

20 Q. You indicated this took place while you were on the
21 phone with dispatch?

22 A. Yes, ma'am.

23 Q. With the glass again, I'm going to go ahead and ask
24 you, what was the lighting like outside?

25 A. The lighting outside is still pretty bright. I

1 don't know if it was equivalent to the inside but we do have
2 quite a few parking lights right over, with that being the
3 front of our building it is well lit and as long as
4 you're right there on the other side of the glass on the
5 sidewalk you are very visible.

6 Q. And again, the individual that you said with well
7 lighting on the inside, was that the same individual now on
8 the outside?

9 A. Yes, ma'am. The only person at this point that had
10 left the building was him and then once he had gone outside
11 one of the employees had gone and stood by the door because
12 while enticing the crowd before he started swinging on the
13 window he was acting like he was going to duck back into the
14 door.

15 Q. Did you ever take your eyes off of the individual?

16 A. No, ma'am. We have had people come into the Waffle
17 House with weapons before so it's just habit to watch that
18 person until they are gone and just no longer feel there is a
19 threat to me.

20 Q. Okay. And what happened next while you were
21 watching him through the window? What, if anything, did he do
22 next?

23 A. Amidst, after he hit on the window a few times, it
24 looked like he was making gestures with his hands. I couldn't
25 tell you exactly what they were and it just - I couldn't tell

1 you what shapes he was trying to make. It was just - and then
2 after that, while still watching him, he pulled out his penis
3 and started waving it at everybody in the Waffle House and
4 then maybe a couple seconds later at most he put it away and
5 started hitting the window again.

6 Q. Okay. And when you said he pulled out his penis,
7 what was your view point, your vantage point? How were you
8 able to actually see his penis?

9 A. From where I was it was probably about at 11:00
10 straight through the window. It just, right through the
11 window it was plain as day. I could see him pull his penis
12 out. The pants he was wearing was black and there was
13 definitely a color shade difference. I could tell it wasn't
14 his phone or his hand. It was very obvious that it was a
15 penis.

16 Q. I was going to ask you that. Could it have been
17 another object?

18 A. No, ma'am. I was hoping so, but as I was
19 registering what I was seeing, I was greatly disappointed.
20 No. It was a penis.

21 Q. And forgive me for asking you this but just so the
22 record is clear. Are you familiar with what a penis looks
23 like?

24 A. Yes, ma'am. I have been lucky enough to have one
25 for many years.

1 MR. RADLEIN: Permission to approach the witness,
2 Your Honor.

3 THE COURT: Yes, ma'am.

4 BY MS. RADLEIN:

5 Q. I'm going to show you what's been marked as State's
6 exhibit 1 that defense counsel has indicated no objection
7 to?

8 MR. WHITMIRE: Without objection 1 through 3.

9 BY MS. RADLEIN:

10 Q. Tell me if you recognize that?

11 A. Yes, ma'am. This is the Waffle House I work at in
12 Batesburg.

13 Q. I'm going to ask you to identify for the Judge just
14 a few things just so we have some clarification. Looking at
15 the image of the Waffle House, where is the entrance?

16 A. The entrance would be this door right here past the
17 sign post and it is parallel to the road as opposed to the
18 side. Right here on the other side of the sign post. Whereas
19 this door out here is parallel with the building, our front
20 door is parallel with the road.

21 Q. With a glass window that we were referencing, where
22 exactly was that? Where was the defendant standing?

23 A. If you see, it's kind of hard to tell, but you can
24 see there's three sets of three windows. This third window
25 right here right directly behind the sign is where the

1 defendant was in front of the door. The entire time he's
2 enticing the crowd he was up against this window right here.

3 Q. I want to ask you about cameras. Were are the
4 cameras at the Waffle House?

5 A. We have a - we have a couple inside and we have two
6 on the outside of the building. The two on the outside of the
7 building right here are at opposite ends of the brick. They
8 crisscross their direction so that there is not a blind spot
9 and right inside the door there is one facing the door but it
10 does not point outside the door. It catches the people
11 walking through the second entrance or the second door of
12 foyer before you actually enter the restaurant.

13 Q. And if you want to show the Judge, point out where
14 the defendant was standing. Tell the Judge whether or not his
15 actions would have been captured on the cameras due to their
16 positioning.

17 A. Right here you're not visible to the camera because
18 the camera that looks towards the road is right here next to
19 this green line. You can see the little black dot and it
20 faces this way towards the door. Like I said, our front door
21 is parallel to the road so this wall is recessed three foot
22 off of the outside exterior wall and when you go into the
23 first door, you have to make an immediate left and open a
24 second door and that's where the second angled camera that
25 actually views the front door comes into play. It points into

1 the second door. It doesn't point outside to look into the
2 parking lot. It gets the person's face as they come through
3 the door. It's all the way down there.

4 Q. In preparing for trial for today did you also again
5 go and review the camera and see if you can see an individual
6 in that spot?

7 A. Yes, ma'am. When I went to work last night, I had
8 one of the customers walk out into the same exact location at
9 that first window pane and I went into the video surveillance
10 and looked and from that far away I couldn't even see him
11 until he backed away from the wall at least four and a half,
12 five foot, and then I could just barely see his back while he
13 was facing in the restaurant.

14 Q. Okay. So can you tell the Judge whether or not if
15 we had a video of the incident that occurred of the defendant
16 exposing himself here today, would it have actually showed him
17 doing so?

18 A. No, ma'am. Best case scenario it would have showed
19 his back and that's the best case scenario. The way the
20 cameras are set up it's just a literal blind spot. If you see
21 the orange curve right here, that's a good four foot away from
22 the building and the gentleman I had standing out there had to
23 get within a foot of that orange line to be seen on the
24 camera.

25 Q. Now, after the defendant exposed himself to you as

1 well as other people in the restaurant, what did he do next?

2 A. Uhm, like I said, after about a second or so he
3 immediately put his penis back in his pants and he hit the
4 window two or three more times. I'm still on the phone with
5 dispatch at this point and he keeps hitting the window and
6 finally he turns and starts running towards the car that's
7 parked in the parking lot right outside. It's a Toyota Camry
8 and that's when he jumps in the car. They go to back out to
9 go to leave and I'm letting the dispatcher know on the phone
10 that they're leaving the parking lot fleeing to the rear to
11 Malibu Street and at this point I walked towards the end of
12 the counter and you can look out the glass and see towards the
13 back of the parking lot and at that point I do see headlights
14 coming up the back row of the police car and they turn around
15 in the back of the parking lot and come to the front and
16 at that point I'm letting the dispatcher know that they're
17 leaving through the front and then at the same time I'm saying
18 a second patrol car pulls up and blocks the entrance and stops
19 them right there at the front of the restaurant right here.
20 They stop them. The police car pulled in this way as they
21 were trying to exit through the front.

22 Q. Okay. Just to make sure it's clear, the same
23 individual you saw at the window is the same individual that
24 you saw get in the car?

25 A. Yes, ma'am. I watched him get into the passenger

1 side of the car and whenever they stopped the vehicle out
2 front, they pulled him out of the passenger side of the front
3 vehicle. That's where he got out of the vehicle.

4 Q. What, if anything, did you tell law enforcement when
5 he got out of the vehicle when law enforcement pulled him out
6 of the vehicle?

7 A. They asked me if this was the individual that had
8 exposed himself. I said it was. It was the same outfit but I
9 had also watched him get into the car and watched them pull
10 him out of the car.

11 Q. I'm going to show you what's been marked and in
12 evidence as State's exhibit 2 without objection from the
13 defense. Do you recognize this image?

