

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KADEEM JOHNSON

APPELLANT

APPELLATE CASE NO. 2012-212033

RECORD ON APPEAL

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SC COURT OF APPEALS

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS

Kadeem Johnson,)
)
PLAINTIFF,)
)
v.)
)
State of South Carolina)
)
DEFENDANT.)
_____)

TRANSCRIPT OF RECORD
C/A #: 2011-GS-43-00469
2011-GS-43-00481
2011-GS-43-00939

April 17, 2012
Sumter County Courthouse
Sumter, South Carolina

BEFORE:

HONORABLE R. JEFFREY YOUNG, PRESIDING

APPEARANCES:

Assistant Solicitor John Meadors
Attorney for State of South Carolina

Charles Brooks, Esquire
Attorney for Kadeem Johnson

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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EXHIBITS

(There were no Exhibits marked during this Hearing)

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Mr. Meadors: May it please the Court?

The Court: Yes sir.

Mr. Meadors: Your Honor, before you is Mr. Kadeem Johnson with his attorney Mr. Charles Brooks and I believe family members and/or friends. As Your Honor knows we've picked a jury and we are prepared to open. Mr. Brooks approached me this morning and asked me about pleading guilty. He is here before Your Honor on 2011-GS-43-469, armed robbery and possession of a firearm during a violent crime. 2011-GS-43-481 attempted murder, attempted armed robbery, and possession of a weapon during a violent crime. And indictment 2011-GS-43-939, armed robbery.

Bailiff: Place your left hand on the Bible, raise your right hand.

(Witness complies)

Bailiff: State your name, please.

A: Kadeem Johnson.

Bailiff: Do you solemnly swear or affirm your testimony to the Court will be the truth, the whole truth and nothing but the truth so help you, God?

A: I do.

The Court: All right Mr. Brooks you represent Kadeem S. Johnson on all these charges?

Mr. Brooks: I do, Judge.

1 The Court: Have you had an opportunity to explain to
2 him the charges contained in the indictments, the
3 possible punishment that he faces and his constitutional
4 rights?

5 Mr. Brooks: I have, Judge.

6 The Court: And he understands that we have a jury
7 sitting in a room over there. He participated in the
8 selection and that we are ready to try this case.

9 Mr. Brooks: He understands that, Judge.

10 The Court: Do you think he understands everything
11 you've told him?

12 Mr. Brooks: He does.

13 The Court: Does he now wish to plead guilty or not
14 guilty?

15 Mr. Brooks: Guilty.

16 The Court: Do you agree with his decision to plead
17 guilty?

18 Mr. Brooks: In light of the facts of the case
19 changing, yes sir.

20 The Court: And based upon your understanding of
21 everything going on, do you think if he were to go to trial
22 that there would be a substantial likelihood that he would
23 be found guilty beyond a reasonable doubt?

24 Mr. Brooks: In light of the fact that the facts have
25 changed in this case, we've talked about it, yes, sir.

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1 The Court: Now, Mr. Johnson, I need to ask you a
2 series of questions to make sure that you're entering this
3 plea freely, voluntarily, knowingly and intelligently to
4 the charges contained in the indictment and the possible
5 punishment that you face.

6 Mr. Johnson - Questions by The Court:

7 Q: The first question that I have is are you under the
8 influence of alcohol or drugs.

9 A: No, sir.

10 Q: Are you taking any medication that would cloud your
11 judgment in any way?

12 A: No sir.

13 Q: Are you aware of any physical, emotional or nervous
14 condition that would keep you from understanding what
15 we are doing today?

16 A: No sir.

17 Q: It's my understanding that you now want to plead
18 guilty under three indictments and I will go over each
19 one of them. I will read what is in the indictment to
20 you. Under indictment 2011-GS-43-469, there are two
21 counts. First count reads that Kadeem S. Johnson did
22 in Sumter County on or about June 9, 2010 violate
23 section 16-11-330 of the code of laws of South
24 Carolina, 1976, as amended, while armed with a deadly
25 weapon, a firearm, did feloniously take from the

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1 presence of Felicia Moses and Ibrahim Awid by means of
2 force or intimidation such goods being described as
3 Three Hundred Dollars in U.S. Currency. Is what is
4 stated in count one of Indictment 469, the truth?

5 A: Sir?

6 Q: Is it the truth?

7 A: Yes sir.

8 Q: Under count two reads that Kadeem S. Johnson did in
9 Sumter County or about June 9, 2010 violate section
10 16-23-490 of the code of laws of South Carolina, 1976,
11 as amended while armed with a deadly weapon, a
12 firearm, did feloniously take from Felicia Moses and
13 Ibrahim Awid by means of force or intimidation goods
14 or monies of such goods or monies being described as
15 Three Hundred Dollars in U.S. Currency. Is what's
16 stated in count two of Indictment 2011-GS-43-469 the
17 truth?