14 A. Yes, ma'am.

15 Q. How do you recognize it?

16 A. Well, I recognize the gentleman from that night but
17 it's really hard to forget that shirt with all the different
18 designs on it. It stands out.

19 Q. Okay. So that's the same hoodie that he was wearing
20 on that night?

21 A. Yes, ma'am. And the pants were identical.

22 Q. I'm going to show you what's been marked as State's
23 exhibit 3 and in evidence without objection from defense. Do
24 you recognize this?

25 A. Yes, ma'am. That's the 911 audio that I just

1 listened to and signed off that it was me on the recording.

2 MS. RADLEIN: Permission to publish, Your Honor.

3 THE COURT: Yes, ma'am.

4 (Whereupon, State's exhibit #3, 911 audio CD
5 played.)

6 BY MS. RADLEIN:

7 Q. When you said "they", who are you referring to?

8 A. The Batesburg/Leesville Police Department.

9 Q. When the police got there, what did the crowd do?

10 A. They immediately started leaving the premises,
11 literally flooding to get out of the restaurant. We had
12 about a third of the people stay, but by the time they got
13 done dealing with them and they were verified with me that
14 this was the guy and by that point there might have been five
15 or six people left in there.

16 Q. Now, the defendant you recognize him here today.
17 Before today he's the individual you saw back on February
18 13th. Prior to that, had he been to the Waffle House that you
19 recall?

20 A. Not that I recall. No, ma'am.

21 Q. How big is Batesburg/Leesville?

22 A. Not very big.

23 Q. Would he be someone you would refer to as a regular
24 customer or not a regular customer?

25 A. Not a regular customer.

1 MS. RADLEIN: I believe that's all the questions I
2 have for right now, Your Honor.

3 THE COURT: Okay. Mr. Whitmire.

4 CROSS EXAMINATION

5 BY MR. WHITMIRE:

6 Q. Mr. Keeble, let me get this straight. My client Mr.
7 Abney is forcibly escorted, removed from your restaurant and
8 some time thereafter exposes himself in the middle of
9 winter?

10 A. Yes, sir.

11 Q. The coldest part of the day 4:00 a.m.?

12 A. Yes, sir.

13 Q. Was there anything remarkable? Anything that stood
14 out about his genitalia?

15 A. Nothing out of the ordinary. No, sir.

16 Q. And at this time you're still in the process of
17 cooking, correct?

18 A. No, sir. I'm on the phone with the dispatcher
19 through the whole incident. There's a second cook. He's
20 cooking the rest of the orders while I'm dealing with the
21 crowd and the dispatch.

22 Q. You said the rest of the orders. You testified that
23 two thirds of the customers fled the restaurant?

24 A. Yes, sir.

25 Q. I presume some of those customers would have been a

1 dine and dash. They just took off without paying?

2 A. No, sir. The problem we have at this time of the
3 morning is we get a lot of to go orders. They'll get their
4 food, they'll pay for their food and they'll sit right there
5 with their food and eat it out of the to go plate until they
6 feel like leaving.

7 Q. So two-thirds of these people have already paid and
8 gotten their food?

9 A. Yeah.

10 Q. Y'all didn't have any problems with the dine and
11 dash?

12 A. No, sir.

13 Q. And Batesburg police was johnny on the spot. They
14 were there in what, two and a half minutes?

15 A. Roughly but they had also just been called out a few
16 minutes beforehand.

17 Q. Did they at least inquire about your surveillance
18 system?

19 A. Yes, sir.

20 Q. Did they walk in and say show a hands, anyone see
21 this?

22 A. Uhm, well the officer came in and asked me if this
23 was the gentleman that I called about and I said it was and
24 then they said, they went back out to take care of him and
25 then they came back in and interviewed me about what happened

1 along with the other two people that are here.

2 Q. I believe you testified that one of your customers
3 forcibly removed my client from the restaurant?

4 A. No, sir. Multiple customers removed him from the
5 restaurant.

6 Q. Were any arrests potentially made for disorderly
7 conduct or assault because there was a physical altercation
8 among many people?

9 A. No, sir. Because literally, I don't know how to
10 describe it other than it looked liked someone like if you see
11 a herd of cow and stuff starts going bad, they naturally push
12 them out. Nobody hit anybody. Nobody swung on anyone. It
13 just gravitated him out the door.

14 Q. Where was your location within the restaurant? This
15 is a mobile phone or is this a land line?

16 A. My personal cellular phone and I am standing between
17 the grill and the cash register behind the counter which would
18 be maybe as far as from me to you from the front door.

19 Q. I know you testified that his clothing was very
20 distinct. Going back to what you exactly saw, was he wearing
21 underwear?

22 A. Not that I could tell. It looked to me that he had
23 pulled it out of his pants and held it out. He didn't just
24 pull his pants down.

25 Q. What hand did he pull it out with, do you

1 remember?

2 A. I think he pulled it out with, I would say might
3 have pulled it out with his right hand, but he was holding it
4 with both hands when he was waving it.

5 Q. So he wasn't beating on the glass at this time?

6 A. No, sir. This was a pause in between the hits.

7 MR. WHITMIRE: So holding it with both hands. No
8 further questions. Thank you, Mr. Keeble.

9 THE COURT: Ms. Radlein.

10 MS. RADLEIN: I don't think so, Your Honor.

11 THE COURT: You may step down, sir. You're excused.
12 Call your next witness.

13 MS. RADLEIN: Thank you, Your Honor. The State
14 calls Brandy Cox.

15 THE COURT: You're kidding.

16 (General laughter.)

17 MS. RADLEIN: She's recently married, Your Honor.
18 Her new name is --

19 THE COURT: Something different?

20 MS. RADLEIN: Yes.

21 THE COURT: Good. You know the subject matter.
22 Your former name is just very comical with everybody in
23 the courtroom. What's your name now?

24 MRS. KEEBLE: Right now Brandy Keeble.

25 THE COURT: You're married to the gentleman there?

BRANDY KEEBLE - DIRECT BY MS. RADLEIN

23

1 MRS. KEEBLE: Yes. We work in the same place.

2 THE COURT: Good. Okay.

3 Thereupon,

4 BRANDY COX KEEBLE

5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please have a seat. After you're
7 seated, please state your full name spelling your last
8 name for the record.

9 DIRECT EXAMINATION

10 BY MS. RADLEIN:

11 Q. Okay. And you have already indicated. Where are
12 you currently employed?

13 A. Waffle House.

14 Q. Were you working there back on February 13, 2016?

15 A. Yes.

16 Q. What was your position?

17 A. Salesperson.

18 Q. Okay. We're just going to jump straight into it.

19 Do you recall the events that took place that night?

20 A. Yes.

21 Q. Why do you recall the events that took place that
22 night?

23 A. Because it was out of the ordinary.

24 Q. What do you mean by out of the ordinary?

25 A. It's something that doesn't normally happen.

1 Q. Okay. Tell the Judge exactly what do you recall
2 happening?

3 A. I remember the gentleman and the lady arguing at the
4 high counter by the register and then we asked them to leave
5 because it was getting out of hand and the crowd was pushing
6 them outside and once he got outside he was banging on the
7 window and then he flashed his penis and then the cops,
8 William was on the phone with the cops at the time.

9 Q. Tell the Judge exactly, at what point did you see
10 him actually flash his penis? What were you doing?

11 A. I was calling one of my orders out and I heard the
12 cook say "look at that" and naturally I just looked over and
13 saw his penis.