18 A: Yes, sir.

19 Q: Under Indictment 2011-GS-43-481, a three count
20 indictment reads under count one, Kadeem S. Johnson
21 and Kareem Upchurch did in Sumter on or about June 10,
22 2010 violate section 16-3-29 of the code of laws of
23 South Carolina 1976 as amended in that Kadeem S.
24 Johnson did shoot Basem Mohammed multiple times with
25 the intent to kill the victim with malice aforethought

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rather expressed or implied. Is what is stated in count one of this indictment the truth?

A: Yes, sir.

Q: Under count two it reads that Kadeem S. Johnson and Kareem Upchurch did in Sumter County on or about June 10, 2010, while armed with a deadly weapon, a handgun, attempted to take and carry away personal property from Basem Mohammad with the intent to deprive him of possession by use of force, threats, intimidation in violation of section 16-11-330(b), South Carolina Code of Laws 1976, as amended. Is what's stated in count two of indictment 2011-GS-43-481 the truth?

A: Yes sir.

Q: Under the same indictment, count three, the indictment reads Kadeem S. Johnson and Kareem Upchurch did in Sumter on or about June 10, 2010 did violate section 16-29 of the code of laws of South Carolina 1976, as amended. In that said Kadeem S. Johnson and Kareem Upchurch did with intent to kill Basem Mohammad with malice aforethought, either expressed or implied by shooting the victim multiple times with a firearm while carrying a firearm without the authority to do same in violation of section 16-23-490 of the code of laws of South Carolina 1976 as amended. Is what's stated in count three of indictment 2011-GS-43-481 the

1 truth?

2 A: Yes, sir.

3 Q: Indictment 2011-GS-43-939, it reads that on or about
4 June 11, 2010 in Sumter County South Carolina, Kareem
5 Upchurch along with Kadeem S. Johnson at 2264 Peach
6 Orchard Road, by use of force, threat or intimidation
7 did while armed with a deadly weapon either by action
8 or words, armed while using a representation of a
9 deadly weapon or other object which a person present
10 during the commission of violence reasonably believed
11 to a deathly weapon did take and carry away personal
12 goods or immediate presence of Ollethia Dinkins in
13 possession thereof in violation of section 16-11-338
14 of the South Carolina Code of Laws, 1976, as amended.
15 Is what's stated in count one of indictment
16 2011-GS-43-939 the truth?

17 A: Yes sir.

18 Mr. Meadors: May it please the Court. This happened

19 ...

20 The Court: I'm aware of what the facts are.

21 Mr. Meadors: I'll make a brief factual basis for this
22 plea if that's okay. This happened on June 9th, it started
23 happening June 9, 2010. This defendant Kadeem Johnson and
24 his co-defendant Kareem Upchurch are first cousins they
25 were basically at their grandmother's house off of 261,

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1 decided they were going to rob a convenience store, Judge.
2 The first one they picked was El Cheapo's at 949 North Main
3 Street here in Sumter. Judge, I think they cased the joint
4 out. They would go by and see when there weren't people in
5 there. If there were people in there they weren't going
6 in. They waited until it was pretty much just the workers
7 or the managers. On indictment for 469 both of them went
8 in, Judge. This young lady right here is my first witness.
9 Ms. Felicia Moses. She was there. Judge, they stole
10 approximately \$300 dollars. Get on the floor. You get to
11 hear a little bit of my opening. Get on the floor or we'll
12 shoot. That's the first thing she heard, Judge. She saw
13 guns, they stole the money and they left. Law Enforcement
14 was called, Judge. They get there and for what every
15 reason, this happens sometime, they couldn't download the
16 video but they got some still pictures of the video and it
17 showed two individuals, two black males. You can kind of
18 see them inside but you see them running away also, Judge,
19 and it's got a unique jacket with kind of a emblem on the
20 back. So law enforcement had that to start with. No i.d.
21 They were wearing masks, hoodies and a coat with a hood on
22 it, Judge. After they robbed that, I've learned they go
23 back to grandmama's and split the money up. They were in
24 grandmama's van. The next one June 10th, Judge, and this
25 was in the early morning hours, 1:30 a.m. on June 9th,

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1 obviously waiting until there are less folks in there. On
2 June 10th, indictment 481, it was roughly a little after
3 twelve. Mr. Johnson and co-Defendant Kareem Upchurch and
4 this is at 4756 Broad Street Extension, Your Honor, in
5 Sumter. Again, they were kind of casing it out if you will.
6 They waited until no one was there. I believe they were
7 parked on the side of the road, Judge. They then went
8 inside, they being this Defendant, Mr. Johnson and Mr.
9 Upchurch. When they went inside, this is where my second
10 victim comes in. This is who we know as Sam, Judge.
11 Basem Muhammed, also known as Sam. Everybody knows him as
12 Sam, he owns this place, Judge. His brother owns a lot of
13 them. He's been working there in the community. He cares
14 about this community, Judge. They came in. Sam grabbed a
15 rack or something but he wasn't going to let them rob him,
16 he just wasn't going to let them rob him. Shots were
17 fired, Judge. Both of them shot, fired shots. Their
18 intent was to go and rob, no question about it. They fired
19 the shots. I believe we could have shown malice and
20 intent. He's lucky to be standing here and I'm not just
21 saying that. I'm not just saying that. He's lucky to be
22 standing here. I've got to know Sam and Felicia. They are
23 both wonderful people. He was shot here, here, here, show
24 him, here and here.

25 Mr. Sam: I got shot here and here, have one here.

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1 Mr. Meadors: And this one is still in him, Judge.

2 Mr. Sam: One is still in me here.

3 Mr. Meadors: Thank God he is still here. They didn't
4 take anything. That's the attempted armed robbery. The
5 attempted murder, Judge. Mr. Upchurch said he fired and
6 kind of ran out and then I think also we could show this
7 defendant fired also. Who hit that would have been up to
8 a jury but they both fired, hand of one, hand of all. I
9 don't think we would have had a issue on that, Judge.
10 There was also a possession of a firearm during the
11 commission of a violent crime on that. Go to June 11,
12 Judge the next night, early morning hours still in the same
13 van, I believe that it belonged to their grandmother. They
14 decide that they're going to rob Young's 2264 Peach Orchard
15 Road. And that's when they parked near the Pizza Hut
16 across the street, Judge. Judge, they go in and this is
17 the video we had prepared to show your honor and the jury.
18 It's a good video. It shows them coming in. And my third
19 victim, Ms. Dinkins, who works for Blue Cross and Blue
20 Shield just couldn't be here today. I had her scheduled
21 to come in the morning, she had taken off. She was
22 prepared. When she came in her first words were when they
23 came in, Your Honor, and you can see them both coming in.
24 Mr. Upchurch came in first and then Mr. Johnson came in
25 after that. Mr. Johnson had a 9 millimeter, you can see

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1 him kind of going after Ms. Dinkins. One of the shots
2 shows the gun to the head. Mr. Upchurch then goes to the
3 front of the counter gets the drawer that Ms. Dinkins has
4 taken out, he takes that out. Mr. Johnson goes around the
5 back and tries to get the victim, Ms. Dinkins to open the
6 safe for some lottery money, where the lottery money is she
7 says I don't have the key. They had just made the big
8 deposit so there were just ones in there, Judge. Mr.
9 Upchurch takes the tray, you see that on the video. He
10 leaves. He tells me later that they burned that tray out
11 in the woods. What Ms. Dinkins said as she was being
12 followed around and would have been offered was I'm
13 pregnant, I'm pregnant. Don't shoot. And she was five and
14 a half months pregnant. She's fine now, she's working, but
15 that would have been her testimony. And again she couldn't
16 be here today. She was going to be here tomorrow, Judge.
17 Judge law-enforcement is armed with this information. They
18 get a look at the first still photos and then they look at
19 this last video they realize they are wearing the same
20 thing. They have something to go on. They know there is
21 a description of a green van or a van that left. It's
22 actually burgundy. They started investigating.
23 Investigator Mays talks to an individual named Randy Lowery
24 who knows Mr. Upchurch. He initially doesn't provide
25 information. Some heat is put on him, basically we know

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1 you know him, we know you have a van. He goes and talks to
2 Mr. Upchurch and basically says look, I'm getting heat on
3 me, I didn't have anything to do with this you all need to
4 turn yourself in. He ultimately says that Mr. Upchurch
5 told him he had done these with his cousin. Mr. Lowery, he
6 didn't want to get involved. They got him involved. I
7 talked to him but reluctantly I believe he would have come
8 forward and testified to that and I want to thank him for
9 that.

10 Judge warrants were taken out, and I believe we're in
11 July of 2010 now. I believe Investigator Mays along with
12 some Marshals were looking for Mr. Kadeem Johnson. He was
13 near his grandmother's house on 261. He was with a fellow
14 named Brady Higgins and Michael Gordon and you can't make
15 this up, Judge. They were looking for Mr. Johnson to serve
16 the warrants on him. Once they stop them there is some
17 marijuana there, everybody is arrested initially they go
18 down to headquarters. Mr. Higgins had said this defendant
19 Mr. Johnson had told him he had done some bops recently
20 which I believe the street term is robberies and that he
21 was going to save enough money to go to Florida according
22 to this witness to buy a vehicle from his uncle. Hang out
23 until the heat died down and come back. That's the
24 evidence we had prepared as we were getting ready for
25 trial. Obviously, Mr. Upchurch entered a plea. I

1 debriefed Mr. Upchurch along with this attorney Mr. Murphy
2 and Investigative Mims yesterday. We went over complete
3 detail of his statement. He was prepared to testify today
4 and I think he would have testified truthfully roughly to
5 the facts I just gave, Your Honor. Judge, his prior record
6 is a juvenile burglary nonviolent, burglary second non-
7 violent, non-violent, excuse me on January 15, 2009.
8 That's his only record. Judge, I hope I've adequately
9 presented the facts I'm sorry if it took too long.

10 With me again are two victims. At the appropriate
11 time they may want to address the court. Thank you.

12 The Court: Mr. Johnson do you agree with the facts as
13 stated by Mr. Meadors?

14 A: Yes sir.

15 The Court: On June 9th of 2010 in your words tell what
16 you did that violated the law.

17 A: I did the crime.

18 The Court: I want to know what crime you did.

19 A: I did a crime, sir.

20 The Court: I want you to tell me what crime you
21 committed on June 9th, 2010.

22 A: Armed Robbery.

23 The Court: You committed Armed Robbery?

24 A: Yes, sir.

25 The Court: And that would be at the El Cheapos on

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1 North Main is that correct?