14 Q. When you say the cook, who is the cook?

15 A. William.

16 Q. Who was he speaking to?

17 A. David.

18 Q. Who is David?

19 A. The other cook.

20 Q. And what was David doing when you guys were
21 looking?

22 A. Cooking.

23 Q. And this is while William was on the phone?

24 A. Yes.

25 Q. Did you know who he was on the phone with?

1 A. The police.

2 Q. How did you know that?

3 A. Because he was calling and getting him escorted off
4 the premises.

5 Q. Okay. And why was he calling to get him escorted?

6 A. Because he was making a scene with the girl and then
7 he was banging on the window.

8 Q. Okay. And when you indicated to the Judge that you
9 saw him pull out his penis, how did you know it was a penis?

10 A. Because I'm married.

11 Q. Okay. And could it have been anything else?

12 A. No, ma'am.

13 Q. What did he do when he pulled it out, do you
14 recall?

15 A. Uhm, he was waving it.

16 Q. How was the lighting, like your opportunity to
17 actually see him do that?

18 A. It was good lighting.

19 Q. Would you say it was bright or dim? Because it was
20 4:00 in the morning. Can you tell the Judge like how good the
21 lighting was for you?

22 A. Inside it was bright. All the lights were on. It
23 was good for me. I could see clearly.

24 Q. Okay. Do you recall what happened when law
25 enforcement arrived?

1 A. No, ma'am.

2 Q. Did you just go back to working?

3 A. Yes, ma'am. There was a lot of people in there.

4 It's one of our busiest parts of the night. We still had to
5 take care of the customers that were in there and trying to
6 help them.

7 MS. RADLEIN: Okay. No further questions, Your
8 Honor.

9 THE COURT: Mr. Whitmire.

10 CROSS EXAMINATION

11 BY MR. WHITMIRE:

12 Q. Just a few short questions, Ms. Cox.

13 Congratulations on your nuptials. Were you and Mr. Keeble
14 romantically involved ten months ago?

15 A. Yes.

16 Q. You didn't give a statement to law enforcement until
17 the following day; is that correct?

18 A. Yes.

19 Q. It's also my recollection that you were in the
20 middle of your job doing your duties and your now husband
21 says, hey, that's a penis and you just look, correct?

22 A. Yes.

23 Q. Was this a particularly cold night in February?

24 A. I don't recall.

25 MR. WHITMIRE: No further questions. Thank you

DAVID BOATWRIGHT - DIRECT BY MS. RADLEIN

27

1 ma'am.

2 Thereupon,

3 DAVID ERNEST BOATWRIGHT

4 after having been first duly sworn, testified as follows,

5 THE CLERK: Please have a seat. After you're
6 seated, please state your full name spelling your last
7 name for the record.

8 THE WITNESS: David Boatwright. David Ernest
9 Boatwright, B-o-a-t-w-r-i-g-h-t.

10 MS. RADLEIN: Your Honor, can my witnesses be
11 excused?

12 THE COURT: Sure. They can get some sleep.

13 MS. RADLEIN: They got off at 7:30.

14 THE COURT: I remember that you talked about
15 intending to sleeping this morning or this afternoon.

16 DIRECT EXAMINATION

17 BY MS. RADLEIN:

18 Q. Mr. Boatwright, where are you currently employed?

19 A. Waffle House.

20 Q. Were you employed there back on February 13th,
21 2016?

22 A. Yes, ma'am.

23 Q. What was your position?

24 A. Grill operator.

25 Q. Do you recall the incident that took place that

1 night, why we are here?

2 A. Yes, ma'am.

3 Q. Can you go ahead and tell the Judge what you
4 recall?

5 A. Yes, ma'am. I was behind the grill cooking and we
6 had a argument start erupting in the building. We - Keeble
7 had then called the police to get the people out because they
8 had started a argument. It was about to erupt into a fight.
9 Once he called the police, the customers got him out of the
10 building.

11 Q. I'm going to stop you there. When you say "him",
12 who are you referring to?

13 A. The defendant.

14 Q. Do you recognize the defendant?

15 A. Yes, ma'am.

16 Q. How do you recognize him?

17 A. The same hair. It was well lit in the building and
18 I got a great memory.

19 Q. Okay.

20 A. Uhm, once the customers got him out of the building,
21 Keeble was already on the phone with the police officers. The
22 guy had started to hit the window repeatedly and I had turned
23 around and went back to cooking because the place was busy.
24 Keeble had then tapped me on the shoulder and said, "dude,
25 look at this." I turned around and the guy had his penis in

1 his hand and was still hitting the window repeatedly. Then I
2 had to turn back around to go back to cooking.

3 Q. You said Keeble said, hey, look at this. Did he
4 ever tell you what you were going to look at?

5 A. No, ma'am. I wouldn't have looked if he had told
6 me.

7 Q. How do you know that it was actually a penis?

8 A. Because I have one myself and I know what it looks
9 like.

10 Q. So it couldn't have been anything else?

11 A. No, ma'am.

12 MS. RADLEIN: I think I have no further questions.

13 THE COURT: Mr. Whitmire.

14 MR. WHITMIRE: May it please the Court.

15 CROSS EXAMINATION

16 BY MR. WHITMIRE:

17 Q. Mr. Boatwright, you said you have got a great
18 memory. What hand was Mr. Abney holding his Johnson in?

19 A. Left.

20 Q. Left?

21 A. Yes. Well, facing me. Yes, sir.

22 Q. Was it just one hand the whole time?

23 A. Like I said, I had to turn back around to start
24 cooking.

25 Q. Could you tell if he was wearing underwear?

1 A. He had on pants.

2 Q. Did he pull his pants all the way down?

3 A. No, sir.

4 Q. I recall you just testified that your shift manager
5 didn't say, hey, that's a penis. He just said, hey, look at
6 that; is that correct?

7 A. Yes.

8 Q. He was on the phone with 911 when all this was
9 happening?

10 A. Yes, sir.

11 Q. Talking contemporaneously. How long is a night
12 shift typically at Waffle House?

13 A. Ten hours.

14 Q. When does it start?

15 A. 9:00.

16 Q. So 4:00 a.m. is a busy time and kind of getting
17 towards the back end of the shift?

18 A. Yes, sir.

19 Q. You didn't give a statement to law enforcement until
20 the following day?

21 A. What's that now?

22 Q. You didn't actually give your statement to police
23 until the following day, Valentine's Day?

24 A. They was there and I handed it to them that night.

25 Q. That night?

AMANDA ALEXANDER - DIRECT BY MS. RADLEIN

31

1 A. Yes, sir. To my memory.

2 MR. WHITMIRE: No further questions, Your Honor.

3 MS. RADLEIN: Nothing further.

4 THE COURT: You may step down. You're free to go.

5 MS. RADLEIN: The State's last witness. The State
6 calls Sergeant Amanda Alexander.

7 Thereupon,

8 AMANDA ALEXANDER

9 after having been first duly sworn, testified as follows,

10 THE CLERK: Please have a seat. After you're
11 seated, please state your full name spelling your last
12 name for the record.

13 THE WITNESS: Amanda Leigh Alexander,
14 A-l-e-x-a-n-d-e-r.

15 DIRECT EXAMINATION

16 BY MS. RADLEIN:

17 Q. Where are you employed?

18 A. With the Batesburg/Leesville Police Department.

19 Q. Were you working back on February 13th, 2015?

20 A. I was.

21 Q. Please tell the Judge what, if anything, occurred at
22 the Waffle House that you responded to.

23 A. We were responding to a call of a fight at the
24 Waffle House. While we were enroute, it got updated to a
25 possible exposure in progress.