2 A: Yes, sir.

3 The Court: On June 10, 2010 tell me in more detail
4 than you just told me on the last one what you did that
5 violated the law?

6 A: I guess you could say I shot the man.

7 The Court: After you committed armed robbery, you shot
8 the man?

9 A: Yes, sir.

10 The Court: How many times did you shoot the man?

11 A: Two.

12 The Court: On June 11, 2010, tell me on the record,
13 specifically what you did that violated the law.

14 A: Armed robbery.

15 The Court: Where?

16 A: At Young's.

17 The Court: Which Young's? Don't be evasive with me or
18 I'll stop this right now, do you understand that?

19 A: There's only one Young's involved, Your Honor.

20 Mr. Brooks: There is only one Young's in this
21 particular situation. One was El Cheapos and the other was
22 Young's. That's what he means.

23 The Court: It was the Young's on Peach Orchard Road.
24 Is that correct?

25 A: Yes, sir.

1 The Court: Now, are you in fact guilty of these
2 charges?

3 A: Yes, sir.

4 The Court: Do you understand that all these charges on
5 the armed robbery, I can sentence you to, this would be the
6 armed robbery under indictment 2011-GS-43-469, I can
7 sentence you to thirty (30) years in jail.

8 A: Yes, sir.

9 The Court: On the weapons possession charge under
10 indictment 2011-GS-43-469, I can sentence you to five (5)
11 years in jail.

12 A: Yes, sir.

13 The Court: Under indictment 2011-GS-43-481 charging
14 you with attempted murder, I can sentence you to twenty
15 (20) years in jail. Do you understand?

16 A: Yes, sir.

17 The Court: Under indictment 2011-GS-43-481, armed
18 robbery or attempted armed robbery, I can sentence you to
19 thirty (30) years in jail. Do you understand?

20 A: Yes, sir.

21 The Court: Under indictment 2011-GS-43-P481 charging
22 you with possession of a weapon during a violent crime, I
23 can sentence you to five (5) years in jail. Do you
24 understand?

25 A: Yes, sir.

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1 The Court: Under indictment 2011-GS-43-939, I can
2 sentence you to thirty (30) years in prison.

3 A: Yes sir.

4 The Court: Do you understand that if I choose to do so
5 I can sentence you to these consecutively and sentence you
6 to One Hundred and Twenty (120) years in jail. Do you
7 understand?

8 A: Yes, sir.

9 The Court: Do you understand, as well, that whatever
10 I sentence you to, you will have to, because these are most
11 serious violent crimes, that you will have to serve at
12 least eighty-five percent of whatever I sentence you to.
13 Do you understand that?

14 A: Yes sir.

15 The Court: Do you understand that because with these
16 convictions you will have two or more violent most serious
17 crimes and therefore if you ever commit another violent
18 crime that you will be facing life without the possibility
19 of parole. Do you understand?

20 A: Yes, sir.

21 The Court: So you fully understand the charges
22 contained in the indictments and the possible punishment
23 which you face?

24 A: Yes sir.

25 The Court: Do you understand that your co-defendant

1 has already plead guilty and there is a negotiated sentence
2 of fifteen (15) years for him. Do you understand that I am
3 not bound by that to you in any way. That you at this
4 moment are looking at a full One Hundred and Twenty (120)
5 years. Do you understand?

6 A: Yes sir.

7 The Court: Now, do you have any questions about what
8 sentence you could possibly receive?

9 A: No sir.

10 The Court: Do you also understand that when you plead
11 guilty you waive certain constitutional rights. The first
12 right you waive is your right against self incrimination.
13 Not in this court or any other court in this land would you
14 ever be required to testify against yourself. However,
15 when you plead guilty, you're doing exactly that. Do you
16 understand?

17 A: Yes sir.

18 The Court: So you wish to waive your right and self
19 incrimination at this time?

20 A: Yes sir.

21 The Court: And you understand as well that we have a
22 jury back here, twelve of them, you participated in the
23 selection of them and they are ready to try the case.
24 During the trial, Mr. Brooks would have the opportunity to
25 cross examine the witnesses presented. I would instruct

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1 the jury that the State had to prove your guilt beyond a
2 reasonable doubt. If you chose not to testify I would
3 instruct the jury that they could not hold that against
4 you. Mr. Brooks could bring up any defenses that he felt
5 were available to you. And, again, only after the State
6 has proven your guilt beyond a reasonable doubt could you
7 be found guilty.

8 Therefore, if you plead guilty, the State does not
9 have to prove anything. You don't get to ask any questions
10 about the evidence against you. Do you understand?

11 A: Yes sir.

12 The Court: So do you wish to waive your right to have
13 a jury trial and confront the witnesses against you?

14 A: Yes sir.

15 The Court: Are you satisfied with the services of Mr.
16 Brooks?

17 A: Yes sir.

18 The Court: Has he done everything that you have asked
19 him to do?

20 A: Yes sir.

21 The Court: Do you need any more time to speak with Mr.
22 Brooks?

23 A: No sir.

24 The Court: Has Mr. Brooks done anything that you don't
25 think he should have done?

1 A: No sir.

2 The Court: Has anyone threatened you in anyway to get
3 you to plead guilty?

4 A: No sir.

5 The Court: Has anybody promised you anything to get
6 you to plead guilty?

7 A: No sir.

8 The Court: The only reason that you are pleading
9 guilty is why?

10 A: I can't go to trial. I can't win.

11 The Court: Is it because you are guilty?

12 A: I am guilty.

13 The Court: Have you understood all of my questions?

14 A: Yes sir.

15 The Court: Do you have any questions for the court?

16 A: No sir.

17 The Court: Do you understand that your lawyer has ten
18 (10) days in which to file an appeal as to your plea or the
19 sentence that I give you?

20 A: Yes sir.

21 The Court: Under indictment 2011-GS-43469 charging you
22 with armed robbery, how do you plead guilty or not guilty?

23 A: Guilty

24 The Court: And under indictment 2011-GS-43-469
25 charging you with possession of a weapon during a violent

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1 crime, how do you plead guilty or not guilty?

2 A: Guilty.

3 The Court: Under indictment 2011-GS-43-481 charging
4 you with attempted murder, how do you plead guilty or not
5 guilty?

6 A: Guilty.

7 The Court: Under indictment number 2011-GS-43-481
8 charging you with attempted armed robbery, how do you plead
9 guilty or not guilty?

10 A: Guilty.

11 The Court: Under indictment 2011-GS-43-481 charging
12 you with possession of a weapon during a violent crime how
13 do you plead guilty or not guilty?

14 A: Guilty.

15 The Court: Under indictment 2011-GS-43-939, charging
16 you with armed robbery, how do you plead guilty or not
17 guilty?

18 A: Guilty.

19 The Court: All right I find that the Defendant has
20 entered into his plea freely and voluntarily. He has had
21 the advice of counsel whom he says he is well pleased. The
22 Defendant in his own words has admitted to each one of
23 these crimes as to what he has done and I will accept his
24 plea. What's his criminal history?

25 Mr. Meadors: Your Honor, a burglary second non-violent

1 in January 15, 2009 as a juvenile.

2 The Court: Is that correct?

3 A: Yes, sir.

4 The Court: I would like to hear from the victim.

5 Mr. Meadors: Yes sir. If it please the Court, Your
6 Honor, this is Alicia Moses. Her presence speaks for
7 itself, she just wants to thank Your Honor. Your Honor,
8 this is Sam.

9 Mr. Sam: Your honor, I want you to know and I want his
10 family to know I was working and I just got off work my
11 relief just walked and ask me to go check the cooler which
12 I said go ahead all of a sudden I heard something I just
13 turned around like this I get three bullets in my stomach,
14 two in my stomach, one right here is still in here. I have
15 a cigar rack behind me I just pushed it. I didn't know
16 what to do, I just push both him and the other guy. Those
17 guys start shooting. They shot me in my finger, shot me in
18 my hand, shot me in my arm, shot me in here. That is
19 without even asking me for money, without nothing. I was
20 standing and those guys walked in to rob the store. They
21 didn't ask for money they just start shooting, that's fine.
22 I called 911 because my co-worker he was crying because he
23 was scared. I was, my blood and everything at the store.
24 Mr. Metts came and drive me to the hospital. When we went
25 to the bond hearing, I believe this or somebody hire a

1 lawyer for him. She should have paid my hospital bills
2 which I am paying til this minute instead of hiring a
3 lawyer for somebody killing somebody. And that is my
4 belief. I mean I didn't do nothing wrong. I was doing my
5 job those guys walking in to kill me for nothing. If they
6 rob me that night they only get a hundred dollars, Your
7 Honor, just a hundred dollars because we change shift. I
8 was standing there, we change shift, nothing. All they had
9 to do and I swear to you if they ask me for the money, I
10 would carry the whole cash register to their car.
11 Everybody knows if you have a robbery, you just give them
12 the money, everybody knows this, even the bank knows this.
13 I didn't do nothing wrong. I didn't deserve all this. My
14 wife called the store because I didn't call and one of my
15 employees say, your husband shot. That woman, she lives in
16 Jerusalem. She went straight to the airport, she came
17 here. She didn't have nothing on, nothing. She came to
18 the hospital. Mr. Meets saw her. My daughter's crying, my
19 wife crying, all family crying for what. Why do I have to
20 go through this? Do, I deserve it, sir? I do nothing. I
21 was working. I work sixteen hours a day, sixteen,
22 seventeen hours a day, seven days a week just for my wife
23 and my kids to do a better life for them.

24 Mr. Meadors: Your Honor, Sam had actually, the shift
25 had just ended and the new person was coming on and he said

1 can you give me a minute. He covered it a little bit
2 longer so the person could go to the back of the store.
3 So, we've talked about it. He may have saved that fellow's
4 life actually by staying on.