1 Q. Okay. Do you recall what, if anything, occurred
2 when you arrived on scene?

3 A. Uhm, I observed a vehicle which ended up being the
4 suspect's vehicle, a Toyota Camry, attempted to exit. There
5 is only one driveway on the Highway 23 side and it's for Sonic
6 and Waffle House. They share it. Another officer was able to
7 block that vehicle in from leaving.

8 Q. Then once the vehicle was blocked in what, if
9 anything, did you do?

10 A. Uhm, we got the people in the car out of it and I
11 walked over to the Waffle House and spoke with the complainant
12 who was Mr. Keeble and asked him if he could identify the
13 party that he called about and he was able to do that.

14 Q. Okay. And I'll show you, should be up there,
15 State's exhibit 2. Is that the individual?

16 A. Yes, ma'am.

17 Q. Who is that individual?

18 A. That's Clarence Abney.

19 Q. Is that the defendant?

20 A. That's the defendant.

21 Q. And that night what, if anything, happened next?

22 A. After Mr. Keeble identified the suspect, I had the
23 officers that had him at the vehicle go ahead and place him in
24 custody and then I went back out to assist them with that.
25 Right around that time we got another call from the dispatch

1 that the person we had in the jail needed medical attention so
2 the other officer had to leave leaving just me and my corporal
3 there.

4 Q. So there were just two officers there?

5 A. That's it.

6 Q. How big was the crowd?

7 A. They were leaving and I couldn't, I just couldn't
8 turn my attention towards them. It was a pretty big crowd.
9 About every weekend or every other weekend we have a large
10 party out of town at a place called Ken's Sports Bar in south
11 Lee, but it's just out of town. They all come into town to go
12 to places that are still open, the gas stations and the Waffle
13 House and that's what had happened this night. Just a large
14 crowd.

15 Q. What was your primary focus there at the scene the
16 two of you guys?

17 A. Getting the situation that we were called there for
18 handled.

19 Q. How big is the Batesburg/Leesville Police
20 Department?

21 A. We have 16 officers that work the road on a good
22 day. That night we had three and the one had to leave to go
23 take care of the inmate and now I got one that's got in
24 custody, but he's a K-9 unit so now I have to figure out how
25 I'm going to get that guy transported back to the police

1 department so we had some issues on our hands.

2 Q. Despite the lack of manpower, were you able to speak
3 to witnesses that night?

4 A. I did go inside the Waffle House and there were a
5 few people sitting at the high bar and a few people here and
6 there. I asked them just in passing if they had witnessed
7 anything. Of course, no one saw anything but the employees.

8 Q. Okay.

9 A. And that's pretty typical.

10 Q. Okay. And when they, when you say no one saw
11 anything, was that indication to you that they just didn't
12 want to speak to law enforcement?

13 A. That's correct.

14 Q. Okay. But no indication whether or not they saw
15 anything or not?

16 A. Right.

17 Q. Just that they didn't want to be involved?

18 A. Exactly.

19 Q. In terms of when you spoke to the cook, did all that
20 take place while the defendant, while the scene was still
21 trying to be controlled?

22 A. Well, the defendant was in custody outside. We were
23 still trying to put the pieces together to make sense.

24 Q. Okay. And did you, can you tell the Judge whether
25 or not you collected written statements from the witnesses?

1 A. I did and interestingly enough two of the three
2 statements have the date of the 14th date on that. I'm not
3 sure why except just being busy. But I did indicate in my
4 investigation supplemental that I did interview them on
5 2/13/2016.

6 Q. Okay. And again, this was the early hours of the
7 morning?

8 A. Correct. And that might have been why the date was
9 wrong.

10 Q. Okay. Anything on their written statement would
11 indicate that the statement was taken right after the
12 incident?

13 A. The details.

14 Q. Okay. Is there a time on those statements?

15 A. There is. Actually on two of the statements the
16 times are too coincidental to have been done on a different
17 time - at a different date.

18 Q. Okay. Were those times indicated around the 4:00
19 hour?

20 A. Exactly. They're around the incident time.

21 MS. RADLEIN: I believe that's it, Your Honor.

22 THE COURT: Your witness, Mr. Whitmire.

23 CROSS EXAMINATION

24 BY MR. WHITMIRE:

25 Q. If I understand correctly, you were initially

1 responding to a disorderly conduct that transitioned into
2 indecent exposure?

3 A. I believe it was put out as a fight in progress and
4 then it undated to a possible exposure. Yes, sir.

5 Q. Did it raise any red flags to you that the alleged
6 indecent exposure occurred outside in the middle of winter the
7 coldest part of the day?

8 A. No.

9 Q. Not that that would create discomfort for
10 somebody?

11 A. No. I have seen much worse than just that.

12 Q. Or just in terms of modesty and it being so cold?

13 A. No. It did not raise any flags.

14 Q. If I recall, you did testify this was a very busy
15 night, undermanned. Did you at least walk in and say raise
16 your hands, did anyone get this on their cell phones?

17 A. No one wanted to talk to me except the employees.
18 No one was willing to even give me the time of day to ask them
19 anything other than did you guys see what happened? They were
20 like, you know, it was very clear that they did not want to
21 cooperate.

22 Q. Did you at least ask their names?

23 A. No. I did not.

24 Q. So you get an affirmative response. You saw what
25 happened? Yeah. And you didn't ask their names?

1 A. No. I'm telling you they did not. They told me
2 they did not see what happened.

3 Q. They did not see what happened?

4 A. Right.

5 Q. So one third of the restaurant is saying they didn't
6 see what happened?

7 A. Yes. That's not uncommon.

8 MR. WHITMIRE: May I approach, Your Honor.

9 THE COURT: Sure.

10 BY MR. WHITMIRE:

11 Q. Sergeant, for the court reporter, I'm referencing
12 your statements. Do you recall taking these statements?

13 A. Yes.

14 Q. Is that your signature?

15 A. It is.

16 Q. I recall you just testified that the times you wrote
17 down were so close together it had to be done on the same
18 day?

19 A. It was the times they wrote down.

20 Q. Does Mr. Boatwright in his statement, does it have a
21 time on it?

22 A. No. It doesn't.

23 MR. WHITMIRE: Nothing further, Judge. Thank you,
24 sergeant.

25 THE COURT: You can step down.

1 MS. RADLEIN: The State rests, Your Honor.

2 THE COURT: Okay.

3 MR. WHITMIRE: At this time, Judge, the defense
4 moves for a directed verdict. The State hasn't produced
5 sufficient evidence in a light most favorable.
6 Furthermore, one of the key elements is malicious
7 willfulness. This is Waffle House 4:00 a.m. If this did
8 occur, there was people laughing. I don't see how the
9 State can meet its burden on that.

10 THE COURT: I think he was acting maliciously from
11 the testimony of Keeble of the banging on the window,
12 exposure and pulling it out and shaking and anything. It
13 was loud and boisterous. It sounds pretty disorderly and
14 loud and crazy and I don't know how banging on a window
15 and exposing themselves would be done in a non taunting
16 manner I suppose. I didn't understand --

17 MR. WHITMIRE: Just for the record.

18 THE COURT: It didn't seem playful to me. Denied.
19 Call your witness, if you're going to call one.

20 MR. WHITMIRE: Judge, the defense calls Mr. Abney to
21 the stand.

22 THE COURT: Okay.

23 MS. MAULDIN: Could we take a brief restroom break?

24 THE COURT: Sure.

25 MS. RADLEIN: For the record, Your Honor, the

1 defendant does have a 2012 receiving stolen goods.