5 The Court: Is there restitution ordered?

6 Mr. Meadors: Your Honor, we quite frankly haven't
7 discussed this.

8 Mr. Sam: You know, Your Honor, the lady I was doing
9 that shift for, she had a stroke. I was covering a shift
10 for another employee and the other employee came in and I
11 was, I stand so he can do the cooler. All this happened.
12 I not suppose to be even there. No, I'm still paying every
13 month. I'm still paying my hospital bills and my doctor,
14 my surgeon bills.. I never asked for any of this.

15 Mr. Meadors: Your Honor, I don't know what to say. It
16 is what it is. I try not to lead victims on that they may
17 receive money and I have not discussed that with him
18 because I did not think that was a possibility.

19 Mr. Sam: I never asked for any help, Your Honor.

20 The Court: The odds of you getting any are going to be
21 very, very slim because it's going to be a while.

22 Mr. Sam: Like I said, I never asked for any help. I
23 never got no employment. I never got nothing, nothing. I
24 always provide. I didn't get nothing.

25 Mr. Meadors: Thank you. Judge, I want to thank law

1 enforcement, especially over the last few days Investigator
2 Mims and I think, Tripp, unless you have anything else I
3 believe that's all we have.

4 The Court: Okay. Mr. Brooks:

5 Mr. Brooks: If it please the Court, Judge. As you've
6 had the opportunity to listen to everything, see my client,
7 see him shedding tears. Obviously he's very remorseful
8 about this situation. He's nineteen now. His grandmother,
9 his family stands beside him. Obviously, all upset about
10 the situation. I remind, Your Honor, that obviously in
11 terms of culpability, I don't think he was any more or any
12 less culpable than Kareem was. At least, what I'm saying
13 I don't think there is a situation where one person did
14 most of the crime versus the other person. I think if you
15 look at the video, I think if you hear the statement by Ms.
16 Upchurch, obviously you see they are both in the same boat.
17 Judge, obviously this is a significant young man and you're
18 about to give him a sentence that obviously, potentially,
19 probably is going to put him in more years than ...

20 The Court: He want be a young man when he gets out.

21 Mr. Brooks: I understand. But I do want to ask the
22 court to show as much leniency and mercy for this young man
23 considering there was no father figure in his life and
24 obviously what he and Mr. Upchurch did obviously was very,
25 very stupid. It put peoples lives in danger.

1 The Court: Do you know how lucky he is. He's lucky
2 that he and Mr. Upchurch are not facing murder. The reason
3 that Mr. Sam here is alive they have escaped capitol murder
4 charges but his being alive has nothing to do with what
5 they did.

6 Mr. Brooks: Judge, when it happened just remember he
7 was seventeen, so they were under the age of eighteen under
8 the law, so I don't know if it would ... But nonetheless
9 ...

10 The Court: His living had nothing to do with them.

11 Mr. Brooks: I agree with that. I agree with that. I
12 don't know if his family wants to say anything. They are
13 up here today. Obviously it is a very difficult situation
14 for them. He has been in jail since his arrest back in
15 2010. And, Judge, obviously we would just ask you to
16 consider, even though you're not bound by the deal that Mr.
17 Upchurch is getting, obviously I want to ask the court to
18 use that as a barometer when you're issuing a sentence to
19 Mr. Johnson understanding that there is a difference
20 between Mr. Upchurch and Mr. Johnson after the fact but
21 actually during the commission of the crime because there
22 really was no difference.

23 I don't know if his grandmother would want to say
24 anything to the Court. You do? State your name for the
25 record.

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 27

1 Ms. Johnson: My name is Hazel Johnson.

2 The Court: Yes, ma'am.

3 Ms. Johnson: And I would like to say to the court and
4 the young fellow over here.

5 The Court: You talk to me.

6 Ms Johnson: My daughter was killed in '69. Stabbed in
7 the back. The girl got not more than seven. Because they
8 was two black kids. And I want to say to him, thank God
9 that you got your life because I haven't got my daughter
10 back yet and I'm still dealing with it.

11 The Court: I'm sorry about your lost.

12 Ms. Johnson: I deal with him, his mother died when he
13 was a baby. So, I'm still dealing with a lot of stuff that
14 I cannot handle. So, I'm just asking you to please have
15 some mercy on him because we all get off at times.

16 The Court: Yes ma'am.

17 Speaker: (Can't understand)

18 The Court: She is going to have to speak up. You need
19 to speak in the microphone.

20 Ms. Johnson: My name is Hattie Johnson and I beg you
21 please have mercy on him. I beg you just have some mercy.
22 I apologize for what happened. This is my first time
23 hearing this but I beg you, literally beg you, please have
24 mercy on him. That's all I have to say.

25 The Court: Thank you.

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 28

1 Mr. Johnson: Your Honor, I'd like to apologize for the
2 crimes that I've done. I apologize to Mr. Sam. That's all
3 I got to say.

4 Mr. Brooks: Judge, this is a young guy. He's not very
5 articulate. He just wanted to convey to the court that he
6 is truly, truly sorry.

7 The Court: Anything further? Anything further from
8 the State?

9 Mr. Meadors: Thank you, Judge. That's it.

10 The Court: All right. I have considered the
11 statements made and I have considered the posture of the
12 case at this time. There are three charges and ordinarily
13 the way they happened I would sentence consecutively if he
14 would have been found guilty. However, because he is
15 pleading guilty I am going to make them concurrent. These
16 are still very serious charges. I am of the belief that
17 Mr. Johnson had he not had his cousin on him would have
18 been defiant to the end and would not have plead guilty
19 until he was in a trap that he couldn't get out of. He
20 certainly did plea voluntary and he has admitted to me, on
21 the record, in open court exactly what he did do. It was my
22 understanding they were age nineteen and seventeen at the
23 time. These gentlemen just went on a crime spree. They
24 were a two man terror on Sumter County and for that he did
25 not plea until the end. I understand that his cousin did

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 29

1 it and he's certainly not going to get what I gave his
2 cousin but I am going to run them consecutive ...)

3 Mr. Brooks: Excuse me, Judge, you said consecutive.
4 You mean concurrent?

5 The Court: Excuse me, concurrent. The sentence of the
6 court under indictment 2011-GS-43-469 charging him with
7 Armed Robbery. This will be the armed robbery of the first
8 El Cheapo's that you be committed to the State Department
9 of Corrections for a period of Twenty-five (25) years.
10 Under indictment number 2011-GS-43-469 on the charge of
11 possession of a weapon during a violent crime you are
12 sentenced to five (5) years in the State Department of
13 Corrections. On the Attempted Murder charge I am giving
14 him the maximum sentence of twenty (20) years. On the
15 charge of Attempted Armed Robbery, the sentence of the
16 court is twenty-five (25) years. On the Young's Market,
17 you will also be receiving five (5) years for the
18 possession of a weapon during a violent crime. On the
19 charge under indictment 2011-GS-43-939, on the armed
20 robbery of the Young's Market the sentence is that you be
21 committed to the State Department of Corrections for a
22 period of twenty-five (25) years. These will run
23 concurrent and he will be given credit for time served. I
24 did not max him out on all these because I do take into
25 consideration that he is a young man and I want to give him

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an opportunity to have a life rather than give him a hundred and twenty (120) years that he could have had.

Mr. Meadors: Your Honor, I may have inadvertently heard the attempted armed robbery carries twenty (20) and I didn't know ...

The Court: Okay.

Mr. Meadors: I apologize.

The Court: Good luck.

CERTIFICATE

This is to certify that the hearing in the matter of Kadeem Johnson vs. State of South Carolina, consisting of Thirty (30) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 31st day of December, 2012.

Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF SUMTER 2012 APR 27) PM 1:07

Case No: 2011-GS-43-469
 2011-GS-43-481
 2011-GS-43-939

JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

Plaintiff,)
)
 vs.)
)
 KADEEM JOHNSON)
)
 Defendant,)

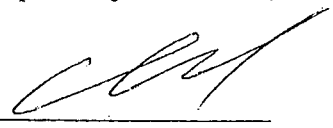
**MOTION FOR RECONSIDERATION
 OF SENTENCE**

This Motion made by Defendant through his undersigned attorney requests the Court reconsider his sentence.

The Honorable Jeffrey Young sentenced the Defendant to aggregate sentence of Twenty-five (25) years at his guilty plea. The Defendant's co-defendant received a sentence of Fifteen (15) years.

Each defendant was equally culpable and although the co-defendant plead guilty the day before, the defendant contended that the disparity in sentence is unfair between the two co-defendants.

Respectfully Submitted,



CHARLES T. BROOKS, III
 Attorney for the Defendant
 309 Broad Street
 Sumter, South Carolina 29150
 (803) 418-5708

Sumter, South Carolina
 April 27, 2012

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
James C. Campbell
 CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER 12 APR 27 PM 1:08

STATE OF SOUTH CAROLINA Case No: 2011-GS-43-469
SUMTER COUNTY, S.C. 2011-GS-43-481
2011-GS-43-939

RECORDED
CHARLES T. BROOKS, III
CLERK OF COURT
SUMTER COUNTY, S.C.

Plaintiff,

vs.

KADEEM JOHNSON

Defendant,

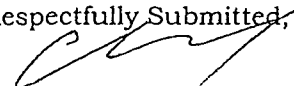
CERTIFICATE OF SERVICE

The undersigned counsel certifies that the attached Motion for Reconsideration of Sentence was personally delivered on April 27, 2012, to the parties indicated below:

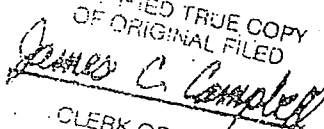
The Honorable W. Jeffrey Young
Third Judicial Circuit
141 North Main Street
Sumter, South Carolina, 29150

Ernest A. Finney, III, Solicitor
Third Judicial Circuit
141 North Main Street
Sumter, South Carolina, 29150

Respectfully Submitted,


CHARLES T. BROOKS, III
Attorney for the Defendant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

Sumter, South Carolina
April 27, 2012

CERTIFIED TRUE COPY
OF ORIGINAL FILED

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

DOCKET NO. 2011-GS-43-0469

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

March TERM 2011

THE STATE

vs.