2 THE COURT: Okay.

3 MR. WHITMIRE: A misdemeanor. No felony record.

4 (Short break.)

5 THE COURT: We're back on the record. Let's have

6 Mr. Abney sworn in.

7 Thereupon,

8 CLARENCE D. ABNEY

9 after having been first duly sworn, testified as follows,

10 THE CLERK: Please have a seat. After you're
11 seated, please state your full name spelling your last
12 name for the record.

13 THE WITNESS: My name is Clarence Abney, A-b-n-e-y.
14 That's my last name.

15 DIRECT EXAMINATION

16 BY MS. MAULDIN:

17 Q. Good morning, Mr. Abney. How old are you?

18 A. I'm 23 years old.

19 Q. Where do you live?

20 A. I live in Granville, South Carolina close to
21 Aiken.

22 Q. Where do you work?

23 A. I work at Amick Farms.

24 Q. How long have you worked there?

25 A. I been working there for two years now.

1 Q. Do you remember the early morning hours of February
2 13th of this year?

3 A. Yes, ma'am.

4 Q. Let's start with the day before. Where were you on
5 February 12th?

6 A. I was home. I was with my girlfriend slash
7 whatever, you know, and my baby. I'm chillin' at the house
8 all day.

9 Q. Did you go out the night of the 12th, early morning
10 of the 13th?

11 A. Yes, ma'am.

12 Q. Why did you decide to go out that night?

13 A. I was on Facebook and I was just scrolling down and
14 I seen some old friends I used to know at school and they said
15 let's go and party down here in Batesburg so I was just
16 sitting there bored and about 12:00 I decided just put some
17 clothes on and I'm just gonna stroll out here and just chill
18 for a little bit, you know. Just get away.

19 Q. Let's talk about the clothes you had on. What
20 outfit did you put on?

21 A. I had on a hoodie and it had like many emoji on it
22 like and it had a lot of colors on it. It was gyroscope. It
23 was a hoodie and just regular jogging pants, you know. It was
24 all coordinated. Just one suit that was just like - and some
25 tennis shoes.

1 Q. Tell me about the hoodie. Does it zip up or what?

2 A. No, ma'am.

3 Q. Okay. If you don't mind, can you stand up and show
4 me how long the hoodie is?

5 A. (Witness complies.) The hoodie stands about just as
6 big as this shirt. Stands about right here and then comes
7 down to about right here and regular sweat pants.

8 Q. Did you have on anything under the hoodie?

9 A. Yellow shirt.

10 Q. Okay. And then what about the pants. Did they zip
11 up or are they elastic or what?

12 A. No, ma'am. Just had regular strings on them.

13 Q. What color underwear did you have on that day?

14 A. Some black briefs.

15 Q. How do you know that?

16 A. Because that's all I buy.

17 Q. Okay. What time did you end up leaving home that
18 night?

19 A. I left around 12:20, maybe something like that.

20 12:10. 12:00. Somewhere around in there.

21 Q. What time did you get to the party?

22 A. I didn't actually make it to the party until like
23 1:25, 1:30.

24 Q. Why did it take you so long to get there?

25 A. Because I ain't too familiar with Batesburg so I put

1 it in the GPS and I was riding all past it like 50 times and
2 it took me like a whole hour or something just to even find
3 the place and then when I got there, I didn't notice that this
4 barn looking place was the party so I finally made it to the
5 party about the time that it was about to end.

6 Q. What kind of place was this that you ended up?

7 A. It looked like a little shack, you know. Had a
8 little bar in there and stuff, you know. Just a regular
9 little -- I don't know. It wasn't no regular club, but it was
10 like a shack or something like that, you know.

11 Q. Okay. How long did you stay there?

12 A. Until 2:00 when they ended the party.

13 Q. Why did you go all that way and then just stay such
14 a short time?

15 A. Because, I mean, I knew a lot of people there and I
16 just basically showing my face. By the time I got there it
17 was almost over so I rode all this way I might as well at
18 least go in and say hi to a couple of people or something, you
19 know.

20 Q. Okay. When you were on your way, was anybody with
21 you on the way there or were you by yourself?

22 A. I was by myself.

23 Q. Okay. When you got to the party, did you see people
24 you knew?

25 A. One guy, his name is Deshontel Whitfall, he used to

1 work at Amick with me. That's why we hooked up. That's
2 about, you know -- He was like one of the people that I, you
3 know, associated with recently. All the rest of the people
4 was just people I probably went to school with or something
5 like that or anything like that. But other than that I didn't
6 know nobody else except for him.

7 Q. All right. Were you drinking when you were at the
8 party?

9 A. No, ma'am.

10 Q. You didn't have anything to drink?

11 A. No, ma'am.

12 Q. When you left the party, what did you do next?

13 A. Well, I went to the Waffle House. We sat there for
14 a little second and, you know, just lounging around just to
15 see what was going on, whatever.

16 Q. When you say "we", who are you talking about?

17 A. I was talking about me and Deshontel.

18 Q. Okay. How long did y'all stay around there then
19 after the party was over?

20 A. Like 20 minutes maybe. 20.

21 Q. And then where did y'all go next?

22 A. We went to the Waffle House.

23 Q. Was it a busy night or a slow night at the Waffle
24 House?

25 A. It was packed. There was a bunch of people in

1 there. I say at least 40, 50 people was in there beside. And
2 there was like 30 people, 35 people just standing up, other
3 people sitting down in chairs and what chairs wasn't filled
4 up, the people was standing at right in front of you.

5 Q. Were these people mainly sitting down at tables or
6 were they kind of congregating or what?

7 A. Everybody was standing up. It was people that was
8 standing at the counter top and whoever was ordering food or
9 whatever, all those seats was filled and then there was chairs
10 behind that. Chairs behind that. That's where I sat down. I
11 sat down behind the chairs behind that because there was so
12 many people you can't even order no food so I just basically
13 sat down and when I sat down, there was a girl named Myesha
14 Strohman. I just happened to know her. So we were just
15 sitting there talking, you know. So after that I was sitting
16 there talking to Myesha and all of a sudden this girl started
17 asking me about my suit feeling like she - she went off. She
18 went off in a way like she was flirting with me. But at the
19 time, you know, I got a girlfriend, you know, so I ain't
20 trying to coming back at her like I'm trying to get at her.

21 So, you know, I'm coming off respectfully in a nice
22 meaning of why does it matter how much my suit cost. I paid
23 for it. I worked for it. So instead of her backing off, she
24 got like - she got like she felt some type of way because she
25 expected a different response, you know. So when I didn't

1 give her the response she wanted, she got, tried to get loud.
2 So I stood up. Like why you being disrespectful? All I tell
3 you is - all I'm telling you is I ain't even trying to - I
4 ain't even trying to conversate with you like that and you
5 butting in my conversation, you know. And then you ask me
6 about my suit and how much it cost, and now you trying to play
7 me and I don't know you from a can of paint, you know.

8 So that's when me and her got in an argument. But
9 as we arguing, I'm walking off like cuz' like everybody is
10 starting pushing and stuff like because they think we, like
11 it's a argument. But I'm really just telling her like why is
12 you being disrespectful? Why is it a problem that I'm telling
13 you what I'm telling you? So after a while I'm walking off
14 and like kind of in the middle now, now all of a sudden this
15 guy just comes up and he grabs my shirt like this right here
16 (indicating) and, well, when he grabbed my shirt, I took his
17 hand like this right here and I took it off me and I'm like,
18 brother, don't touch me. Like don't put your hands on me. Go
19 talk to her like and supposedly said that's his girlfriend.
20 So I'm looking like I don't know her. She came at me. Go
21 talk to her. If you want to talk to anybody, go talk to her.

22 So he put his hands on me so all of a sudden the
23 crowd start pushing and all this stuff. I don't know these
24 people so right now I'm looking like these people about to
25 jump me or anything might happen right now so I got on

1 defense, you know. So I wasn't - I wasn't ready to fight him.
2 He was making it seem like I'm ready to fight him, but all of
3 a sudden all along he's coming at me acting wild and all I'm
4 telling him is go talk to your girlfriend. Feel me? But
5 after a while I just got mad cus' everybody pushing me and all
6 kind of stuff. So after a while ain't no customers take me
7 out the door. Deshontel came over there and he got me and
8 said go out the door, you know.

9 So I went out the door. He kind of jacked me up
10 like get on out the door. So as I go out the door I'm mad
11 because this guy sitting here hiding behind the crowd and he
12 don't know me from a can of paint. So I stood at the window.
13 I'm like, bro, come outside. I'm like, what's up, man? I
14 ain't gonna do this right here, man. Come out the door and do
15 this. So I'm mad. I'm acting like a maniac. I shouldn't,
16 you know, but I'm mad at this point because he's flashing
17 money. He's acting like he's counting money in the window.
18 I'm like, bro, come out the door. So I start beating on the
19 window, doon, doon, doon, doon, doon, doon, doon. And I'm
20 beating on the window and I'm looking right at - I'm looking
21 right at 30 people. 30 people looking at me. They looking
22 right at me and I'm standing beating on the window. They
23 shell shocked right now because this man acting crazy. This
24 man acting a fool. So they shell shocked.

25 So I'm beating on the window and then I just all of

1 a sudden like when I get done acting like a maniac, I stood
2 there. And I was like, bro, what you gonna do? Like outside
3 the window still yelling. I got my hands like this
4 (indicating) sir. I got my hands like this in a fighting
5 position. Like what you gonna do? But it's a window sill
6 right here. All of a sudden I ain't even gonna put that out
7 there, but I'm standing like this right here. Bro, what you
8 gonna do? And so all of a sudden Myesha Strohman, she comes
9 out the door and she like, cus, they done called the police on
10 you. You need to go. So I'm like, man, I ain't even
11 tripping, man. I'm just gonna -- Because I ain't about to get
12 in trouble. I didn't come here for that. All I came was to
13 pull a burger and to chill for a little second, that I didn't
14 even get to enjoy the party. So I'm just cooling at the
15 Waffle House for a second.

16 So she said they about to take you to the jail. You
17 need to go. So I threw my hands up. I didn't run or none of
18 that. I wasn't scared or none of that. So I get in my car
19 and as I'm riding off the police -- I'll remind you that I
20 already talked to that lady and the other cop that before this
21 and we had a decent conversation before any of this even
22 occurred. While all them 50 peoples in there waiting and
23 hovering all in the Waffle House, I was outside talking to the
24 police. And she, I know she can vouch for that. We had a
25 decent conversation. They know I wasn't drunk or belligerent

1 or absurd or any of that. I was a respectful young guy.

2 So as I'm going out the parking lot they stop me and
3 I'm like - and they like, are you the one they called for?
4 I'm like, man, I ain't did nothing. That man put his hands on
5 me. All I did - all I did was beat on the window and talk
6 loud. I may have caused a disturbance but I ain't did
7 nothing. That's the man you want. So they like, okay.
8 Back up. Mind you that they didn't block me in. They never
9 blocked me in. I backed up and I cooperated with them and
10 they said let me go in here and see what's up. See what
11 happened. Because they had already known me like. Basically
12 gotten to know me.

13 So they're like okay. Just calm down. Let me go
14 see what's going on. So they goes in for approximately like
15 two minutes. They come back out and all of a sudden they like
16 you're under arrest for indecent exposure. And I had put two
17 and two together. I don't know the law like that. But
18 indecent exposure? When did I show my - when did I show my
19 penis like or any of that? When did I show any body parts? I
20 never showed. I was just as surprised to get locked up for
21 that as y'all is today to hear me saying, trying to plead my
22 case that I would show my penis. I wasn't - that wasn't even
23 the situation with me. I was angry and I was ready to fight.
24 But showing my penis? I - I - I don't even know how they come
25 up with that, you know, to tell you the truth. I really

1 don't, man.

2 I - I - I've been cooperating. I been coming here.
3 I did thought it was going to get dropped. I thought they was
4 gonna pull up the video camera and just look and see that,
5 yeah, he really didn't show his penis. But here I am, man.

6 Q. Well, you have covered a lot of ground. Let me go
7 back over just a few of the details, okay?

8 A. All right.

9 Q. The two people that you knew at the Waffle House
10 were Ms. Strohman and Mr. Whitfall; is that right?

11 A. Yes, ma'am.

12 Q. Did you know any of the other folks in there?

13 A. No, ma'am.

14 Q. So it's basically the way you saw it, essentially
15 you and a couple people you know and everybody else?

16 A. And I wasn't paying nobody else no attention.

17 Q. All right. Once you got out of the Waffle House,
18 did you try and get back in there?

19 A. I was -- No. No. I don't remember trying to get
20 back in there. I might have ran towards the door like I was
21 going to come back in there, but I just - I never went back in
22 there or even tried to go back in there.

23 Q. Okay.

24 A. I don't recall that.

25 Q. Now, I know it's been a long time ago but do you

1 remember what the temperature was like that night?

2 A. It was cold. It was cold. And I had that little
3 sweat suit on but luckily it was a sweat suit, you know. But
4 it wasn't that cold, you know, at 11:00, but around 2:00 it
5 was cold there.

6 Q. Okay. When you got outside, you were banging on the
7 glass; is that right?

8 A. That's correct.

9 Q. And when you were doing that, were you doing that
10 with your right hand or your left hand or both or what?

11 A. Both hands. I was beating just like this right here
12 (indicating.)

13 Q. Okay. Are you right handed or left handed?

14 A. I'm right handed.

15 Q. When you're doing that, you're facing the glass,
16 right?

17 A. Yes, ma'am.

18 Q. When you're looking through, are you able to see any
19 of the Waffle House employees?

20 A. No, ma'am.

21 Q. Why couldn't you see them?

22 A. Because it was 30 people looking right at me.

23 Q. How long do you think you were banging on the
24 glass?

25 A. Maybe two minutes. Something like that.

1 Q. Okay. Were the people inside standing there looking
2 at you?

3 A. They was sitting there just staring at me like this
4 dude crazy.

5 Q. Okay.

6 A. Remind you I'm not crazy. I just was upset because,
7 you know, this guy felt the need to do all kinds of stuff and
8 hide behind friends that he know, you know. I don't know.

9 Q. Okay. And when you were banging on the glass, were
10 you interacting with the man that was in there or the women
11 that was in there?

12 A. No. The woman was no longer part of the whole
13 situation. It was the guy now because he put his hands on me.
14 I wasn't worried about that girl at all. That's the only
15 reason I was even at the window was because the guy put his
16 hands on me and started a big scene and all that good stuff.
17 That's the only reason I was at the window.

18 Q. You were responding to him, not the girl?

19 A. I was responding to him. Yes. Not the girl.
20 That's it.

21 Q. Now, this night you admit that you were arguing with
22 this guy that was in there, right?

23 A. Yes.

24 Q. Were you pretty obnoxious at the Waffle House?

25 A. Yes. Yes. Pretty much as far as me not just

1 leaving and being a regular human being. Yeah. I was pretty
2 obnoxious, you know.

3 Q. Would you say you were creating a disturbance in
4 there?

5 A. Yeah. I mean at first inside, the inside, I was
6 being, trying to solve the situation as much as I can. But
7 after a while it got to pushing people and he acting like he
8 want to punch me in the face and all kind of stuff. After a
9 while I just started acting like him, you know. So after a
10 while I just start acting out myself. So, yeah.

11 Q. When the police got there, you cooperated with them,
12 right?

13 A. Yes. Yes. I had no reason not to.

14 Q. Now, you have been charged with indecent exposure.
15 At any point that night did you pull out your penis?

16 A. No, ma'am.

17 Q. Did you wave it around at anybody that night?

18 A. No, ma'am. I never even thought about it. It was
19 never on my mind at all.

20 Q. Are you sure about that?

21 A. I'm positive. I'm a hundred percent positive. That
22 was never even a thought. It was never a thought, man. It's
23 just crazy, man. I don't know. I don't know how they get
24 that out of that. But I don't know. How can you see me? I'm
25 sitting outside of a window and you say I'm showing my penis

1 and I'm waving it around with two hands and all that stuff.
2 Like I ain't do that, man. I really didn't. It was like a
3 million people in front of you and you cooking and it's a big
4 'ole counter in front of you and 30 people right there in
5 front of the window, how you get a man about to fight --
6 Obviously you don't know the situation. You feel me? Because
7 they don't even know there was another party involved. It was
8 another guy involved. They don't even know that, you know.
9 So how do you put that with that? And just tell the police
10 that he did that. They didn't ask me no questions. They
11 asked me no questions. All they did was come out the door and
12 lock me up.

13 And I had Deshontel right there. He know. He will
14 vouch for that. He was right there telling them, man, that
15 man ain't did that. He was standing right beside me. He the
16 one who pulled me out the door. He said that man ain't do
17 that. But she never - they never asked no questions. I was
18 mad and that's why they sent me to the hospital saying, you
19 know, all kind of crazy stuff. Like, oh, he mad. I said,
20 man, before I pay y'all, that's why they sent me to the
21 hospital. I'm being real with y'all. Because I said before I
22 pay y'all any money to get out of here, y'all gonna have to
23 kill me. I said that. I ain't -- I said that. Because why?
24 I'm innocent and y'all ain't asked me no questions.

25 Q. Okay.

1 A. And I don't want to go to jail. I know I got to pay
2 the money to get out. I got a family, man. I got rent to
3 pay. Car insurance payments and all that good stuff, you
4 know. So that's money I ain't got, man. I ain't got it to
5 just give it away.

6 MS. MAULDIN: Your Honor, no further questions.

7 THE COURT: Cross.

8 MS. RADLEIN: Just briefly, Your Honor.

9 CROSS EXAMINATION

10 BY MS. RADLEIN:

11 Q. Mr. Abney, you indicated that Myesha, the female,
12 when she told you that the police were coming that you needed
13 to go --

14 A. Myesha Strohman.

15 Q. When you indicated that she told you the police were
16 coming, you needed to go, if you did nothing wrong, why did
17 you need to leave?

18 A. Well, I mean, if I just go ahead and leave, they got
19 my name. I'm not from around here. But I wasn't going to run
20 if they, you know, caught me over there. But I was just going
21 to leave because I ain't figured like they got, you know, I
22 ain't fight nobody so...

23 Q. So I'll ask you again.

24 A. It's not my fault so I'm like I can just go and, you
25 know.

1 Q. So I'm going to ask you again. If you did nothing
2 wrong, why did you have to leave?

3 MR. WHITMIRE: Objection. Asked and answered.

4 THE COURT: He gave her a rambling answer. This is
5 her witness. She can --

6 BY THE WITNESS:

7 A. I ain't have to leave. I really didn't have to
8 leave. But I wasn't going to leave, but she like, oh, you
9 need to go so instead of just sitting there and just waiting
10 for them to come lock me up, but I ain't did nothing though so
11 we didn't fought so when they told me to pull up at the car,
12 there wasn't no questioning, you know, so...

13 BY MR. RADLEIN:

14 Q. So for the record you're not going to answer my
15 question?

16 A. I didn't have to leave if that what you trying to
17 ask me.

18 Q. So you did nothing wrong. You didn't have to leave.
19 But yet she was telling you you had to leave and so you
20 left?

21 A. I just left. I was gonna leave because I didn't
22 want no problems. I didn't feel like I did nothing wrong so
23 I'm just gonna leave so...

24 Q. Okay. You testified that you were acting like a
25 maniac; is that correct?

1 A. As far as, yeah, as far as acting mad and crazy.

2 Q. But your words were a maniac, correct?

3 A. If you want to call it that. Yeah. It was just me
4 exaggerating and --

5 Q. Just a few minutes ago when your lawyer was asking
6 you questions --

7 A. It was an exaggeration. I - I was acting out. I
8 was acting wild. Yes. Yes. I was.

9 Q. You were banging on the window?

10 A. Yes, ma'am.

11 Q. You were cussing?

12 A. Can't nobody hear that through the window. I was
13 telling him to come outside. Blase, blase. Ain't nobody hear
14 me cussing through the window.

15 Q. Okay. So you were doing something wrong?

16 A. Yeah. I was beating on the window. Destroying
17 property. Disorderly conduct. I was.

18 Q. Okay. Now, you described it as being so crowded in
19 there everyone was standing up but you were able to walk
20 inside?

21 A. I mean, well, what I'm telling you is people stood
22 at the counter. It's a lot of people in there, but the back
23 door is right here. It's chairs laid out for you to sit down
24 right here. I didn't try to get a chair all the way around.
25 I went to the closest seat and I sat down.

1 Q. So it was so crowded --

2 A. It's people - it's people standing - it's people
3 stepping over my feet, you know. So I got to let people by as
4 they go by.

5 Q. So it was so crowded but you were able to find a
6 seat in there?

7 A. Not everybody ain't sitting down. It's like maybe
8 two, three seats maybe and people came after I came so it got
9 crowded, you know, as people started rolling in there so I'm
10 so happy to get a seat.

11 Q. Just one last thing. When you were testifying about
12 your sweatshirt when you stood up, can you stand up for me
13 please.

14 A. (Witness complies.)

15 Q. No. Don't -- Sit back down and then just stand
16 back up. Don't touch your sweatshirt.

17 A. (Witness complies.)

18 Q. So earlier you wanted to pulled it down. When you
19 go to the bathroom, do you leave your sweatshirt down?

20 A. I mean, it's already like - like I'm professional.
21 I'm not gonna --

22 Q. It's a yes or no.

23 A. I'm not gonna have my shirt all up here like this
24 right here (indicating.)

25 Q. When you have to use the restroom, do you leave your

1 sweatshirt down?

2 A. No. I have got to pull it up.

3 MS. RADLEIN: Okay. No further questions, Your
4 Honor.

5 THE COURT: All right. You can step down.

6 MR. WHITMIRE: Defense rests, Judge. Renew our
7 motion for directed verdict.

8 THE COURT: Okay. Never heard anything like this.
9 It's like most cases. It's a credibility contest and
10 it's my opinion and finding that the State's witnesses
11 were believable and that the State met its burden of
12 proof. I think the defendant was candid and he was
13 upset. It wasn't his normal crowd and he got pushed out
14 and he wanted to discuss the matter further with the
15 young man inside and that didn't go his way. Ms.
16 Radlein, you told me that he had a conviction for some
17 sort of receiving stolen goods or something or other?

18 MS. RADLEIN: That's correct, Your Honor. 2012
19 receiving stolen goods. 2014 possession of marijuana.
20 And currently pending in Aiken he has a DV second and
21 another charge for allowing a person to inflict bodily
22 harm upon a child.

23 THE COURT: Are there any lesser includeds of
24 indecent exposure? It's a serious question.

25 MS. RADLEIN: There are no lesser includeds, Your

1 Honor. The exposure statute would have been a waiver
2 because it doesn't have the exact element.

3 MR. WHITMIRE: Your Honor, concluding our case we're
4 actually in agreement with about 98 percent of the facts.
5 It's just the inferences on the audio tape.

6 THE COURT: The presence and impression of the audio
7 tape is probably the most believable thing I've heard was
8 the 911 tape because Mr. Keeble was very candid on what
9 he was observing.

10 MR. WHITMIRE: We just ask that you not consider his
11 pending Aiken charges.

12 THE COURT: How long did he stay in jail?

13 MR. ABNEY: I ain't stay in jail. I bonded out with
14 my case up there.

15 MS. MAULDIN: No.

16 THE COURT: You said something about not leaving
17 jail.

18 MR. ABNEY: I stayed in jail for like a day or two
19 maybe.

20 THE COURT: Okay.

21 MR. ABNEY: Then I bonded out.

22 MS. RADLEIN: He had to go to the Lexington Medical
23 Center first to be cleared before he was booked into the
24 jail. I think that's what he's talking about. There was
25 some issues and then they had to get clearance before

1 they took him to jail.

2 MR. WHITMIRE: He was diagnosed with a stress
3 reaction. That was the actual diagnosis before he was
4 booked. This is right after the incident.

5 THE COURT: All right. So he's got a couple days
6 credit. Mr. Whitmire, I'm kind of inclined to give him
7 some weekend time. Would that suit him? I'll do a
8 suspended sentence and put him on probation or just some
9 straight weekend time is kind of my inclination.

10 MR. WHITMIRE: I think that's very reasonable,
11 Judge. I did get a chance to talk to him. Mr. Abney
12 lives an hour away. He routinely drives an hour and
13 constantly runs out of gas money.

14 THE COURT: Well, if he lives in Aiken, I can put
15 him on supervision over there and do a few weekends and
16 have it end once he's done. That may be the easiest.

17 MR. WHITMIRE: That's great.

18 THE COURT: Okay.

19 MS. RADLEIN: Your Honor, just for the record, your
20 verdict?

21 THE COURT: Oh, I find for the State. I already did
22 that. I was discussing mitigating factors, what I could
23 do with him. All right. Here's the sentence. The
24 sentence is 12 months suspended to 22 days. Probation
25 for 18 months. Give him credit for the two days he's

1 already done. He can start his weekends next Friday
2 which is the 25th of November. Probation can terminate
3 after he gets his weekends done, if he's paid all of his
4 costs and assessments. All right. And I put on the
5 sentence sheet no registry. I'm not putting him on the
6 registry. I'm not making him register for this. Got you
7 right here for transfer to Aiken.

8 PROBATION OFFICER: Yes, sir. Thank you, Your
9 Honor.

10 THE COURT: All right.

11 MS. RADLEIN: Thank you, Your Honor.

12 MR. WHITMIRE: Thank you, Your Honor.

13 MS. RADLEIN: So when he reports, it's weekend time
14 in Aiken?

15 THE COURT: Yes, ma'am. Make sure he gets to the
16 probation agent first. He's got to report on the weekend
17 next Friday.

18 PROBATION OFFICER: Yes, sir.

19 MS. MAULDIN: Friday falls on a holiday.

20 THE COURT: I'll put on there skip Christmas. I
21 don't mind that.

22 PROBATION OFFICER: How about the first weekend
23 after New Year's? First weekend up in the first of the
24 year.

25 THE COURT: If that's what he wants to do, we'll let

1 him start the first weekend in January.

2 PROBATION OFFICER: Having probation and everything
3 we have to do he can start the first weekend in
4 January.

5 THE COURT: Does that suit you?

6 MR. ABNEY: Yes, sir.

7 MS. RADLEIN: I think the first weekend would be the
8 5th.

9 THE COURT: The 1st is on a Sunday.

10 THE CLERK: He'll spend New Year's in jail.

11 MS. RADLEIN: No.

12 THE CLERK: Oh, the following weekend. I got you.

13 MR. RADLEIN: Yeah. The 2nd, 3rd, 4th and 5th.

14 PROBATION OFFICER: The first Saturday is on the
15 7th.

16 THE COURT: So it will be the 6th of January?

17 PROBATION OFFICER: 6th of January, sir.

18 THE CLERK: Yep. Friday the 6th.

19 THE COURT: All right. So the first weekend to
20 report would be January 6th of 2017. That way he goes
21 through the holidays without weekends. Now, get
22 probation to get him set up to get him in there. That
23 will work better.

24 WHEREUPON, THE BENCH TRIAL WAS CONCLUDED.

25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 17th day of November, 2016.

11 I FURTHER CERTIFY that the forgoing 62 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 8th day of February, 2017.

17

18

19

20

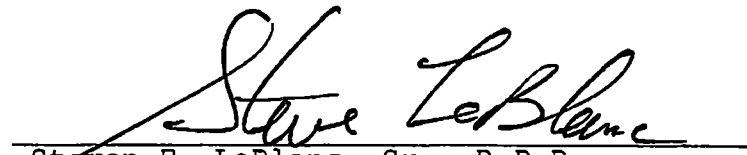
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Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

WITNESSES

Batesburg Leesville Police Department

Sgt Alexander

Law Enforcement Case #: 160245

SR

ARREST WARRANT NUMBER

2016A3220200034

ACTION OF GRAND JURY

TRUE BILL

Z. Satt Vatas

Foreperson of Grand Jury

Date: *7-11-16*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016GS3201845

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2016

THE STATE

vs.

Clarence Duane Abney

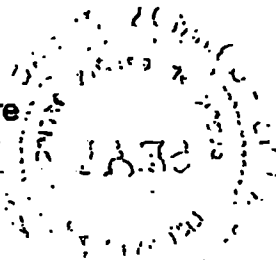
CLARENCE DUANE ABNEY
2016 GS 3201845

CDR #: 0091

Indictment for

Indecent Exposure

§ 16-15-0130



DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Indecent Exposure

§ 16-15-0130

At a Court of General Sessions, convened on July 2016, the Grand Jurors of Lexington County present upon their oath:

That Clarence Duane Abney did, in Lexington County, South Carolina, on or about February 13, 2016, willfully, maliciously, and indecently did expose his person in a public place or property of others or to the view of another person on a street or highway; to wit: the defendant did expose himself to several customers of the Waffle House while at 130 W. Church Street, Batesburg-Leesville, South Carolina, all in violation of Section 16-15-130 in the Code of Laws of South Carolina, (1976, as amended).

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Lex. Co. C. C. P., G. S. & F. C.

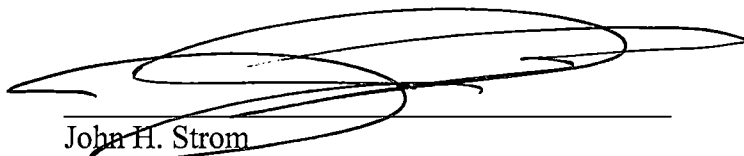
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Just Kade
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of August, 2017.

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