KADEEM S. JOHNSON

KAREENE ABDUL UPCHURCH

WITNESSES

L Mays Sumter County Sheriff

ARREST WARRANT NUMBER

M441834 M441755

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: *3/31/2011*

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

ROBBERY / ARMED ROBBERY, ROBBERY
WHILE ARMED OR ALLEGEDLY ARMED WITH A
DEADLY WEAPON

AND

POSSESSION OF A WEAPON DURING A
VIOLENT CRIME

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

ROBBERY / ARMED ROBBERY, ROBBERY WHILE ARMED
OR ALLEGEDLY ARMED WITH A DEADLY WEAPON
AND
POSSESSION OF A WEAPON DURING A VIOLENT
CRIME

At a Court of General Sessions, convened on March 31, 2011 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE

ROBBERY / ARMED ROBBERY, ROBBERY WHILE ARMED OR ALLEGEDLY ARMED
WITH A DEADLY WEAPON

That KADEEM S. JOHNSON and KAREENE ABDUL UPCHURCH did in Sumter County on or
about 2010-06-09, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as
amended, while armed with a deadly weapon, to-wit: firearm, did feloniously take from in the
presence of Alicia Moses and Ibrahim Awid, by means of force or intimidation goods or monies
of the said, such goods or monies being described: \$300 in U.S. currency.

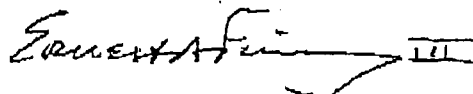
COUNT TWO

POSSESSION OF A WEAPON DURING A VIOLENT CRIME

That KADEEM S. JOHNSON and KAREENE ABDUL UPCHURCH did in Sumter County on or
about 2010-06-09, violate Section 16-23-490 of the Code of Laws of South Carolina (1976), as
amended, while armed with a deadly weapon, to-wit: firearm, did feloniously take from in the
presence of Alicia Moses and Ibrahim Awid, by means of force or intimidation goods or monies
of the said, such goods or monies being described: \$300 in U.S. currency.

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

Solicitor



DOCKET NO. 2011-GS-43-0481

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH TERM 2011

THE STATE

vs.

KADEEM S. JOHNSON

KAREENE ABDUL UPCHURCH

Indictment for

Attempted Murder

Attempted Arm Robbery

Possession of a Weapon During the Commission of a
Violent Crime

WITNESSES

L Mays Sumter County Sheriff

ARREST WARRANT NUMBER

M441837 M441835 M441753

M441754

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: *3/31/2011*

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR
Attempted Murder
Attempted Arm Robbery
Possession of a Weapon During the
Commission of a Violent Crime

At a Court of General Sessions, convened on MARCH 31, 2011 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE
ATTEMPTED MURDER

That Kadeem S. Johnson and Kareem Upchurch did in Sumter on or about JUNE 10, 2010, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Kadeem S. Johnson and Kareem Upchurch did shoot Basem Mohammad multiple times with intent to kill, the victim, with malice aforethought, either express or implied.

COUNT TWO
ATTEMPTED ARMED ROBBERY

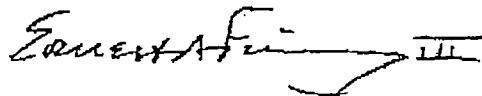
That Kadeem S. Johnson AND Kareem Upchurch did, in Sumter County on or about June 10, 2010, while armed with a deadly weapon, to wit: hand gun attempted to take and carry away the personal property from Basem Mohammad with intent to deprive him of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT THREE
POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Kadeem S. Johnson and Kareem Upchurch did in Sumter on or about June 10, 2010, did violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Kadeem S. Johnson and Kareem Upchurch did with intent to kill, attempt to kill Basem Mohammad, with malice aforethought, either express or implied, by shooting the victim multiple times with a firearm while carrying a hand gun with out authority to do same in violation of Section 16-23-490 of 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.

Solicitor



WITNESSES

L Mays Sumter County Sheriff

DOCKET NO. 2011-GS-43-0939

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

JULY TERM 2011

THE STATE

vs.

KAREENE ABDUL UPCHURCH

KADEEM S. JOHNSON

ARREST WARRANT NUMBER

M441756 M441832

Indictment for

Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury Date: 7/21/2011

Ernest A. Finney III

VERDICT

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Robbery / Armed Robbery, robbery while armed or allegedly
armed with a deadly weapon

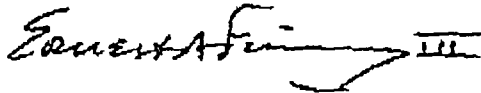
At a Court of General Sessions, convened on JULY 21, 2011 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE - ARMED ROBBERY
WHILE ARMED WITH A DEADLY WEAPON

That on or about June 11, 2010, in Sumter County, South Carolina, the Defendant, Kareene Abdul Upchurch along with Kadeem S. Johnson, at _____, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Ollethia Dinkins with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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

Solicitor



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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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 18, 2013



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT