

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Kristi F. Curtis, Circuit Court Judge

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S.C. SUPREME COURT

MICHAEL ORLANDO BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-001677

APPENDIX

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August 4-5, 2014
Columbia, South Carolina

B E F O R E:

THE HONORABLE JAMES R. BARBER, JUDGE; and a jury.

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1 AUGUST 4, 2014

2 THE COURT: Before we begin, unless there is
3 some objection from you, Ms. Walker, I would like
4 to query your client about his understanding of
5 what discussions have taken place regarding -- at
6 least what I understand -- regarding a plea. Do
7 you have any objection to that?

8 MS. A. WALKER: No objection, Judge.

9 THE COURT: All right. Mr. Brown, let me get
10 you to raise your right hand, if you would.

11 (Defendant complies.)

12 THE COURT: Do you solemnly swear or affirm
13 that the evidence, testimony, or statements you
14 give will be the truth, the whole truth, and
15 nothing but the truth?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I am not going to ask you anything
18 about the trial, but I was informed that you have
19 had some discussions with your attorneys in this
20 case and some attorneys representing you on some
21 charges that are pending in Lexington County
22 relating to a plea offer that was made to
23 consolidate all the cases and allow you to plead
24 over here.

25 And I think my understanding is that the State

1 would make a recommendation of a sentence of 20 to
2 30 years. Is that your understanding?

3 MS. A. WALKER: Your Honor, I believe the
4 State ultimately came down to 15 here in Richland
5 County, and then in Lexington it was 15 to 30.

6 THE COURT: Oh, really? I wasn't aware of
7 that. Okay.

8 MS. A. WALKER: I apologize.

9 THE COURT: So that is the -- the last time we
10 talked last week I think y'all told me it was 20 to
11 30.

12 MS. A. WALKER: It was, Judge. I believe late
13 Friday they were able to come to that.

14 THE COURT: All right. So is it your
15 understanding that the State here on the Richland
16 County charges would recommend 15 years, and the
17 Solicitor's Office in Lexington County on the
18 charges pending over there would recommend 15 to
19 30? Is that your understanding?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. And of course you
22 are -- I have been informed that the State has put
23 you on notice that this is a life without parole
24 case because of your prior criminal history. Do
25 you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: That if you are convicted here
3 today -- or whenever this case is concluded -- of
4 attempted armed robbery; that the sentence is a
5 mandatory life without parole. Do you understand
6 that?

7 THE DEFENDANT: Correct.

8 THE COURT: And that this Court would have no
9 discretion to do anything other than sentence you
10 to life without parole. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: It is my understanding that you
13 have declined that offer. And I'm not saying
14 anything about that, but I just want to make sure
15 that you understood all that. And you have
16 declined that offer and you want to go forward with
17 this trial here today.

18 And of course it is my understanding that
19 based on talking to your lawyers earlier on the
20 Lexington County charges that they anticipate that
21 Lexington County will go forward with all those
22 other charges, and if you are convicted on any of
23 those charges, you conceivably could get life
24 without parole as well. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. And nobody has
2 threatened you, coerced you, forced you, or
3 pressured you into making the decision that you
4 want to go forward and reject any negotiations,
5 have they?

6 THE DEFENDANT: No, sir.

7 THE COURT: This is your decision and your
8 decision alone; is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you fully understand the
11 recommendations that the State would make in this
12 case and the cases arising out of Lexington County;
13 is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you have had the advice of
16 your counsel, Ms. Walker and Ms. Dyar, about the
17 pleas as well; right?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you have not had any alcoholic
20 beverages, taken any drugs or heavy medication in
21 the last 24 hours, have you?

22 THE DEFENDANT: No, sir.

23 THE COURT: And you are not being seen by a
24 psychiatrist or other professional for any mental
25 health issues, are you?

1 THE DEFENDANT: No, sir.

2 THE COURT: All right. Ms. Walker, Ms. Dyar,
3 anything y'all want me to inquire of your client?

4 MS. A. WALKER: Nothing further for my client,
5 Judge.

6 THE COURT: What I cited to your client is
7 what your understanding of the discussions were as
8 well?

9 MS. A. WALKER: Yes, Your Honor.

10 THE COURT: And your client, you believe,
11 fully has understood what the offer is and made
12 that decision on his own as to what he would do; is
13 that correct?

14 MS. A. WALKER: Yes, Your Honor.

15 THE COURT: All right. Okay. What did you
16 want to talk about real quick?

17 MS. A. WALKER: One issue, Your Honor, as far
18 as selecting a jury, I know that the State
19 generally has a list where they are able to get
20 some background information about potential jurors
21 regarding their prior criminal records. They
22 traditionally have that list. I think they
23 generally give it to the clerk. We don't have a
24 copy of that list. We don't have access to that
25 information. Just so that we are on equal footing,

1 I am requesting a copy of that regarding the jurors
2 as well just before we pick the jury.

3 MS. CAMPBELL: Your Honor, there is case law
4 on point that says we do not have to provide that
5 information.

6 THE COURT: Well, I think she is asking will
7 you voluntary provide it.

8 MS. CAMPBELL: No, sir, Your Honor.

9 THE COURT: All right. I can't make them give
10 it to you.

11 MS. A. WALKER: And, Your Honor, just so I
12 know what case law that they are -- I have gotten
13 it in the past -- or anything like that.

14 THE COURT: Well, you can ask them, but I
15 don't think I have the ability to make them give
16 you that information.

17 MS. A. WALKER: Certainly, Your Honor. Thank
18 you.

19 THE COURT: What I anticipate we will do this
20 morning is select a jury and then we will ask the
21 jury to come back this afternoon. And we'll try
22 and do what pretrials we can this morning, and then
23 start the case when we get them back later on
24 today. Is that okay with y'all? We can turn the
25 jury loose for the day -- I mean, for the morning.

1 MS. A. WALKER: Certainly, Your Honor. And
2 just as far as scheduling, you know, I think we are
3 going into tomorrow. I have an expert that I would
4 like to be here for DNA. I think that is the only
5 scheduling issue I have. I think if we can do the
6 DNA tomorrow so my expert can be present.

7 THE COURT: Well, again, I can't make them
8 call witnesses when they -- that is their
9 prerogative. I think they indicated last week that
10 they anticipated that their DNA witnesses would be
11 tomorrow.

12 MS. A. WALKER: Certainly, Judge.

13 THE COURT: That is what y'all anticipate?

14 MS. MOSER: Yes, Your Honor.

15 THE COURT: All right. All right, let's bring
16 the jury up, if you can. Mr. Matthews, I will have
17 to get you to move.

18 (WHEREUPON, the jury came into open
19 court at 11:35 a.m.)

20 THE BAILIFF: The jury is present, Your Honor.

21 THE COURT: Let me see a lawyer from each
22 side.

23 (WHEREUPON, a bench conference was held
24 in the presence of the jury but out of
25 the hearing of the jury.)

1 THE COURT: All right, ladies and gentlemen,
2 good morning to you. My name is Judge Barber, and
3 I'm a Circuit Court judge here in the Fifth
4 Circuit, and I'm holding General Sessions Court
5 this week, which I'm sure Judge Manning explained
6 to you is Criminal Court.

7 We are about to select a jury in a case
8 entitled The State of South Carolina versus Michael
9 Orlando Brown.

10 Mr. Brown has been indicted by the Grand Jury
11 of Richland County for the offense of attempted
12 armed robbery.

13 The indictment alleges that Mr. Brown did, in
14 Richland County, on or about January 3, 2013,
15 commit robbery by attempting to feloniously take
16 from the person or presence of Kyrie Green, by
17 means of force or intimidation, goods or monies of
18 Kyrie Green and/or Chuck E. Cheese, and/or an
19 employee of Chuck E. Cheese, and did so with the
20 intent to deprive the owner permanently of such
21 property while armed with a pistol, dirk,
22 slingshot, metal knuckles, razor, or other deadly
23 weapon, or while alleging, either by actions or
24 words, that he was armed while using a
25 representation of a deadly weapon or any object

1 which a person present during the commission of the
2 robbery reasonably believed to be a deadly weapon.

3 Now, ladies and gentlemen, to this charge
4 Mr. Brown has entered a plea of not guilty, which
5 now places upon the State of South Carolina the
6 burden of proving this Defendant guilty and proving
7 him guilty beyond a reasonable doubt.

8 Now, ladies and gentlemen, the fact that this
9 Defendant has been indicted is not to be considered
10 by you in any way other than the indictment is the
11 document that has put this Defendant on notice of
12 this particular charge. It is not evidence. It is
13 not to be considered for any purpose other than it
14 is the notice document to the Defendant.

15 You need to keep two things in mind about our
16 criminal justice system throughout the course of
17 this trial, ladies and gentlemen. And one is that
18 in every instance the Defendant comes into the
19 court presumed to be innocent. And that
20 presumption of innocence remains with the Defendant
21 throughout the course of the trial and would only
22 change if a jury, after hearing all the evidence,
23 determines that in fact the Defendant is in fact
24 guilty beyond a reasonable doubt.

25 And the other thing that you need to remember

1 is that the burden of proof in this case falls upon
2 the State of South Carolina. And, as I told you,
3 the State must prove the charge by proof beyond a
4 reasonable doubt. There is no burden whatsoever on
5 the Defendant at all.

6 You need to keep those two basic principles in
7 mind throughout the course of this trial.

8 Now, before we begin selecting the jury,
9 ladies and gentlemen, I have certain individuals I
10 want to introduce you to, and I have certain
11 questions I would like to ask you.

12 First I'd like to introduce you to the
13 Defendant, Mr. Brown.

14 Mr. Brown, if you could please stand and face
15 the jury.

16 (Defendant complies.)

17 THE COURT: Ladies and gentlemen, this is
18 Michael Orlando Brown. And I would inquire at this
19 time, is there any member of this jury panel or any
20 member of the jury panel's immediate family who is
21 related by blood or connected by marriage or either
22 now or in the past has had a close personal
23 relationship with Mr. Brown, or either now or in
24 the past has had an employment or a business
25 relationship with Mr. Brown? If so, please stand.

1 (WHEREUPON, there was no response.)

2 THE COURT: All right, thank you. You may be
3 seated.

4 (Defendant complies.)

5 THE COURT: Ladies and gentlemen, in most
6 instances when parties come into court they are
7 represented by attorneys. And, in fact, that is
8 the situation here today. The State is represented
9 by the Solicitor's Office of the Fifth Judicial
10 Circuit.

11 Here on behalf of the Solicitor is Ms. Meghan
12 Walker, the young lady standing here; Ms. Kathryn
13 Luck Campbell, the young lady standing now; and
14 Ms. Sandra Moser is the third individual. These
15 are all members of the Solicitor's Office. They
16 are licensed to practice law in the State of South
17 Carolina.

18 And I would inquire at this time, is there any
19 member of the jury panel or any member of the
20 jury's immediate family who is related by blood or
21 connected by marriage or either now or in the past
22 has had a close personal relationship with any of
23 these individuals or anyone in the Solicitor's
24 Office of the Fifth Circuit, or either now or in
25 the past has had an employment or a business

1 relationship with these ladies or with the
2 Solicitor's Office of the Fifth Circuit? If so,
3 please stand.

4 Yes, ma'am, your name?

5 THE JUROR: Deborah Shupe.

6 THE COURT: All right, Ms. Shupe, what is your
7 situation?

8 THE JUROR: I worked with the Attorney
9 General's Office, and in that capacity I knew
10 Ms. Walker, but never really worked closely with
11 her. And I know Ms. Campbell from -- just have
12 known her a long time.

13 THE COURT: All right. The fact that you have
14 some acquaintance with two of these ladies, would
15 that prevent you from listening to the evidence in
16 this case and based upon such evidence render a
17 fair and impartial verdict?

18 THE JUROR: No, sir.

19 THE COURT: Thank you, ma'am.

20 Ladies and gentlemen, Mr. Brown is also
21 represented by counsel. And he is represented by
22 Ms. Anastasia Walker. And this is Ms. Walker
23 standing now. And Ms. Alicia Dyar. And this is
24 Ms. Dyar. And they are also both members of the
25 South Carolina Bar and they work with the Public

1 Defender's Office of the Fifth Judicial Circuit.

2 And I would inquire at this time, is there any
3 member of this jury panel or any member of the jury
4 panel's immediate family that is related by blood
5 or connected by marriage to either of these young
6 ladies, or either now or in the past has had a
7 close personal relationship with Ms. Walker or
8 Ms. Dyar, or either now or in the past has had an
9 employment or a business relationship with them or
10 with the Public Defender's Office, or been
11 represented by either of these two ladies? If so,
12 please stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: All right, thank y'all.

15 (Defense attorneys seated.)

16 THE COURT: Ladies and gentlemen, I am now
17 going to read you the names of some potential
18 witnesses who may testify in this case. And if any
19 of these witnesses are here, I would ask them to
20 stand so that the jury could see who they are.

21 Mr. John Sullivan, of the Richland County
22 Sheriff's Department.

23 Mr. Stephen Pearrow, P-E-A-R-R-O-W, of the
24 Richland County Sheriff's Department.

25 Ronnie Kennedy Martin.

1 Kadeshia Green.

2 Kyrie Green.

3 John Barron, of the Richland County Sheriff's
4 Department.

5 Investigator Rob Martin, of the Richland
6 County Sheriff's Department.

7 Sergeant Kevin Isenhoward, of the Richland
8 County Sheriff's Department.

9 Dayle Blackmon, of the Richland County
10 Sheriff's Department.

11 Ashley Dixon, of the Richland County Sheriff's
12 Department.

13 Melody Galinski, of the Richland County
14 Sheriff's Department.

15 William Cedarstaff, of the Richland County
16 Sheriff's Department.

17 Judy Castro.

18 Samantha Poole.

19 Theresa Hines, of the State Law Enforcement
20 Division.

21 Rachel Grant, of the Richland County Sheriff's
22 Department.

23 Gray Amick, of the Richland County Sheriff's
24 Department.

25 Cecilia Castro.

1 Doctor Ronald Ostrowski, O-S-T-R-O-W-S-K-I.

2 Ron Jones.

3 Douglas Bouchillon, B-O-U-C-H-I-L-L-O-N.

4 And Russell Dean.

5 Ladies and gentlemen, I would inquire at this
6 time, is there any member of this jury panel or any
7 member of the jury panel's immediate family who is
8 related by blood or connected by marriage, or
9 either now or in the past has had a close personal
10 relationship with any of the individuals whose
11 names I just read to you, or either now or in the
12 past has had an employment or a business
13 relationship with these individuals?

14 Yes, ma'am, your name, please?

15 THE JUROR: My name is Nancy Whitlock. And I
16 couldn't hear very well. Did you say Chimene
17 Green, C-H-I-M-E-N-E?

18 THE COURT: No, ma'am, I said Kadeshia Green,
19 K-A-D-E-S-H-I-A, and Kyrie Green, K-Y-R-I-E.

20 THE JUROR: All right. Thank you.

21 THE COURT: I think those would be the only
22 two Greens.

23 THE JUROR: Thank you.

24 THE JUROR: Deborah Shupe again. My husband
25 was retired from the Richland County Sheriff's

1 Department, and has been for some time. Some of
2 the names that you read out sound familiar, but I
3 never worked with them and don't know them well
4 personally.

5 THE COURT: All right. The fact that you may
6 know the names of some of the witnesses but may not
7 have had any kind of relationship or known them
8 personally, would that prevent you from listening
9 to the evidence in this case and based upon such
10 evidence rendering a fair and impartial verdict?

11 THE JUROR: No, sir.

12 THE COURT: All right, thank you.

13 Is there any member of this jury panel or any
14 member of the jury panel's immediate family that is
15 or has been in the past employed by any local,
16 state, or federal law enforcement agency, including
17 but not limited to the City of Columbia Police
18 Department, the Richland County Sheriff's
19 Department, the State Law Enforcement Division, or
20 the Federal Bureau of Investigation? If so, please
21 stand.

22 Ms. Shupe, you have already told us that your
23 husband was formerly with the Sheriff's Department.

24 THE JUROR: Thank you.

25 THE COURT: Yes, ma'am, your name?

1 THE JUROR: Yes, Your Honor. My father -- My
2 name is Lisa Ragland. And my father --

3 THE COURT: I'm sorry, Lisa?

4 THE JUROR: Ragland, R-A-G-L-A-N-D. And my
5 father is employed with the Richland County
6 Sheriff's Department.

7 THE COURT: As a deputy?

8 THE JUROR: As a deputy sheriff.

9 THE COURT: Do you live at home with your
10 father?

11 THE JUROR: I do.

12 THE COURT: All right. I think that I'm going
13 to excuse you from service on this jury. What
14 number? All right, thank you, ma'am.

15 (Juror Ragland excused.)

16 THE COURT: Yes, sir, your name?

17 THE JUROR: Michael Prewitt. Your Honor, I
18 have a first cousin who is a retired agent with
19 ATF; a current cousin who is employed by South
20 Carolina Law Enforcement Division, Michael Mayer.

21 THE COURT: The fact that you have family
22 members that are employed in law enforcement, would
23 that prevent you from listening to the evidence in
24 this case and based upon such evidence rendering a
25 fair and impartial verdict?

1 THE JUROR: No, sir, it will not affect it.

2 THE COURT: Thank you, sir.

3 Yes, ma'am, your name?

4 THE JUROR: Macheille Wilson-McCants.

5 THE COURT: All right. Yes?

6 THE JUROR: My husband is employed with the
7 Richland County Sheriff's Department as a school
8 resource officer.

9 THE COURT: Your husband works in the Richland
10 County Sheriff's Department?

11 THE JUROR: Yes, sir.

12 THE COURT: All right. Ms. Ragland, is that
13 what you said?

14 THE JUROR: Yes.

15 THE COURT: I'm going to excuse you from
16 service on this jury. Tell me your name again?

17 THE JUROR: Macheille Wilson.

18 THE COURT: Oh, Wilson. I'm sorry. All
19 right, Number 19. All right. Thank you, ma'am.
20 You may be seated.

21 (Juror Wilson-McCants excused.)

22 THE COURT: All right. Is there any member of
23 this jury panel or any member of the jury panel's
24 immediate --

25 THE BAILIFF: Your Honor?

1 THE COURT: Oh, I'm sorry. Yes, ma'am?

2 THE JUROR: Nancy Whitlock. I have done entry
3 level and promotional testing for the Fairfax
4 County, Virginia police officers. Not in South
5 Carolina.

6 THE COURT: The fact that you had some
7 connection with a law enforcement agency in Fairfax
8 County, Virginia in the past, would that prevent
9 you from listening to the evidence in this case and
10 based upon such evidence rendering a fair and
11 impartial verdict?

12 THE JUROR: No, Your Honor.

13 THE COURT: All right. Thank you, ma'am.

14 Is there any member of this jury panel or any
15 member of the jury panel's immediate family that is
16 a member or a contributor to or an employee of any
17 group which has as its primary concern the
18 promotion of law enforcement or -- who else do
19 y'all like to ask about -- Victims' Rights groups,
20 such as DARE, CAVE, CADRE, MADD, SADD or --

21 MS. M. WALKER: Or Defendant Advocacy groups,
22 Your Honor.

23 THE COURT: -- Defendant Advocacy groups? If
24 so, please stand.

25 (WHEREUPON, there was no response.)

1 THE COURT: All right, ladies and gentlemen,
2 if you have a response to this question, I want you
3 to come down and meet with me by the court
4 reporter.

5 Is there any member of this jury panel or any
6 member of the jury panel's immediate family who has
7 ever been the victim of a violent crime? If so,
8 please come down here and talk to me about it.

9 (WHEREUPON, there was no response.)

10 THE COURT: All right. Is there any member of
11 this jury panel or any member of the jury panel's
12 immediate family who is or has been employed by the
13 Attorney General's Office, the Fifth Circuit
14 Solicitor's Office, or a prosecuting attorney's
15 office, other than Ms. Shupe, who has already told
16 us? If so, please stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: Is there any member of this jury
19 panel who has ever been employed by any civilian or
20 military law enforcement agency? If so, please
21 stand.

22 Oh, yes, sir, tell me your name.

23 THE JUROR: My name is Bryan Lister.

24 THE COURT: All right.

25 THE JUROR: I have worked for Burton Fire

1 Department and Daufuskie Island Fire Department.

2 THE COURT: All right. The fact that you have
3 some history in law enforcement or law enforcement
4 related agencies, does that prevent you from
5 listening to the evidence in this case and based
6 upon such evidence rendering a fair and impartial
7 verdict?

8 THE JUROR: No, sir, it does not.

9 THE COURT: Thank you, sir.

10 Has any member of this jury panel read or
11 heard anything about this case that is about to
12 come before us? If so, please stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: Has any member of this jury panel
15 discussed this case with anyone prior to now?

16 (WHEREUPON, there was no response.)

17 THE COURT: Ladies and gentlemen, at the end
18 of this trial I'm going to charge you or instruct
19 you as to the law as it applies to this type of
20 case.

21 Now, you, as the jurors, will be finders of
22 the facts and I'm the instructor of the law. It is
23 your obligation to accept the law as I give it to
24 you and apply it to the facts as you determine them
25 to be in this case.

1 Is there any member of this jury panel who
2 believes you will not be able to comply with my
3 instructions and apply the law as I give it to you
4 to the facts of this case? If you cannot comply
5 with my instructions, please stand at this time.

6 (WHEREUPON, there was no response.)

7 THE COURT: Does any member of this jury panel
8 know of any bias or prejudice either for or against
9 the Defendant or for or against the State? If you
10 have bias or prejudice, please stand at this time.

11 (WHEREUPON, there was no response.)

12 THE COURT: Any member of this jury panel know
13 of any reason you cannot be fair and impartial to
14 both the State and the Defendant? If you believe
15 you cannot be fair and impartial, please stand at
16 this time.

17 (WHEREUPON, there was no response.)

18 THE COURT: All right. Any further inquiry
19 from the State?

20 MS. M. WALKER: None, Your Honor.

21 THE COURT: Anything from the Defendant?

22 MS. A. WALKER: No, Judge.

23 THE COURT: All right. Madam Clerk, if you
24 could.

25 THE CLERK: Ladies and gentlemen of the jury,

1 as I call your number, please come to the
2 microphone located here in the center of the
3 courtroom. At the microphone please restate your
4 number and your place of occupation.

5 Juror Number 42.

6 Please bring any personal items that you may
7 have with you.

8 THE JUROR: Corey Cornwell. I'm a server at
9 Liberty on the Lake.

10 THE CLERK: What says the State?

11 MS. M. WALKER: Your Honor, please excuse the
12 juror.

13 (Juror 42, a Black Male, was excused by
14 the State.)

15 THE CLERK: Juror Number 281.

16 THE JUROR: Nancy Whitlock.

17 THE COURT: What is your occupation?

18 THE JUROR: Retired from the Department of
19 Education.

20 THE CLERK: What says the State?

21 MS. M. WALKER: Please present the juror.

22 THE CLERK: What says the Defense?

23 MS. A. WALKER: Please excuse this juror.

24 THE CLERK: Return to the back of the
25 courtroom.

1 (Juror 281, a White Female, was excused
2 by the Defense.)

3 THE CLERK: Juror Number 316.

4 THE JUROR: My name is Eric Williams. And I'm
5 a driver.

6 THE CLERK: What says the State?

7 MS. M. WALKER: Please excuse the juror.

8 THE CLERK: Please return to the back of the
9 courtroom.

10 (Juror 316, a Black Male, was excused by
11 the State.)

12 THE CLERK: Juror Number 7.

13 THE JUROR: Sarah Ausband. I process
14 insurance claims for a physician's office.

15 THE CLERK: What says the State?

16 MS. M. WALKER: Please present the juror.

17 THE CLERK: What says the Defense?

18 MS. A. WALKER: Please seat this juror.

19 THE CLERK: Please have a seat in the jury
20 box.

21 (Juror 7, a White Female, was seated on
22 the jury.)

23 THE CLERK: Juror Number 313.

24 THE JUROR: Deborah Shupe. South Carolina
25 Attorney General's Office.

1 THE CLERK: What says the State?

2 MS. M. WALKER: Please present the juror.

3 THE CLERK: What says the Defense?

4 MS. A. WALKER: Please excuse the juror.

5 THE CLERK: Please return to the back of the
6 courtroom.

7 (Juror 313, a White Female, was excused
8 by the Defense.)

9 THE CLERK: Juror 73.

10 THE JUROR: Dimetrius Fletcher. Human
11 Resources. Rest Assured Home Care.

12 THE CLERK: What says the State?

13 MS. M. WALKER: Please present the juror.

14 THE CLERK: What says Defense?

15 MS. A. WALKER: Please seat the juror.

16 THE CLERK: Please have a seat in the jury
17 box.

18 (Juror 73, a Black Female, was seated on
19 the jury.)

20 THE CLERK: Juror Number 31.

21 THE JUROR: I'm Brian Burns. IT Management,
22 Computer Sciences Corporation.

23 THE COURT: What says the State?

24 MS. M. WALKER: Please present the juror.

25 THE CLERK: What says the Defense?

1 MS. A. WALKER: Please present the juror.

2 THE CLERK: Please have a seat in the jury
3 box.

4 (Juror 31, a White Male, was seated on
5 the jury.)

6 THE CLERK: Juror 305.

7 THE JUROR: Eddie Jones. State retirement.

8 THE CLERK: What says the State?

9 MS. M. WALKER: Please present the juror.

10 THE CLERK: What says the Defense?

11 MS. A. WALKER: Please present the juror.

12 THE CLERK: Please have a seat in the jury
13 box.

14 (Juror 305, a Black Male, was seated on
15 the jury.)

16 THE CLERK: Juror Number 78.

17 THE JUROR: Brenda Free. Business analyst
18 manager.

19 THE CLERK: What says the State?

20 MS. M. WALKER: Please present the juror.

21 THE CLERK: What says the Defense?

22 MS. A. WALKER: Please seat the juror.

23 THE CLERK: Please have a seat in the jury
24 box.

25 (Juror 78, a Black Female, was seated on

1 the jury.)

2 THE CLERK: Juror Number 9.

3 THE JUROR: My name is Tim Baier. I'm an
4 Aquatic Coordinator with the South Carolina
5 Vocational Rehabilitation Department.

6 THE CLERK: What says the State?

7 MS. M. WALKER: Please present the juror.

8 THE CLERK: What says the Defense?

9 MS. A. WALKER: Please present the juror.

10 THE CLERK: Please have a seat in the jury
11 box.

12 (Juror 9, a White Male, was seated on
13 the jury.)

14 THE CLERK: Juror Number 215.

15 THE JUROR: Michael Prewitt. Water pump
16 sales.

17 THE CLERK: What says the State?

18 MS. M. WALKER: Present the juror.

19 THE CLERK: What says the Defense?

20 MS. A. WALKER: Please excuse the juror.

21 THE CLERK: Please return to the back of the
22 courtroom.

23 (Juror 215, a White Male, was excused by
24 the Defense.)

25 THE CLERK: Juror 271.

1 THE JUROR: My name is Angela Vandelay. I am
2 a water resources scientist for AMEC Environment &
3 Infrastructure.

4 THE CLERK: What says the State?

5 MS. M. WALKER: Please present the juror.

6 THE CLERK: What says the Defense?

7 MS. A. WALKER: Please present the juror.

8 THE CLERK: Please have a seat in the jury
9 box.

10 (Juror 271, a White Female, was seated
11 on the jury.)

12 THE CLERK: Juror Number 138.

13 THE JUROR: My name is Darlene Kinard. And I
14 work for SCE&G.

15 THE CLERK: What says the State?

16 MS. M. WALKER: Please present the juror.

17 THE CLERK: What says the Defense?

18 MS. A. WALKER: Please seat the juror.

19 THE CLERK: Please have a seat in the jury
20 box.

21 (Juror 138, a White Female, was seated
22 on the jury.)

23 THE CLERK: Juror Number 146.

24 THE JUROR: My name is Dorothy Lakin. I'm a
25 supervisor in the bakery at Super Wal-Mart.

1 THE CLERK: What says the State?

2 MS. M. WALKER: Please present the juror.

3 THE CLERK: What says the Defense?

4 MS. A. WALKER: Please present the juror.

5 THE CLERK: Have a seat in the jury box.

6 (Juror 146, a Black Female, was seated
7 on the jury.)

8 THE CLERK: Juror Number 186.

9 THE JUROR: My name is Tammy Moshier. I teach
10 Fifth Grade at Hammond School.

11 THE CLERK: What says the State?

12 MS. M. WALKER: Please present the juror.

13 THE CLERK: What says the Defense?

14 MS. A. WALKER: Please excuse the juror.

15 THE CLERK: Please return to the back of the
16 courtroom.

17 (Juror 186, a White Female, was excused
18 by the Defense.)

19 THE CLERK: Juror Number 181.

20 THE JUROR: My name is Kathryn Berry. I'm a
21 registered nurse.

22 THE CLERK: What says the State?

23 MS. M. WALKER: Please present the juror.

24 THE CLERK: What says the Defense?

25 MS. A. WALKER: Please seat the juror.

1 THE CLERK: Please have a seat in the jury
2 box.

3 (Juror 181, a White Female, was seated
4 on the jury.)

5 THE CLERK: Juror Number 167.

6 THE JUROR: My name is Lance McClester. I'm a
7 fourth year pharmacy student at the South Carolina
8 College of Pharmacy.

9 THE CLERK: What says the State?

10 MS. M. WALKER: Please present the juror.

11 THE CLERK: What says the Defense?

12 MS. A. WALKER: Please seat this juror.

13 THE CLERK: Please have a seat in the jury
14 box -- the jury box.

15 (Juror 167, a Black Male, was seated on
16 the jury.)

17 THE CLERK: Juror Number 95.

18 THE JUROR: My name is Louis Gray. And I'm
19 disabled. And I was a caregiver.

20 THE CLERK: What says the State?

21 MS. M. WALKER: Please present the juror.

22 THE CLERK: What says the Defense?

23 MS. A. WALKER: Please seat the juror.

24 THE CLERK: Please have a seat in the jury
25 box.

1 (Juror 95, a Black Male, was seated on
2 the jury.)

3 THE COURT: All right, we are going to have
4 two alternates.

5 THE CLERK: Juror Number 225.

6 THE JUROR: My name is Kim Roberts. And I
7 work at the South Carolina National Guard Federal
8 Credit Union.

9 THE CLERK: What says the State?

10 MS. M. WALKER: Please present the juror.

11 THE CLERK: What says the Defense?

12 MS. A. WALKER: Please excuse the juror.

13 THE CLERK: Please return to the back of the
14 courtroom.

15 (Juror 225, a White Female, was excused
16 by the Defense.)

17 THE CLERK: Juror Number 260.

18 THE JUROR: My name is Norma Taylor. And I
19 work at Whole Foods.

20 THE CLERK: What says the State?

21 MS. M. WALKER: Please present the juror.

22 THE CLERK: What says the Defense?

23 MS. A. WALKER: Please seat the juror.

24 THE CLERK: Please have a seat in the jury
25 box.

1 (Juror 260, a White Female, was seated
2 as Alternate Number 1.)

3 THE CLERK: Juror Number 46.

4 THE JUROR: I'm Aliayah Daney. Unemployed.

5 THE CLERK: What says the State?

6 MS. M. WALKER: Please present the juror.

7 THE CLERK: What says the Defense?

8 MS. M. WALKER: Please seat the juror.

9 THE CLERK: Please have a seat in the jury
10 box.

11 (Juror 46, a Black Female, was seated as
12 Alternate Number 2.)

13 THE COURT: All right. Anything from the
14 State with respect to the composition of the jury?

15 MS. M. WALKER: Nothing from the State, Your
16 Honor.

17 THE COURT: Anything from the Defense?

18 MS. A. WALKER: Your Honor, may we approach?

19 THE COURT: All right.

20 (WHEREUPON, a bench conference was held
21 in the presence of the jury but out of
22 the hearing of the jury.)

23 THE COURT: All right, the Defendant is making
24 a motion under Batson. So, ladies and gentlemen, I
25 need to take up a matter with the attorneys, and

1 we're going to do it -- rather than move all of
2 y'all somewhere else, we are going to move
3 ourselves. And if y'all will bear with us for
4 about five minutes and I'll take the attorneys to
5 another room with the court reporter and we'll hear
6 what the Defense has to say. So give us a few
7 minutes, please.

8 (WHEREUPON, the following takes place in
9 chambers out of the hearing of the
10 jury.)

11 THE COURT: All right, Ms. Walker, what do you
12 want to tell me?

13 MS. A. WALKER: Your Honor, just to be
14 completely thorough, the only jurors that were
15 struck by the prosecution were black males. I
16 don't know if they had any additional information.
17 They do have the list I mentioned earlier, and I
18 just ask they put their reasons outside of race
19 reasons for striking those gentleman.

20 THE COURT: All right. What is the basis of
21 the strikes?

22 MS. M. WALKER: The first one was a young man
23 with his shirt untucked. He was laughing and
24 smiling and throughout his entire --

25 MS. CAMPBELL: I observed when he came in the

1 courtroom coming in in a loud manner, laughing out
2 loud. He just didn't seem to have any respect for
3 the court.

4 MS. M. WALKER: Your Honor, the second one has
5 a record.

6 MS. CAMPBELL: Didn't know what number, I just
7 told her that I thought he was a problem when I
8 observed that behavior.

9 THE COURT: All right.

10 MS. A. WALKER: She says the second one has a
11 record. We are satisfied with those reasons. I
12 just wanted to put it on the record.

13 THE COURT: I find that they are race neutral.

14 MS. M. WALKER: Thank you, Your Honor.

15 MS. CAMPBELL: Thank you, Your Honor.

16 MS. A. WALKER: Thank you, Your Honor.

17 (WHEREUPON, the following takes place in
18 open court within the hearing of the
19 jury.)

20 THE BAILIFF: Remain seated. Come to order.

21 THE COURT: All right, thank you all.

22 Okay, ladies and gentlemen of the jury panel
23 that did not get selected, I thank all of you very
24 much for making yourselves available. I would ask
25 that you return back downstairs to the jury

1 assembly room. You will get further instructions
2 from those folks. And I thank you again. And
3 y'all have a nice afternoon.

4 (WHEREUPON, jurors not selected exit the
5 courtroom.)

6 THE COURT: All right, ladies and gentlemen of
7 the jury panel, first of all, I thank you too for
8 making yourselves available.

9 In just a few minutes I am going to turn you
10 loose and ask you to come back at 2:30. I have to
11 take up some pretrial matters with the attorneys,
12 and rather than have you sit here and listen -- I
13 mean, in the jury room while I take them up, we are
14 going to just break for lunch and let you go to
15 lunch and ask you to be back here at 2:30. And
16 when we come back at 2:30, then I will give you
17 some preliminary instructions about your jury
18 service and we will then turn it over to the
19 attorneys so they can go forward with the trial of
20 the case.

21 But there are a couple of things that I want
22 to tell you, and I want you to keep this in mind
23 throughout the course of this trial. This is a
24 very serious case. It is very important to both
25 the State and the Defendant. And we want to do

1 everything we can to see that both sides get a fair
2 and impartial trial.

3 And one of the ways I'm going to ask you to
4 help me do that is to ask you not to discuss this
5 case with each other or with anyone else at any
6 time until you have been given instructions by the
7 Court that you can begin your deliberations.

8 So that means any time we take a break, you go
9 back to the jury room, you are back there waiting
10 on me, or if we are on a break, please do not
11 discuss the case with each other. When you go to
12 lunch today, when you go home tonight, when you go
13 to lunch tomorrow, please do not discuss the case
14 with anybody that you come in contact with.

15 I anticipate that this case could last three
16 days. That is why we have two alternates because
17 sometimes when we have to go more than a day we
18 have a problem. So we want to do everything we can
19 to make sure that we don't discuss the case with
20 anyone until the appropriate time comes.

21 And the reason I ask you to do that is if
22 during the course of the trial you begin talking to
23 each other about it in the jury room, even though
24 both sides have not been given a full opportunity
25 to put in front of you whatever they wish to put in

1 front of you, you may begin to formulate some
2 opinion about the case. If you go home or go to
3 lunch and come in contact with somebody who has not
4 been here, not heard any of the evidence in this
5 case, I promise you they'll probably have an
6 opinion and they'll tell you what that opinion is
7 and it may influence you in some way.

8 So do not discuss in the case with family
9 members, friends, acquaintances, anybody that you
10 come in contact with outside the presence of this
11 courthouse.

12 When this case is over and you have concluded
13 your jury service you can talk to anybody you want
14 about anything that took place up here. If you
15 don't want to talk to anybody about it, you don't
16 have to talk to anybody about it.

17 If someone at the end of the trial wants to
18 talk to you about the case and you don't want to,
19 tell them you don't want to talk to them about it.
20 If they persist, get their name, contact me, and I
21 promise you I will deal with those individuals.

22 But you will have ample opportunity to discuss
23 the case after it is over, but until the trial is
24 concluded, do not discuss this case with each other
25 until deliberations and with anyone else.

1 I am also going to ask that you not make any
2 independent inquiry or investigation in this
3 matter. So anything that comes up, don't go home
4 at night and get on the internet and see what you
5 can figure out about anything. Don't -- if we talk
6 about locations of things that happen, don't ride
7 by any location. You are to decide this case based
8 upon the evidence that is presented here in this
9 courthouse during the next several days. Nothing
10 else. So listen to the evidence in the course of
11 the trial and you will be able to make your
12 decision.

13 So with that said, as I told you, I will give
14 you some preliminary instructions when we come
15 back.

16 Now, there are several individuals that you
17 are going to have some involvement with during the
18 course of this trial, and I'd like to introduce you
19 to who they are.

20 The young lady that is seated in front of me
21 is Ms. Pendergrass, and she is our Clerk of Court,
22 and, as you have seen, she has been very actively
23 involved in the jury selection process and she will
24 assist me throughout the course of the trial.

25 Judge Manning may have explained to you that

1 this is a court of record. And the young lady
2 seated to my right is Ms. Debbie McCurdy, and she
3 is taking down everything that is said in this
4 courtroom. If I say something, the lawyers say
5 something, witnesses say something, if you say
6 something, she will make a record of it. And that
7 it is why it is a court of record.

8 The young lady seated to my left is Caitlin
9 Creswick, who is my law clerk. I also have a law
10 clerk seated down on the floor, and that is
11 Mr. Madison Marchant. And they assist me in a
12 number of ways that involve this trial, as well as
13 other matters that I am dealing with.

14 Ladies and gentlemen, the folks that you are
15 going to have the most contact with are our
16 bailiffs. And they are the ones in just a moment
17 to show you how to get from the courtroom back to
18 the jury room. They will tell you what you need to
19 do when you leave here to go to lunch, how you get
20 back when you come back from lunch. They will take
21 roll when you come in in the morning and after
22 lunch. They will collect your cell phone. They
23 are here to assist you in any way they possibly
24 can. We have very experienced bailiffs and nice
25 folks: Mr. Dye, seated down here; Mr. Talbert, who

1 is seated in the back back there; and Ms. Sutton
2 who is all the way in the back back there.

3 Now, these folks may move around a little bit
4 from time to time, but they are here to help you.
5 If any questions come up, any problems come up,
6 please bring it to their attention and they will
7 direct you to where you need to go to get an answer
8 or they'll get that answer for you.

9 So, with that said, I'm going to go ahead and
10 let them take you out, take you back to the jury
11 room, and let you go to lunch.

12 Again, I ask you to be back here at 2:30.
13 Please do not discuss this case with anyone while
14 you are gone. Y'all have a nice lunch. And we'll
15 see you back here in about two hours.

16 Please be on time, ladies and gentlemen. Do
17 not be late.

18 (WHEREUPON, the jury is excused for
19 lunch at 12:23 p.m.)

20 (WHEREUPON, the following takes place
21 outside the presence of the jury.)

22 THE COURT: All right. We will take up your
23 motions here, Ms. Walker, if you don't mind,
24 please, ma'am. One is a renewal of your Rule 5
25 discovery.

1 Did y'all give them everything?

2 MS. M. WALKER: Yes, Your Honor. We sat down
3 and went over discovery, was it two weeks ago?

4 MS. A. WALKER: Yes, Your Honor.

5 MS. M. WALKER: My understanding is that they
6 have everything.

7 THE COURT: All right. A motion pursuant to
8 Riddle v. State.

9 MS. A. WALKER: Yes, Your Honor. I filed my
10 motion I believe about three weeks ago regarding
11 any new information they found, any changes in any
12 of the witness statements.

13 So far -- and I do have a concern about Riddle
14 in this case in particular. There are three
15 eyewitnesses in this case. Only two give a
16 statement. They are on sheets of what I would
17 assume to be notebook paper, a paragraph long or
18 so. So, if there is any changes in their
19 statements or additions.

20 The State has told me that some information --
21 I don't know the accuracy of the information --
22 that they may have changed their statements to
23 indicate that -- or have added to their statements
24 that indicate that the suspect demanded money. But
25 I believe there are more specific statements if the

1 State would put that on the record regarding those
2 two witnesses, Kadeshia Green and Kyrie Green.

3 MS. CAMPBELL: Your Honor, I provided the
4 information this morning to her. My understanding
5 is -- and I haven't spoken to the witnesses myself,
6 but Kadeshia Green basically, as the Defendant
7 entered, he had a gun in his hand and was saying --
8 which he then yelled out, We're about to get
9 robbed, or, We're going to get robbed, or something
10 to that effect. I turned that information over to
11 her. It was included in her statement.

12 I have not spoken to Kyrie Green. I am
13 getting ready to go interview him myself in a few
14 minutes. If there is anything new I will turn it
15 over at that point.

16 As far as the manager, Mr. Martin, he
17 basically said he was in the restaurant and he
18 heard Kadeshia yell out what she said she said.

19 MS. A. WALKER: Your Honor, Mr. -- and just to
20 make that also clear, his name is Ronnie Martin?

21 MS. CAMPBELL: Kennedy Martin.

22 MS. A. WALKER: Ronnie Kennedy Martin.

23 MS. CAMPBELL: And it is written up as Ronnie
24 Kennedy sometimes in the discovery.

25 MS. A. WALKER: Yes, Your Honor.

1 Furthermore, Your Honor, there is a statement
2 that Kadeshia Green gives. Ronnie Kennedy or
3 Martin has signed the statement. I'm trying to
4 determine if he is adopting that statement as his
5 own or merely signing as a witness.

6 MS. M. WALKER: My information, Your Honor,
7 from Investigator Martin is that he witnessed -- he
8 was witnessing the statement.

9 MS. A. WALKER: And, Your Honor, furthermore,
10 Investigator Martin has indicated that the
11 Defendant made a statement during interrogation
12 regarding -- when requested for DNA, that the
13 Defendant said, No, I won't give you my DNA, that
14 will convict me. Or something to that effect. I
15 just need to make sure of the accuracy of that
16 statement and that there is nothing else further
17 that Investigator Martin has to add to his
18 statement -- or his notes -- case summary --
19 investigative follow-up.

20 MS. M. WALKER: Your Honor, we're going to --

21 MS. A. WALKER: And I'm happy to ask him that
22 during Denno. If you would like us to make that
23 clear during Denno, that is perfectly fine.

24 THE COURT: All right. What is the record of
25 State's witnesses?

1 MS. A. WALKER: Your Honor, I still have
2 additional Riddle. I apologize.

3 Officer Sullivan -- or Deputy Sullivan's
4 incident report mentions watching a video that
5 indicates that the suspect runs around the incident
6 location and towards the El Toro.

7 The only video that has been turned over in
8 this case is one shot of the entryway of Chuck E.
9 Cheese. There is no other video that has been
10 turned over at this point. But it is mentioned
11 that they view another video.

12 They also indicate that they --

13 THE COURT: Is there more than one video?

14 MS. M. WALKER: Your Honor, there is one video
15 that we were able to retrieve. And that has been
16 turned over to Ms. Walker.

17 MS. A. WALKER: And I just want to also make
18 sure that there are no enhanced videos as well.

19 They indicated that they can tell that he is
20 wearing -- there is mention of latex gloves at one
21 point, and there is also mention he is wearing
22 jeans with a hole in them, and that you can see a
23 ring on the video.

24 I have watched the video countless times, and
25 I am able to note these traits about the suspect.

1 I just want to make sure that there is no enhanced
2 video or anything that I haven't been made privy
3 to.

4 MS. M. WALKER: There is no enhanced video.

5 MS. A. WALKER: And, Your Honor, I also
6 indicated in chambers about the line-up. That is
7 exculpatory information that was turned over to me
8 yesterday. And I am happy to flesh that out on
9 Denno as well, if Your Honor is so inclined.

10 Just a couple of others things that I want to
11 make sure that we don't have.

12 MS. M. WALKER: For the record -- I don't mean
13 to interrupt, but the line-up was not turned over
14 to her yesterday. The line-up was turned over with
15 the rest of the stuff.

16 MS. A. WALKER: The information that a line-up
17 was shown to a witness was turned over to me
18 yesterday. I had a generated line-up, that is
19 true, in my discovery.

20 THE COURT: Please proceed.

21 MS. A. WALKER: And, Your Honor, just to make
22 sure that there is no statement from Mr. Kennedy.
23 I think that Investigator Martin may have reported
24 to the scene as the on-call investigator. I don't
25 have any notes from him. I just want to make sure

1 there is none of those. And any follow-up
2 interviews with any of the witnesses if there is
3 anything to change their statements or anything at
4 this juncture.

5 THE COURT: Did anything change in any of the
6 statements?

7 MS. M. WALKER: Not that I'm aware of, Your
8 Honor. Not from the conversations that I have had
9 with our investigator who served the witnesses
10 their subpoenas. Other than what Ms. Campbell
11 already said about Ms. Green's statement.

12 THE COURT: She will talk to her and let you
13 know. We will deal with that at that time.

14 MS. A. WALKER: Certainly, Your Honor.

15 THE COURT: What else?

16 MS. A. WALKER: I believe that covers
17 everything as far as Rule 5.

18 THE COURT: All right. Records of witnesses?

19 MS. M. WALKER: Your Honor, we are running
20 Kyrie Green's rap sheet now. Kadeshia Green does
21 not have a record. And the other witnesses, Your
22 Honor, are law enforcement.

23 THE COURT: All right. Give her -- if you
24 come up with a record, give it to her before they
25 testify.

1 MS. M. WALKER: Yes, sir.

2 MS. A. WALKER: What about Ronnie Martin?

3 MS. M. WALKER: My understanding is that he
4 doesn't have a record. I can doublecheck.
5 Ms. Outen is running a rap sheet now, but I
6 don't -- my understanding is that he does not have
7 a record.

8 MS. A. WALKER: And Ms. Castro? Judy Castro?

9 MS. M. WALKER: I need a birthdate for her.
10 She is the Defendant's -- she is one of the
11 Defendant's girlfriends in this case.

12 MS. A. WALKER: I believe she is an
13 ex-girlfriend of my client. I can get a birthdate.

14 THE COURT: All right. Establish
15 admissibility of criminal records of potential
16 witnesses. Those are your witnesses?

17 MS. A. WALKER: No, Your Honor. I don't -- as
18 far as I know, none of my witnesses have criminal
19 records.

20 THE COURT: All right. Well, they have
21 already told you about the other one, so what else
22 have you got to deal with?

23 MS. A. WALKER: Your Honor, we can wait until
24 those come up. It may not be an issue.

25 THE COURT: All right. Any problem

1 sequestering witnesses?

2 MS. M. WALKER: Your Honor, other than -- The
3 State would like for the investigator to stay in.

4 THE COURT: The investigator and the victim.

5 MS. M. WALKER: Yes, Your Honor.

6 MS. A. WALKER: And I have no objection to
7 that, Judge.

8 THE COURT: All right.

9 MS. M. WALKER: And expert witnesses that have
10 generated reports, Your Honor?

11 THE COURT: What about them?

12 MS. M. WALKER: Will they be allowed -- like
13 the other members of law enforcement? She is
14 asking that they be sequestered as well? Or the
15 DNA analyst?

16 MS. A. WALKER: Your Honor, the DNA analyst --
17 because I am obviously requesting to have my DNA
18 expert present during the analyst's testimony.
19 Certainly if I call my witness I have no issue with
20 the analyst being present during my expert's
21 testimony, should he even testify.

22 THE COURT: Well, he probably will have
23 already testified by the time your witness
24 testifies, won't he?

25 MS. A. WALKER: Certainly. But that would be

1 my only issue. If they have any other experts that
2 want to be present, I don't necessarily have an
3 issue with those not being sequestered.

4 MS. M. WALKER: Would she have a problem with
5 our DNA experts being in here during our DNA
6 expert's testimony? There are multiple DNA
7 experts.

8 MS. A. WALKER: No, I have no objection to
9 that, Judge.

10 THE COURT: All right. So now we have got a
11 Denno hearing; right?

12 MS. A. WALKER: Yes, Your Honor.

13 MS. M. WALKER: Your Honor, the State calls
14 Investigator Rob Martin.

15 THE COURT: Let's understand what we have got
16 here. A statement was made by the Defendant; is
17 that correct?

18 MS. M. WALKER: Yes, Your Honor, there was an
19 oral statement made by the Defendant. The
20 Defendant declined to put anything in writing.

21 THE COURT: All right. Y'all's position is he
22 did not make the statement or the statement wasn't
23 made voluntarily?

24 MS. A. WALKER: Well, Your Honor, I would like
25 to hear what the witness has to say regarding

1 voluntariness and how the statement was given. It
2 is a general --

3 THE COURT: Well, I understand that. But, I
4 mean, is your client claiming he never made the
5 statement?

6 MS. A. WALKER: I don't believe so, Your
7 Honor.

8 THE COURT: All right. So the issue is not
9 whether he made it or not, but whether it was done
10 voluntarily?

11 MS. A. WALKER: Right. We are challenging the
12 additional statement that I mentioned earlier,
13 that when asked for his DNA he said, No, I'm not
14 giving it, that will convict me.

15 THE COURT: All right. But you are not
16 denying that he made the statement? You may deny
17 the content of the statement is correct and
18 truthful, but that is an issue of credibility?

19 MS. A. WALKER: Yes, Your Honor.

20 THE COURT: And, you know, a Denno hearing is,
21 one, was the statement made. If he is denying
22 there was a statement, then -- but apparently y'all
23 acknowledge that he made the statement. There may
24 be a difference as to what your client says was
25 said and what they say was said.

1 MS. A. WALKER: Certainly, Your Honor.

2 THE COURT: But the real issue is the
3 voluntariness of the statement?

4 MS. A. WALKER: Yes, Your Honor.

5 THE COURT: All right. Go ahead.

6 (Witness approaches.)

7 THE BAILIFF: Place your left hand on the
8 Bible, and raise your right hand, please.

9 (Witness complies.)

10 THE CLERK: Do you solemnly swear or affirm
11 that the testimony you give in this case will be
12 the truth, the whole truth, and nothing but the
13 truth, so help you God?

14 THE WITNESS: So help me God.

15 THE CLERK: Please have a seat.

16 (Witness seated.)

17 THE CLERK: And state your full name for the
18 record.

19 THE WITNESS: Robert Martin.

20 MS. M. WALKER: May it please the Court, Your
21 Honor?

22 THE COURT: Yes, ma'am.

23 MS. M. WALKER: Thank you.

24 ROBERT MARTIN,
25 after being duly sworn, testified as follows:

1 DIRECT EXAMINATION(JURY OUT)

2 BY MS. M. WALKER:

3 Q Investigator Martin, can you tell me where you are
4 currently employed?

5 A At the Richland County Sheriff's Department.

6 Q And how long have you been at the Sheriff's
7 Department?

8 A About 14 years.

9 Q And what do you do at the Sheriff's Department?

10 A Currently I'm assigned as a robbery homicide
11 investigator for Richland County.

12 Q And specifically why we're here this week, did you
13 become involved in the investigation of a robbery
14 that happened at Chuck E. Cheese back in January of
15 last year?

16 A I did.

17 Q And how did you become involved with that?

18 A The case was assigned to me after the fact as being
19 part of the robbery unit, and I began to
20 investigate what was given to me and then
21 interviewed the witnesses and moved the case
22 forward.

23 Q As part of your investigation did you interview
24 Michael Orlando Brown?

25 A I did.

1 Q Can you tell me how you came to interview him?

2 A Arrest warrants were obtained. He was arrested by
3 the Fugitive Task Force and brought to me in my
4 office. He was verbally Mirandized -- I'm sorry,
5 Mirandized in writing. I kind of went through the
6 Advice of Rights form step-by-step and then began
7 to ask him questions about the incident.

8 MS. M. WALKER: Beg the Court's indulgence.

9 (Pause.)

10 (WHEREUPON, State's Exhibit No. 1 was
11 marked for identification only.)

12 BY MS. M. WALKER:

13 Q And can you describe the room in which this
14 interview took place?

15 A Yes. Open. It is a very large single office that
16 is divided into smaller cubicles with walls that
17 are approximately 4 foot high. These cubicles are
18 connected to each other. It has a little maze
19 throughout the office. My cubicle is in the back
20 corner. And I interviewed him in my cubicle.
21 There is an interview chair, a desk, computer,
22 phone, filing cabinet. And it is a -- I'm going to
23 say it is probably 6 and a half feet long and
24 probably 5 foot deep.

25 Q And this is where you interviewed the Defendant,

1 Michael Brown?

2 A It is.

3 Q Over the course of the interview -- I guess you
4 started off with the Advice of Rights?

5 A Yes.

6 Q I want to show you what has been marked as State's
7 Exhibit 1. Is that the Advice of Rights you showed
8 Michael Brown?

9 A It is.

10 Q And how are you certain of that?

11 A It has my signature on, it has his signature on it,
12 and I filled out -- this is all my handwriting on
13 the front.

14 Q Can tell the Court the Advice of Rights that were
15 given to Michael Brown on that day? And what day
16 was that?

17 A It was the 14th of March.

18 Q What time?

19 A 1640 hours.

20 Q So that is 4:40?

21 A Yes.

22 Q Okay. Can you tell the Court the Advice of Rights
23 that were given at that time?

24 A Yes. I started with a question and answer portion.
25 It is kind of at the bottom. I asked some

1 background information.

2 I asked him how far he went in his education.

3 I have it documented here that he graduated
4 high school in 2000 from Airport.

5 I asked him the last time he used alcohol or
6 drugs.

7 He said, No alcohol or drugs today, to include
8 marijuana.

9 I asked him when he last ate.

10 And he said it was 1530 hours, he had Wendy's
11 while he was on break from his job.

12 I asked him the last time he slept and for how
13 long.

14 He said he slept last night for about six
15 hours.

16 The top of the form has his name on it,
17 Michael O. Brown. Where. There is a place
18 indicated, which was the Richland County Sheriff's
19 Department, we used the initials RCSD. It has my
20 name on it as the officer advising the rights. The
21 date, 3/14/2013. And at 1640 hours.

22 The form has several bullets on it. And it
23 starts off with: Your Rights. And it says:

24 Before we ask you any questions you must
25 understand your rights. And I marked: Check.

1 You have the right to remain silent. That
2 block is checked.

3 Anything you say can be used against you in
4 court. That block is checked.

5 You have the right to talk to a lawyer for
6 advice before we ask you any questions and to have
7 a lawyer with you during any questioning. That
8 block is checked.

9 If you cannot afford a lawyer, one will be
10 appointed for you before any questioning if you
11 wish. That block is also checked.

12 If you decide to answer questions now without
13 a lawyer present, you still have the right to stop
14 answering at any time. You also have the right to
15 stop answering at any time until you talk to a
16 lawyer. That block is checked.

17 It is witnessed by me and signed by Michael
18 Brown.

19 It also has a Waiver of Rights, which is the
20 portion below that. And that block reads:

21 I have read this statement of my rights and I
22 understand what my rights are. I am willing to
23 talk and answer questions. I understand and know
24 what I am doing. No promises have been made to me
25 and no pressure or coercion of any kind has been

1 used against me.

2 I have coercion circled. I asked the
3 Defendant if he knew what coercion meant. He said
4 he did.

5 I wanted to explain that everything he gave me
6 was because he wanted to give me the statement, not
7 because anyone was forcing him to or holding
8 anything against him. He agreed.

9 At the top on the line that says, Anything you
10 say can be used against you in court, there is two
11 letters, RA. I have that for Read Aloud. And he
12 read that line aloud to me so I could verify that
13 he could read and write.

14 Q And while you were going over that Advice of Rights
15 with him, did he seem to understand what you were
16 saying?

17 A Yes.

18 Q Did he indicate that he was able to read and write?

19 A Yes.

20 Q And he indicated that he understood the rights that
21 he was given?

22 A Yes.

23 Q And he signed a waiver of those rights?

24 A Correct.

25 Q During the course of this conversation that the two

1 of you were having, was he denied the ability to
2 use the bathroom?

3 A No.

4 Q Was he denied water?

5 A No.

6 Q Was he denied food?

7 A No.

8 Q And he understood that at any point he could stop
9 talking to you and go?

10 A Yes.

11 Q And can you tell me what, if anything, he said to
12 you over the course of that conversation?

13 A We discussed some of the -- what he was charged
14 with and how he came to that charge, because his
15 DNA was left behind at the scene.

16 I asked him if he had ever been to the Chuck
17 E. Cheese, had he ever been to that location. He
18 said he had -- I believe it was in 2011, 2012
19 timeframe -- and he went there for a party for some
20 relative of his girlfriend, Ms. Castro.

21 I asked him if he had ever worn a wig. He
22 said he had never worn a wig.

23 I asked him why his DNA would be left at the
24 scene. He didn't have a valid reason as to why
25 that would be.

1 I asked him the last time he had been to that
2 area, that part of St. Andrews Road and Burning
3 Tree, and he said he hadn't been there since he was
4 there at that party in about 2011, he hadn't been
5 on that side of town.

6 Q Did there come a point in time in which you guys
7 began talking about him possibly giving a DNA
8 sample?

9 A Yes. As we went through it, I wanted to collect
10 DNA. Our process is to validate that DNA sample
11 with the DNA that was on file. Again, that is part
12 of the DNA lab's protocols.

13 I asked for a sample, and he told me, no, that
14 it would convict him.

15 Q Did he make any other statements regarding offers
16 to plead to this case, conversations about you
17 possibly helping him with the charge, or anything
18 of that nature?

19 A Yes. He didn't really deny the evidence. He said
20 he wasn't going to challenge the DNA, that he knew
21 the DNA would be enough to convict him. That is
22 his words.

23 He knew that -- he wanted a lesser charge. He
24 wanted to know if he could be charged with
25 something else because he knew that this carried

1 the possibility of life.

2 Q And did you indicate to him that that was something
3 you weren't able to do?

4 A I did. I told him that was between his attorney
5 and the Solicitor's Office. I don't make deals.

6 (WHEREUPON, State's Exhibit No. 2 was
7 marked for identification only.)

8 BY MS. M. WALKER:

9 Q You said you requested a DNA sample from him. Is
10 there a form that the Sheriff's Department uses?

11 A It is. It is a Consent to DNA form.

12 Q I want to show you State's Exhibit 2 and ask if you
13 recognize that?

14 A This is our standard DNA collection form.

15 Q And this is the one that was shown to Michael Brown
16 and he refused?

17 A He did.

18 Q And at any point had he told you that he wanted to
19 stop talking to you, would you have stopped the
20 conversation?

21 A We did stop. That was what he indicated, he didn't
22 want to talk about his case anymore. He was
23 allowed to use the cell phone -- or use the phone
24 in my office, and he called Ms. Castro.

25 Q Judy Castro?

1 A Yes.

2 Q At any point did you force Mr. Brown to engage in
3 these conversations?

4 A No.

5 Q This was all done freely and voluntarily?

6 A Yes.

7 MS. M. WALKER: Your Honor, I don't have any
8 further questions.

9 THE COURT: Ms. Walker?

10 MS. A. WALKER: May it please the Court?

11 CROSS-EXAMINATION(JURY OUT)

12 BY MS. A. WALKER:

13 Q Investigator Martin, approximately how long did you
14 interview Mr. Brown?

15 A I'm not sure. I don't know how long the process
16 took.

17 Q You are not sure if it was less than 30 minutes,
18 longer than 30 minutes, anything of that nature?

19 A I believe it would have been more than 30 minutes,
20 but, again, I don't recall how long the full
21 conversation was.

22 Q And you took notes about this conversation in your
23 investigative follow-up; correct?

24 A Yes.

25 Q And you said that Mr. Brown didn't write anything

1 down?

2 A No.

3 Q And you didn't write anything down for him to sign?

4 A He refused to have a written statement.

5 Q Right. And did he ever tell you that he did not
6 rob the Chuck E. Cheese?

7 A He didn't.

8 Q He did not?

9 A He did not.

10 Q Okay. So you write down a couple of the statements
11 that he made. At the end of the conversation is
12 when you asked for the DNA?

13 A I'm not sure. I might have a timeline. I'm not
14 sure what the time was on the DNA. It was either
15 during or at the end.

16 Q Okay. And you indicate in your notes that when you
17 asked him for DNA that he declined until he had
18 spoken to an attorney?

19 A Is that what it says on my notes?

20 Q Do you have your notes?

21 A I do. (Reading notes.) I do have that in my
22 notes, yes.

23 Q But you don't have in your notes that he said, I'm
24 not giving you my DNA because it will convict me?

25 A I don't see that in my notes, but that is what was

1 said.

2 Q Okay. So it is fair to say there are things that
3 you did not put in your notes?

4 A It is not a verbatim line-by-line exact
5 conversation of what took place.

6 Q But you wanted to put as much information as you
7 could in your notes?

8 A And I did.

9 Q And especially since he doesn't sign the statement?

10 A (No response.)

11 Q And the phone call that was made to Ms. Castro, was
12 that recorded?

13 A It was on a recorded line. I don't know if it was
14 actually captured or recorded. I didn't make a
15 request for it. I don't know.

16 Q So you heard the other side of the conversation?

17 A I was sitting there while he made the conversation.

18 Q Okay. And you said it was about 30 minutes that
19 you spoke with him probably, give or take?

20 A Again, I don't know exactly how long it took.

21 Q And was he handcuffed during this time?

22 A No, he wasn't.

23 Q You were in your cubicle?

24 A Yes.

25 Q And you said that he had been arrested by the

1 Fugitive Task Force?

2 A He was.

3 Q Okay. Anything additional that you did not write
4 down in your notes that Mr. Brown stated?

5 A As in?

6 Q Well, you indicated you took notes about the
7 conversation. Is there anything of substance that
8 he indicated outside of the statement the DNA would
9 convict him, is there anything additional that you
10 would like to add?

11 A I didn't actually give a written statement, so as
12 far as if you want to ask me questions about what
13 he said.

14 Q Yes. And Ms. Walker went through that with you,
15 that he -- that you asked him if he had been at
16 Chuck E. Cheese?

17 A Yes.

18 Q If he had been in the St. Andrews area?

19 A Yes.

20 Q And then you asked him about wearing a wig?

21 A Yes.

22 Q And then you asked him about the charges, prior
23 charges, that he had pending?

24 A I did.

25 Q Okay. And you said -- you indicate that what he

1 says is, He is not going to fight DNA?

2 A He said he wasn't going to fight the DNA.

3 Q And wanted to know if he could be charged with
4 something less serious?

5 A He did. He said he wanted a plea in this case.

6 Q But in the conversation to Judy Castro he says he
7 is being framed?

8 A He did. He changes to her. However, I kind of
9 looked at his cell phone, and there is pictures of
10 other nude women and things. I'm not sure how
11 honest he is with his fiancée.

12 Q Okay.

13 A So he did start the story and said that he was
14 being framed by someone.

15 So I asked the question: Well, if you are
16 being framed by someone, who is it? Who do you
17 think it might be? To explore that avenue. And he
18 declined to give her he was involved in something
19 serious.

20 Q So he did tell Ms. Castro, I didn't do this?

21 A Yes, he told Ms. Castro that.

22 Q Okay. And do you know when in the conversation --
23 so it indicates by your note that he declined to
24 give you DNA until he had spoken to an attorney.
25 Do you know when he made the statement regarding,

1 No, I'm not giving you DNA, that will convict me?

2 A Again, I don't remember if it was during or at the
3 end or before he made the phone call. I'm not sure
4 when he made that.

5 MS. A. WALKER: Thank you, Your Honor. Beg
6 the Court's indulgence.

7 (Pause.)

8 MS. A. WALKER: I have no further questions
9 for this witness, Your Honor.

10 THE COURT: Anything?

11 MS. M. WALKER: Nothing, Your Honor.

12 THE COURT: Thank you, sir. You may step
13 down.

14 THE WITNESS: Thank you.

15 (Witness steps down.)

16 THE COURT: Anything further?

17 MS. M. WALKER: We don't have any other
18 witnesses for this Denno hearing.

19 THE COURT: Anything else?

20 MS. A. WALKER: We have no witnesses, Your
21 Honor, for the Denno hearing.

22 THE COURT: All right. Any --

23 MS. A. WALKER: Your Honor, my only challenge
24 regarding the voluntariness regarding this new
25 statement that we have, Investigator Martin

1 unfortunately is unable to recall exactly how long
2 the event occurred, how long -- and exactly what
3 order things happened when he declined DNA.

4 What Investigator Martin's notes do indicate
5 is that Brown asked -- Investigating Officer asked
6 for DNA from Brown, and he declined until he had
7 spoken to an attorney. That is what the notes
8 indicate regarding one question for DNA.

9 My only concern is that the statement is given
10 after my client has essentially invoked his Sixth
11 Amendment Right to Counsel, which he chose after
12 questioning. At this point he is unable to recall
13 exactly when the statement was given regarding this
14 interview.

15 My concern is that is outside the parameters
16 of Miranda and that my client invoked his Sixth
17 Amendment Right to Counsel at that point.

18 MS. M. WALKER: Your Honor, I think
19 Investigator Martin testified that he said, I did
20 stop the conversation. I stopped it when he said
21 that he wanted -- he wasn't going to give DNA until
22 he talked to an attorney. He indicated on direct
23 examination when I was questioning him that he did
24 stop the interview and he stopped it at that point.

25 THE COURT: All right. Well, first of all, I

1 am going to find that there is no question that the
2 Defendant is not questioning whether he made the
3 statement. They are acknowledging that he made the
4 statement. They disagree with the contents of the
5 statement.

6 I'm going to find that the statement was
7 voluntary. That he was in custody and he was given
8 the appropriate Miranda Warnings that: He had a
9 right to remain silent. Anything he said could be
10 used against him in a court of law. He had the
11 right to an attorney to be present. That if he
12 couldn't afford one, one would be appointed for
13 him. That he could exercise these rights
14 throughout -- anytime during the course of the
15 interrogation. And that knowing all that, he
16 waived his rights.

17 Here are concerns I have. He testified that
18 the Defendant made a statement, I'm not going to
19 give a DNA sample because it would convict me. And
20 then he further testified that when the Defendant
21 exercised his rights, he stopped.

22 So that I take means that the Defendant made:
23 I'm not going to give DNA because it will convict
24 me. And then at some point in time -- the
25 inference is that at some point in time he further

1 went on and said, I need to talk to an attorney.
2 And that is when they stopped.

3 Here is the concerns I have. One, are y'all
4 planning on putting -- getting this investigator to
5 testify that he is looking at life in prison?

6 MS. M. WALKER: No, Your Honor. We would not
7 elicit that. And I have advised Mr. Martin --
8 Investigator Martin in my office this morning to
9 not mention it.

10 THE COURT: I am not having any of that. The
11 other thing is, I mean, his declining to take --
12 give a DNA sample, that is kind of like his
13 declining to give a statement. I mean, he has a
14 right to not do that.

15 And if you ask him -- if he says, Well, I
16 decline to do that, aren't you -- isn't that kind
17 of like saying, Well, we asked him to give a
18 statement and he invoked his Fifth Amendment
19 rights?

20 MS. M. WALKER: One second, Your Honor. Beg
21 the Court's indulgence.

22 THE COURT: Which is not proper.
23 (Pause.)

24 MS. M. WALKER: If I could just have a -- I'd
25 like to do a little bit more research on that, Your

1 Honor, if you don't mind. I know we won't talk
2 about it in the opening, but I think he is saying,
3 I know DNA will convict me.

4 THE COURT: Well, I mean, that portion may be
5 admissible, but to say that, I want to exercise my
6 right to not give DNA because it would convict me,
7 I mean, I think you have got a problem.

8 MS. M. WALKER: I understand, Your Honor. If
9 I could just have --

10 THE COURT: Do y'all understand what I'm
11 saying?

12 MS. A. WALKER: Certainly, Your Honor. And in
13 my motion to redact and suppress statements, I
14 certainly have an issue with that, that he is at
15 that point refusing a warrantless search, which he
16 has every right to do. I think that any comment --

17 THE COURT: Well, I tend to agree, that there
18 can't be any testimony, We asked him for his DNA
19 sample and he refused to give it to me.

20 MS. M. WALKER: Could there be testimony along
21 the lines of --

22 THE COURT: The question is -- I mean, if he
23 voluntarily makes the statement, DNA would convict
24 me, consistent with, I'm not contesting DNA in
25 this, which apparently is what the officer said he

1 said, I'm not going to contest the DNA in the
2 matter and DNA would convict me -- I'll give y'all
3 about five minutes when we get back to see what you
4 can find out about it. I'm sort of inclined to
5 maybe let that in, but nothing that -- that he was
6 asked to give a DNA sample and he refused to do so,
7 because he doesn't have any obligation to give a
8 DNA sample.

9 MS. M. WALKER: I understand.

10 MS. A. WALKER: And, Your Honor, I do have
11 that concern as well. I have concern with
12 redacting part of the statement, No, I'm not giving
13 DNA, that will convict me. It seems that he gives
14 a number of statements that are kind of -- he
15 declined to give a statement -- he declined to give
16 DNA until he spoke to an attorney, he declined to
17 give DNA --

18 THE COURT: We are not bringing up anything
19 about his declining. He has that right and we are
20 not going to address that issue.

21 MS. A. WALKER: Certainly.

22 THE COURT: For whatever reason. I decline
23 because I want to see an attorney or talk to an
24 attorney, that is not coming in.

25 MS. A. WALKER: Certainly, Your Honor.

1 THE COURT: I decline to give DNA for whatever
2 reason. He doesn't have to give DNA. He doesn't
3 have to testify. He doesn't have to do anything.

4 MS. A. WALKER: And my only concern in
5 redacting that statement, I guess, is that is
6 somewhat confusing and that we don't have a record
7 that that statement was ever given. Investigator
8 Martin said --

9 THE COURT: Well, you clearly can attack the
10 fact that, Oh, everything was -- you wrote
11 everything down but this, the thing that is
12 probably one of the most crucial things that he
13 said, DNA would convict me.

14 MS. A. WALKER: Certainly, Your Honor.

15 THE COURT: That is a matter of believability.
16 I think you can cross-examine about that and he
17 will have to justify why he did or didn't do what
18 he did.

19 MS. A. WALKER: And, Your Honor --

20 THE COURT: But, anyway, I'm not going to --
21 y'all look at what you want to look at at lunch and
22 we'll talk about five minutes. But that is sort of
23 my inclination at this point.

24 MS. A. WALKER: And, Your Honor, there are
25 some other -- we should probably talk about the

1 statement as a whole. There are some other
2 statements, according to Investigator Martin, that
3 are said.

4 I believe that, one, Investigator Martin said
5 that he asked about the prior -- the pending armed
6 robbery that he was facing in Springdale. And I
7 don't believe that would be admissible. So I would
8 ask that that be taken out of the statement as
9 well.

10 And then there are some statements
11 regarding --

12 THE COURT: Well, they had indicated that Lyle
13 is not an issue in this thing. Any prior bad acts,
14 or anything like that, they are not going to go
15 into, which is one of your motions. And they said
16 they are not going to go into that stuff.

17 MS. A. WALKER: Certainly, Your Honor.

18 THE COURT: We are not talking about any other
19 pending charges against him.

20 MS. A. WALKER: And then I believe he gives
21 a -- there is a paragraph indicating -- talking
22 about the DNA --

23 THE COURT: What?

24 MS. A. WALKER: Where he talks about the DNA,
25 talks about looking at a life sentence, which we

1 have already said that that is not coming in. But,
2 also, the investigating officer asked about his
3 prior charges, meaning his prior convictions. I
4 just ask that anything regarding that be taken out
5 as well and not be mentioned.

6 THE COURT: Well, they know better than that.

7 MS. A. WALKER: Certainly, Your Honor. And I
8 think -- I would put on the record, Judge, the
9 offer to plead guilty, I would argue to exclude it
10 as an offer to plead guilty shouldn't be
11 admissible. I would put that on the record.

12 And other than that --

13 THE COURT: We aren't putting that. Don't go
14 into the fact that he offered to plead.

15 MS. M. WALKER: We can't go into the fact that
16 he offered -- Your Honor, this wasn't a plea
17 negotiation that took place between -- this wasn't
18 a plea negotiation that took place between his
19 attorneys and us. This was him walking in and
20 saying, I want -- it is an admission of guilt, Your
21 Honor. He is saying, I want to plead guilty, can
22 you help me out on my sentence, that he had with
23 Investigator Martin. This wasn't a -- this was not
24 a plea negotiation.

25 Investigator Martin didn't say, Well, I can

1 offer you this, or anything of that line.

2 THE COURT: All right. I'll think about it.

3 MS. A. WALKER: And, Your Honor, my response
4 to that is that he -- in the conversation he
5 says -- it sounds like the conversation starts by
6 Investigator Martin saying, Your DNA is found at
7 the scene.

8 And then Mr. Brown says something to the
9 effect of, Well, what DNA?

10 And he says, Your DNA.

11 And that is the information he is given. And
12 then at that point he responds with an offer to
13 plead guilty.

14 I would still argue it is prejudicial and
15 probative value. I don't think that is a
16 confession, Your Honor. And, Your Honor, I would
17 just put that on the record.

18 THE COURT: Anything you say in here is on the
19 record so you don't have to say, I'm going to put
20 it on the record.

21 MS. A. WALKER: Just in abundance of caution.
22 And then, Your Honor, I am going to turn it over to
23 Ms. Dyar for a couple of things.

24 THE COURT: All right. The motion regarding
25 the Defendant's phone calls at Lexington County

1 Detention Center, what is that? Do y'all have
2 phone calls that you are going to introduce?

3 MS. M. WALKER: Your Honor, I shared this with
4 Ms. Walker. They have all the phone calls that we
5 have at this point. There are a number of phone
6 calls that I think -- there are none that I plan to
7 introduce in our case in chief, unless there is
8 something that they go into on cross-examination
9 that triggers my desire to put that in.

10 THE COURT: All right. Well, we will deal
11 with that if that becomes an issue.

12 MS. A. WALKER: Certainly. And my concern
13 was -- I'd say about two weeks ago they turned over
14 about 1300 files regarding phone calls. We did our
15 best to get through as many as we humanly could.
16 Unfortunately, I got through 2014 and not so
17 much --

18 THE COURT: Well, they don't intend to
19 introduce any phone calls in their case in chief.

20 MS. A. WALKER: Certainly. We just ask for
21 notice.

22 THE COURT: If they do in reply, then we'll
23 have to address it at that time.

24 MS. A. WALKER: Certainly, Your Honor.

25 THE COURT: What else?

1 MS. DYAR: Your Honor, I believe they are
2 trying to introduce a Facebook photo or a photo
3 that is on Mr. Brown's phone where he has got on a
4 bandanna and maybe another picture that has --
5 where he is wearing white shoes. The person in
6 this video of this incident at the Chuck E. Cheese
7 has on a red bandanna and also wearing white shoes.
8 There are several issues with that. They are not
9 unique pieces of clothing. I think it is more
10 prejudicial than relevant to the case.

11 It comes from his phone, which there is Riley
12 v. California where there was no warrant to search
13 the phone. And we have no idea where the picture
14 was taken.

15 Cell phone records should be admissible. They
16 have got the picture they want to introduce and
17 possibly some text messages. I just argue that --

18 THE COURT: We will talk about -- the cell
19 phone is not introduced because you say it violates
20 Riley v. California; right?

21 MS. DYER: Correct.

22 THE COURT: Well, didn't Riley v. California
23 say that it is not retroactive, that if in good
24 faith -- it was permissible before and then they
25 acted in good faith, then --

1 MS. DYAR: That was in Davis, the Davis case
2 that said that?

3 THE COURT: I think it was Davis, yes.

4 MS. DYAR: And the difference -- the
5 distinction between the two cases, Riley v.
6 California was reversed and remanded.

7 THE COURT: Well, I understand that.

8 MS. DYAR: And his case is still pending at
9 this time. So we would just argue that this case
10 would apply to him and he should get -- they didn't
11 have a search warrant at the time.

12 THE COURT: What do y'all want to say? Well,
13 Riley v. California wasn't pending -- I mean, the
14 decision at the time that they made the arrest and
15 went through the cell phone. What do y'all want to
16 say?

17 MS. M. WALKER: Your Honor, Investigator
18 Martin acted in good faith at that point in time
19 when he did the cell phone dump, so I think, Your
20 Honor, the contents of the cell phone would be
21 admissible.

22 THE COURT: All right. I am going to deny
23 your motion.

24 MS. DYAR: And I do have another part to that,
25 Your Honor. They just found this picture of him on

1 his phone last week, and Riley v. California came
2 down the end of June. They could have gotten a
3 search warrant at that point. They just searched
4 it in their office like last week, the picture.

5 MS. M. WALKER: As we always do, Your Honor,
6 we brought the evidence over to -- we brought the
7 evidence over to be viewed by Defense counsel
8 pursuant to their request. We turned the phone on
9 and looking at it see the text messages that were
10 on the phone dump. There are a number of pictures
11 that are on there, Your Honor, that were on there
12 at that point in time.

13 THE COURT: Wait a minute. So y'all went --
14 law enforcement went through the cell phone at some
15 point in time prior to the Riley decision?

16 MS. M. WALKER: Yes, Your Honor.

17 THE COURT: And came up with whatever it is
18 that they came up with?

19 MS. M. WALKER: Yes, sir.

20 THE COURT: All right. Well, I am going to
21 find that that is admissible.

22 MS. M. WALKER: Okay.

23 THE COURT: All right. Since then y'all have
24 gone back through the cell phone and gotten
25 additional evidence from the cell phone on a second

1 Look?

2 MS. M. WALKER: Your Honor, I don't know if
3 it -- it was on the phone.

4 THE COURT: I understand that. But you didn't
5 have it --

6 MS. M. WALKER: No, no, we didn't have it.
7 There were pictures and videos that were not dumped
8 on the phone. There are pictures and videos that
9 were in evidence, though, at that point.

10 THE COURT: Why didn't you get a warrant?

11 MS. M. WALKER: Your Honor, because at that
12 point it didn't occur to get a warrant because the
13 cell phone had already been dumped and had been in
14 evidence some period of time. But, Your Honor,
15 what I can tell you that may alleviate some of
16 their concerns is that once the cell phone was
17 turned back on, they saw the pictures. They were
18 shown the picture. Ms. Dyar wasn't there. It
19 was Ms. Walker and Ms. Pringle sitting in my
20 office.

21 At some point the phone connected to the
22 wireless internet here and he was logged out of all
23 of his social media accounts, so we can't actually
24 pull the picture up. The picture -- he can testify
25 about --

1 THE COURT: So all this we don't need to be
2 talking about?

3 MS. M. WALKER: Right. Because he can
4 testify -- Investigator Martin saw the picture. He
5 can testify as to --

6 THE COURT: Saw it when?

7 MS. M. WALKER: Last week.

8 THE COURT: I'm not going into that.

9 MS. M. WALKER: Okay.

10 MS. DYAR: And I know -- just with the text
11 messages, the relevance of the ones that I think
12 they are trying to admit, I don't think they are
13 relevant in this case, even outside of, you know,
14 not having a search warrant.

15 THE COURT: I don't know what they are trying
16 to go into.

17 MS. M. WALKER: Your Honor, that would depend
18 upon how their case unfolds.

19 MS. DYAR: I think there was one that was like
20 an incoming message from someone about a gun.

21 MS. M. WALKER: We are not going into that.

22 MS. DYAR: Okay. No need.

23 THE COURT: All right. What else?

24 MS. A. WALKER: And, Your Honor, I did bring
25 up State v. Lyle. As you said -- or they have

1 indicated they aren't.

2 THE COURT: That is not an issue.

3 MS. A. WALKER: And I understand they are not
4 wanting to bring in that. There is somewhat of an
5 odd issue here that may come up. So there is a
6 Springdale case that happened roughly about seven
7 days prior to the Chuck E. Cheese armed robbery.
8 And that is what Mr. Brown is also charged with,
9 which is where all the concern was coming in.

10 However, there is a small piece of discovery
11 in the Springdale case that indicates a wig and a
12 gun were located at his house because his father
13 called it in.

14 And I believe they alluded in chambers that
15 they may bring that in, and I want -- if they don't
16 want to bring that in, certainly we can stop this
17 line of motion right now, but at this point I would
18 move to suppress any mention of wig and gun found
19 in a bag.

20 MS. M. WALKER: Your Honor, my understanding
21 is this Defendant, when he is talking to
22 Investigator Martin, said, I don't know anything
23 about a wig, I don't know anything about a
24 bandanna, and I never had a gun.

25 And that would go to the credibility, the wig

1 and bandanna being found at his home, without even
2 mentioning the fact that there was another armed
3 robbery that he committed. I think it would go to
4 the credibility of that statement that he gave to
5 Investigator Martin.

6 MS. A. WALKER: And, Your Honor, there is
7 absolutely no information that this is in any way
8 related.

9 What happened was the father says, Hey, I
10 found this in the yard with --

11 THE COURT: Is there allegedly a wig in this
12 case?

13 MS. M. WALKER: He was wearing a wig on his
14 head, Your Honor, and a -- the robber that walked
15 in Chuck E. Cheese has on a wig and a bandanna. He
16 then -- the robber then runs out, runs around the
17 restaurant to another restaurant/night club.

18 At that point, Your Honor, once police
19 officers arrive, K-9 tracked to the wig and
20 bandanna. The DNA, Your Honor, that is found is
21 found on the bandanna in this case.

22 When Investigator Martin shares that
23 information with Mr. Brown, Mr. Brown's response
24 is, I have never had a wig, I have never had a
25 bandanna, I have never had a gun.

1 And so I think those things they found in a
2 bag at his home, Your Honor, would directly
3 contradict that statement that he gave to
4 Investigator Martin, without even mentioning the
5 fact that there is another armed robbery out there.

6 THE COURT: All right. Well, how do you tie
7 the wig, the bandanna, and the gun at home to him?

8 MS. M. WALKER: Your Honor, his father called
9 law enforcement and said, There is this wig and
10 bandanna at my house. Yes. And that there is some
11 information I think in the Springdale armed robbery
12 that is where he was living at the time.

13 THE COURT: Well, how do you tie it to him as
14 opposed to somebody else? Did his father say, Hey,
15 this is my son's wig, gun, and bandanna?

16 MS. M. WALKER: I can doublecheck.

17 THE COURT: Is his dad going to testify to
18 that?

19 MS. A. WALKER: Your Honor, I believe the
20 father actually called while Mr. Brown was still
21 incarcerated. But it was found in his yard, Your
22 Honor.

23 THE COURT: What is found in the yard?

24 MS. A. WALKER: It is a duffel bag, I think.
25 I haven't seen it because it is in evidence in

1 Springdale. It is a duffel bag that apparently
2 contains a wig. I don't know what it looks like or
3 what -- how it is related -- a gun, which isn't --

4 THE COURT: Well, I'm still trying to figure
5 out how it gets tied into --

6 MS. A. WALKER: And that is my argument as
7 well. It has no tie other than the dad called it
8 in at some point, like, Hey, I found this in the
9 yard, come get it out of my yard.

10 I don't think there is any testing. I don't
11 think that Mr. Brown made any statements, et
12 cetera, et cetera.

13 MS. M. WALKER: I understand her point, Your
14 Honor. I think that would go to more of the weight
15 of the evidence as opposed to the admissibility of
16 the evidence if it is found at the home that he
17 shares with his father and his father is calling to
18 say, This isn't mine, y'all come get it.

19 THE COURT: I think if the father is going to
20 testify, This was my son's wig and bandanna, it
21 would go to his -- the credibility of the statement
22 he made previously. But just because there is a
23 wig and a bandanna found at the house, it is not
24 tied to your Defendant. I don't see that.

25 MS. M. WALKER: Okay. Thank you, Your Honor.

1 MS. A. WALKER: And nothing further on that
2 matter. There is no other Lyle information just
3 regarding the wig and the bag.

4 And then, Your Honor, just how we wanted to
5 deal with referencing the database and CODIS
6 because the way he is arrested initially is by a
7 match is done, obviously from being placed in the
8 DNA database due to a prior criminal charge, just
9 exactly how we want to deal with that on the record
10 to avoid that sort of information.

11 MS. M. WALKER: Your Honor, usually we just
12 refer to it as a database, no DNA sample, without
13 going into CODIS or SLED database.

14 MS. A. WALKER: Or why they are there or
15 anything. I just wanted -- and I know DNA database
16 is perfectly fine. I just want to make sure. We
17 certainly wouldn't go into any information about
18 how it got there, and things of that nature.

19 THE COURT: All right. Anything else?

20 MS. A. WALKER: Last thing, Your Honor, is if
21 there is in any possible in-court identification.
22 Certainly considering the issues of the line-up,
23 that nobody has been able to identify my client at
24 this point. And as far as I know, the line-up has
25 only shown -- and this is information I learned

1 today -- that the line-up was only shown to Ronnie
2 Kennedy Martin. It was not shown to Kadeshia or
3 Kyrie.

4 MS. M. WALKER: That's correct, Your Honor.

5 MS. A. WALKER: And it was shown on
6 March 14th?

7 MS. M. WALKER: The date is on the -- 3/14.

8 MS. A. WALKER: And, Your Honor,
9 unfortunately, I'm somewhat confused. Your Honor,
10 may I approach to show you --

11 THE COURT: About what?

12 MS. A. WALKER: About this line-up. Now, I
13 received this blank line-up in discovery is what I
14 received, this line-up. Nothing is indicated on
15 either one of them. And then a blank photo line-up
16 sheet.

17 Upside down it looked to me like it says Rob
18 Martin, 3/14/13, maybe 2000 hours? I don't know.
19 I'm not sure what that means. I'm not sure -- I'm
20 trying to --

21 THE COURT: I don't know what the situation is
22 here. Apparently we have a witness named Martin
23 and we have an investigator named Martin.
24 Investigator Martin went to Witness Martin; is that
25 correct?

1 MS. M. WALKER: Yes, Your Honor.

2 THE COURT: And had a photo line-up that had
3 five or six individuals. And he showed Witness
4 Martin the photo line-up. And Witness Martin
5 looked at it and was not able to make a positive
6 identification; is that correct?

7 MS. M. WALKER: Yes, Your Honor.

8 THE COURT: Now, what do you --

9 MS. A. WALKER: I guess I'm asking if there is
10 any anticipation of an in-court ID from the
11 witnesses in this case?

12 THE COURT: Well, I don't know. I mean, I
13 don't know how you stop -- if somebody walks into
14 the courtroom and says, Hey, I recognize that
15 person now, nobody has ever shown me any kind of
16 identification, I don't know how you stop that. I
17 don't know that they know that the witness is going
18 to be able to make an in-court identification if
19 they have never seen the person before.

20 MS. A. WALKER: Certainly, Your Honor.

21 THE COURT: But if you are asking me that any
22 witness that comes in here and says, Oh, now that I
23 have seen this person I recognize him and that is
24 the person, that I say that they can't testify to
25 that? I don't think I can do that.

1 MS. A. WALKER: And, Your Honor, I guess I'm
2 just asking out of an abundance of caution in light
3 of the fact that I --

4 THE COURT: As of right now, do you know of
5 anybody that is going to make an in-court
6 identification?

7 MS. M. WALKER: Your Honor, the extent of
8 my -- the victims in the case just arrived.

9 THE COURT: I know. I'm asking you as of
10 right now.

11 MS. M. WALKER: I do not. As of right now, I
12 do not know that anybody is going to come in here
13 and identify this Defendant as to the robbery.

14 MS. A. WALKER: And, Your Honor, I think I
15 fleshed out all issues. No line-up was shown to
16 any other witness except the one.

17 THE COURT: All right. So we are going to
18 talk about whether the Phase II of the statement, I
19 know DNA will convict me, is admissible. And I'm
20 inclined to allow that in.

21 And what was the other thing we were going to
22 talk about that y'all --

23 MS. M. WALKER: Whether or not his declining
24 to take -- to give the sample, I think --

25 THE COURT: I have already ruled he can't.

1 MS. M. WALKER: Okay. Then I'm not sure.

2 THE COURT: There was something else that you
3 wanted me to -- that I indicated I was not going to
4 go for you, and you told me how wrong I was.

5 MS. M. WALKER: If that is how it happened,
6 Your Honor, that was not my intention.

7 THE COURT: I'm just kidding you.

8 MS. M. WALKER: Okay.

9 THE COURT: What was it?

10 MS. M. WALKER: Oh, his offer to plead guilty.

11 MS. A. WALKER: Yes, Your Honor.

12 MS. M. WALKER: Which our office wasn't
13 involved in that. His attorneys weren't involved
14 in that. It was not part of the plea bargaining or
15 plea negotiation process. And if it was, I would
16 completely understand their objection to it because
17 that wouldn't be admissible.

18 THE COURT: Wasn't the statement he offered to
19 plead guilty to something lesser?

20 MS. M. WALKER: He said, I need something
21 lesser, this will send me to prison for life, I
22 will plead guilty, I can't fight the DNA, is kind
23 of the gist of that statement, Your Honor.

24 THE COURT: All right. I will let y'all know.

25 MS. M. WALKER: Thank you, Your Honor.

1 THE COURT: But we do know that life is out.

2 MS. M. WALKER: We are not going there, Your
3 Honor.

4 THE COURT: All right. Anything else?

5 MS. M. WALKER: Nothing from the State.

6 THE COURT: All right. Well, we'll see you
7 back here and ready to go at 25 after, so you can
8 give me two minutes each as to why I should keep
9 out that statement.

10 MS. A. WALKER: Certainly, Your Honor.

11 THE COURT: All right.

12 MS. A. WALKER: Thank you.

13 (Lunch Recess.)

14 THE COURT: Are you ready to go? Did anybody
15 get me anything you wanted me to look at, case law
16 or anything?

17 MS. M. WALKER: Your Honor, just reviewing the
18 rule, I think they are trying to use the bar
19 statement.

20 THE COURT: Which statement?

21 MS. M. WALKER: The statement about the offer
22 to plead guilty. Under Rule 410(4)--

23 THE COURT: Wait a minute. What?

24 MS. M. WALKER: 410(4).

25 THE COURT: All right.

1 MS. M. WALKER: Any statement to a prosecuting
2 attorney. There was no prosecuting attorney
3 involved in this. It was not part of a plea
4 negotiation. This was done after he waived
5 Miranda.

6 And, Your Honor, this case has recently been
7 discussed in our Supreme Court -- I want to hand it
8 up -- State v. Willis, Your Honor.

9 May I approach, Your Honor?

10 THE COURT: Yes, ma'am.

11 (Complies.)

12 MS. M. WALKER: The Supreme Court, Your
13 Honor -- that case, Your Honor, is a case in which
14 the prosecuting agency entered into an agreement
15 with the Defendant that they could use --

16 THE COURT: Wait. Back up again. This is a
17 case what?

18 MS. M. WALKER: In which the prosecuting
19 agency -- I think the Attorney General's Office --
20 entered into an agreement with the Defendant that
21 said that if he at that point -- if he took a
22 polygraph and passed it, then they would not pursue
23 the charges. But if he took a polygraph and it
24 showed deception or dishonesty, or anything of that
25 nature, that anything that he pled to or anything

1 that he said as a part of this process could be
2 used.

3 And the Supreme Court said, you know, that is
4 different, y'all can't use that, even though there
5 was an agreement saying that you could, because
6 that is between a prosecuting agency, an attorney
7 and the Defendant, he can't waive that. But if it
8 is pursuant to Miranda, then he can have
9 discussion.

10 The things he says as part of his
11 investigation, admissions that he makes in terms
12 of --

13 THE COURT: Tell me exactly what he allegedly
14 said.

15 MS. M. WALKER: This Defendant, Your Honor,
16 this Defendant said, Can you help me with a plea, I
17 want to plead guilty, is my understanding. As a
18 part of his interrogation after being Mirandized
19 and the --

20 THE COURT: So, in other words, Find me
21 something I can plead guilty to and I'll plead
22 guilty, I don't want to plead guilty to this
23 charge?

24 MS. M. WALKER: I don't want to plead guilty
25 to this charge because this charge carries life,

1 but if there is something else that doesn't carry
2 life, I can plead guilty, is the gist of that
3 conversation.

4 THE COURT: I don't know about "doesn't carry
5 life." Something else I find acceptable.

6 MS. M. WALKER: Well, no, he said, This is
7 life. His understanding was this was life.

8 THE COURT: He would be pleading now if that
9 was the case, wouldn't he?

10 MS. M. WALKER: Your Honor, I'm not saying he
11 is correct, I'm just saying that that is what he
12 said. This case is life. If you have charged me
13 be this, this is life. But I want to plead guilty
14 to the charge. I can't fight the DNA. Yada yada
15 yada.

16 And there is no prosecuting agent -- attorney
17 that he is entering that negotiation with, Your
18 Honor. So our position would be that that is a
19 statement that he made to law enforcement after
20 being Mirandized and there is really nothing in the
21 Rule 410(4) that keeps it out.

22 THE COURT: What do you want to say there,
23 Ms. Walker?

24 MS. A. WALKER: Just briefly, Your Honor. It
25 looks like, according to notes, exactly what he

1 says is: Brown said he is not going to fight the
2 DNA. Brown wanted to know if he could be charged
3 with something less serious. He said he planned on
4 trying to plead to this charge.

5 Your Honor, I guess I just stand by at the
6 time that Mr. Brown is speaking to law enforcement
7 that he is attempting to enter into some sort of
8 negotiation, whether it was with the wrong party or
9 not. I would argue that --

10 THE COURT: Well, the rule does say the
11 prosecuting attorney; right?

12 MS. A. WALKER: It does, Your Honor.

13 THE COURT: All right. I am going to admit
14 it.

15 MS. M. WALKER: Thank you, Your Honor.

16 MS. A. WALKER: Thank you, Your Honor.

17 THE COURT: Did y'all find anything else on
18 the other?

19 MS. A. WALKER: Regarding?

20 THE COURT: DNA would convict me.

21 MS. A. WALKER: That specific statement? Your
22 Honor, my only argument is that is out of context
23 if we redact to that point. And he was asked for
24 DNA --

25 THE COURT: Would you rather have it the way

1 it is said?

2 MS. A. WALKER: Probably not. No, I don't
3 think so.

4 THE COURT: All right.

5 MS. M. WALKER: So he can say, DNA will
6 convict me?

7 THE COURT: But do not relate to the fact that
8 he refused to take -- I mean, submit himself for
9 the test. And at some point in time he made the
10 statement, DNA will convict him.

11 MS. M. WALKER: I understand, Your Honor.

12 THE COURT: All right. Are we ready to go?
13 Did y'all talk to the witness, Ms. Green, and told
14 Ms. Walker what it is -- whether she changed her
15 statement or added anything to her statement?

16 MS. M. WALKER: Yes, Your Honor. I spoke with
17 Ms. Walker over the break. I talked to the victim.
18 They said that it is like the same -- he had a mask
19 on so they couldn't really see his face. I am not
20 going to say that that is him. The person they saw
21 had the bandanna on, the wig on, and had the black
22 glasses on. There are pictures --

23 THE COURT: I know. But she wanted to know
24 if that had changed from what she had said before?

25 MS. M. WALKER: No, Your Honor.

1 MS. A. WALKER: I think that information that
2 Ms. Campbell said earlier, that I believe Ms.
3 Kadeshia Green said that -- she says out loud,
4 We're getting robbed. And Mr. Kyrie Green says
5 that when the suspect put the gun to his back he
6 says, Take me to the money. Is that correct? And
7 that is the information she gave me.

8 THE COURT: So it is consistent with what you
9 have? Weren't you worried about there had been --

10 MS. A. WALKER: Well, I wanted to make sure
11 there is no more additional, but she said that is
12 the only additional information, that's correct.

13 THE COURT: All right. So it is all the same?

14 MS. A. WALKER: Yes, Your Honor.

15 THE COURT: All right. Are y'all ready to go?

16 MS. M. WALKER: Yes, Your Honor. One more
17 thing.

18 THE COURT: Ma'am?

19 MS. M. WALKER: My victim is outside the
20 courtroom. Can I bring her in, then bring the jury
21 in?

22 THE COURT: Sure.

23 MS. M. WALKER: Thank you.

24 THE COURT: Mr. Dye, bring the jury in.

25 THE BAILIFF: Yes, sir, Your Honor.

1 (WHEREUPON, the jury came into open
2 court at 2:35 p.m.)

3 THE COURT: Ma'am, could I get you to move all
4 the way to the end?

5 THE BAILIFF: The jury is seated, Your Honor.

6 THE COURT: Ladies and gentlemen, I hope you
7 had a nice lunch. And before we get started, I
8 have to ask the clerk if she would swear you in,
9 please. Madam Clerk?

10 THE CLERK: Ladies and gentlemen of the jury,
11 please stand and raise your right hands to be
12 sworn.

13 (Jury complies.)

14 THE CLERK: At the end of the statement that
15 I'm about to give you, please respond by saying, I
16 do.

17 Do you swear or affirm that you shall well and
18 truly try and true deliverance make between the
19 State of South Carolina and the Defendant at bar
20 whom you shall have in charge and a true verdict
21 give according to the law and the evidence, so help
22 you God?

23 THE JURY: I do.

24 THE CLERK: You may be seated.

25 (Jury complies.)

1 THE COURT: All right, ladies and gentlemen,
2 as I told you, I am going to take a couple of
3 minutes and tell you a little bit about this
4 process in case you have not served on a jury
5 before or it has been some time since you have
6 served on a jury.

7 Again, I want to tell you that this case is
8 very, very important to both the State and the
9 Defendant. It is the one opportunity that both
10 parties have to come into a courtroom and an
11 independent fact-finding body such as yourself
12 listen to the evidence, ultimately apply the law,
13 and render a verdict and resolve this dispute that
14 exists between the State and Mr. Brown.

15 Now, the first thing that is going to happen
16 in this trial is the attorneys are going to have an
17 opportunity to get up and make an opening
18 statement. And the State will go first in making
19 the opening statement. As a matter of fact, the
20 State will go first throughout the course of the
21 trial. And they go first because the burden of
22 proof falls upon them to prove the allegations that
23 they are making against this Defendant. The
24 Defendant has no burden whatsoever. He doesn't
25 have to do anything. So because the burden falls

1 on the State, they go first throughout the course
2 of the trial.

3 The opening statement is the chance for the
4 lawyers to introduce themselves to you, to tell you
5 a little bit about the case, to inform you or
6 educate you as to what they believe will come out
7 during the course of the trial so that you have
8 some understanding of what is about to unfold when
9 they begin presentation of their evidence.

10 After the State makes their opening statement,
11 then the Defendant will go forward with the
12 Defendant's opening statement. When both parties
13 have completed their opening statement, the State
14 will begin presenting evidence in its case in
15 chief.

16 Most of its evidence I would think, ladies and
17 gentlemen, would come in by way of testimony from
18 witnesses who will be put under oath. They will
19 get in this witness box right here next to
20 Ms. McCurdy and they will tell you what they know
21 about this case. They have seen something, heard
22 something, smelled something, tasted something,
23 felt something. They have some knowledge from one
24 of their senses, and they will tell you what that
25 knowledge is.

1 Now, that is what we call a fact witness.
2 They get up and testify as to facts that they have
3 knowledge about.

4 We also might have what we call expert
5 witnesses in this case. And experts are people who
6 have specialized knowledge or training or skill in
7 a particular area. And that expert knowledge can
8 assist you in understanding some matters that may
9 be in controversy or some issue in this case.

10 An expert can offer opinions in his or her
11 areas of expertise. Fact witnesses don't get to
12 offer opinions. But an expert, a scientist, an
13 engineer, a physician, people such as that, can
14 offer opinions in their areas of expertise.

15 Other types of evidence may be things like
16 photographs, documents, that type of evidence is
17 actually introduced into evidence. It is given an
18 exhibit number. And it will go with you to the
19 jury room when you begin your deliberations so that
20 you can review those exhibits during the course of
21 your deliberations.

22 Testimony, ladies and gentlemen, will go to
23 the jury room in your memory. So it is absolutely
24 essential that you pay close attention to what is
25 being said here in the courtroom. If you don't

1 understand somebody, you can't hear somebody, let
2 me know somehow, raise the hand, let me know, and
3 we'll make sure that person either speaks more
4 clearly or louder, whatever it takes, because it is
5 essential that you hear what is being said in this
6 courtroom over the next several days.

7 A third type of evidence that could come in is
8 what we call a stipulation. And that is where the
9 parties stipulate or agree as to some fact or some
10 matter. If there is a stipulation the lawyers will
11 tell me and I will tell you and you are to accept
12 that as though it has been proven here in the
13 courtroom.

14 Now, ladies and gentlemen, after the State has
15 presented its evidence in its case in chief, the
16 Defendant is given an opportunity to put up
17 whatever evidence the Defense wishes to offer.
18 But, again, the Defendant has no burden in this
19 case. The Defendant doesn't have to put up any
20 evidence. It all falls upon the State of South
21 Carolina.

22 If the Defendant elects to put up a case, then
23 its evidence, the Defense evidence would be of a
24 similar nature of that of the State. And that is,
25 I think most of it would be testimony from

1 witnesses who would testify in this trial.

2 When both sides have completed the
3 presentation of their evidence in this case, then
4 the lawyers are given another opportunity to speak
5 with you, ladies and gentlemen. And this is called
6 a closing argument.

7 And a closing argument is a little bit
8 different than an opening statement in that the
9 closing argument is a chance for the lawyers to
10 review with you what they believe the evidence that
11 came in during the trial. It is a chance for them
12 to emphasize to you or point out to you what they
13 hope you will consider and discuss during the
14 course of your deliberations. It is an opportunity
15 for both lawyers to attempt to convince or persuade
16 you as to why you should ultimately return a
17 verdict for their respective client.

18 When both sides have completed their closing
19 arguments, ladies and gentlemen, then I will charge
20 you or instruct you as to the law. You will then
21 retire to the jury room to begin your
22 deliberations, determine the facts, apply the law,
23 and ultimately render your verdict.

24 Now, as I have told you, ladies and gentlemen,
25 your role in this case is that of the fact finders.

1 You are the judges of the facts. You are the sole
2 judges. Nobody else will participate in that
3 process.

4 My role is different from yours. My role is
5 twofold. One, I'm sort of the referee in this
6 case. Every structured event generally has rules,
7 and we have rules as to how a case should be tried,
8 rules of evidence and rules of procedure, and it is
9 my responsibility to see that those rules are
10 complied with.

11 My other responsibility, as I have told you
12 earlier, is to instruct you as to the law so you
13 can apply the law to the facts.

14 Now, ladies and gentlemen, we have good
15 lawyers in this case. And I want you to listen
16 carefully to whatever the lawyers say during the
17 course of this trial. But understand this. What
18 the lawyers tell you is not evidence. They are
19 advocates and they represent their respective
20 clients. And they are here hopefully on their part
21 to get what they are asking on behalf of their
22 client. They are not witnesses. They are not
23 providing evidence. And anything they say you
24 should not consider to be evidence and should not
25 be considered as such in the course of your

OPENING STATEMENT BY MS. MOSER

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1 deliberations.

2 Now, as I told you earlier, this is very, very
3 important, and we want to do everything we can to
4 see that both parties get a fair and impartial
5 trial. And I know you will pay close attention and
6 do what you have said you would do under your oath.

7 So, with that said, I will ask the State, are
8 you prepared to proceed?

9 MS. MOSER: Yes, Your Honor.

10 THE COURT: Ms. Moser, are you going to make
11 the opening statement?

12 MS. MOSER: Yes, Your Honor.

13 THE COURT: If you would, please, ma'am?

14 MS. MOSER: May it please the Court?

15 THE COURT: Yes, ma'am.

16 OPENING STATEMENT

17 MS. MOSER: Good afternoon.

18 THE JURY: Good afternoon.

19 MS. MOSER: Chuck E. Cheese is known as a
20 place where a kid can be a kid. Take a second and
21 think about what comes to mind when we hear the
22 phrase Chuck E. Cheese.

23 Without knowing any one of you, I would bet
24 that none of you pictured an armed gunman with a
25 mask and a wig entering a Chuck E. Cheese, grabbing

1 a person, putting a gun to his back, and demanding
2 money. But that is exactly what happened on
3 January 3rd, 2013.

4 The Defendant, Michael Brown, entered the
5 Chuck E. Cheese off of St. Andrews Road. He was
6 wearing a bandanna to cover his face, a wig. He
7 entered. He grabbed an employee, Mr. Kyrie Green,
8 took him to the back, asked for money, and then
9 fled the scene.

10 This was captured on video surveillance. We
11 see him entering and exiting the Chuck E. Cheese.
12 And the disguise, the bandanna, the wig, was all
13 found near feet from the incident.

14 Thankfully no one was injured in this case.
15 Thankfully this happened after hours. It closes at
16 9:00 o'clock. It happened after 9:00 o'clock. And
17 there were no kids around.

18 But for the employees that were there, the
19 employees that go to work every single day to a
20 place they consider safe, a place that is known to
21 be fun, they never could have expected anything
22 like this.

23 My name is Sandra Moser. Along with my
24 Co-Counsel, Meghan Walker, we represent the State
25 of South Carolina for the Fifth Judicial Circuit

1 and the people of Richland and Kershaw County. It
2 is our job to prosecute crimes. And we are here
3 today because the Defendant, Mr. Michael Brown, was
4 arrested and charged with attempted armed robbery.

5 Now, attempted armed robbery is the attempt to
6 take or carry away personal property of another
7 with the intent to deprive someone thereof while
8 using fear, intimidation, threat, and while armed
9 with a deadly weapon.

10 Now, in this case we don't have -- we are not
11 talking about a hand or a fist or even a baseball
12 bat. We're talking about a gun. And all those
13 things I mentioned before, they could be considered
14 a deadly weapon. But we're actually talking about
15 a gun here.

16 And you are going to hear from the witness
17 stand, you are going to hear how that gun made
18 those witnesses feel. You are going to hear from
19 Kyrie Green, who was there. He was an employee, a
20 cashier at Chuck E. Cheese. He came to work that
21 day like it was any other day. He was grabbed by
22 the Defendant. He was threatened by the Defendant.

23 You are also going to hear from a couple of
24 other employees. You are going to hear from
25 Ms. Kadeshia Green and you are going to hear from a

1 Ronnie Kennedy Martin, who was also there, who
2 witnessed the Defendant come in and then flash his
3 gun.

4 Now, you are going to hear from a lot of
5 different types of witnesses and you are going to
6 hear a lot of different types of evidence. You are
7 going to hear direct evidence, which is essentially
8 eyewitness, first-hand knowledge of something that
9 Kyrie Green will give you his first-hand knowledge
10 of the experience.

11 And you are also going to hear circumstantial
12 evidence in this case. Circumstantial evidence is
13 anything else that leads you to a conclusion.

14 The way that I try to explain this to people
15 is, you are getting ready for bed and look out the
16 window and it is completely dry outside. You go to
17 bed. You wake up the following morning. You look
18 out the window again and the trees, the grass,
19 everything is soaked. You can draw the conclusion
20 that it rained outside. Even if you didn't see a
21 single raindrop you can conclude that it rained.
22 And that is example of circumstantial evidence.

23 Now, you are going to hear not only from
24 witnesses who were there at the scene, but you are
25 also going to hear from law enforcement.

1 Deputy Sullivan was the first person to arrive
2 on the scene. He is going to tell you what he saw.
3 He is going to tell you what he heard.

4 You are going to hear from the K-9 officer who
5 actually tracked the trail of the Defendant out of
6 the building, out into the woods. And that is
7 where they found the bandanna and the wig.

8 Now, I'm pretty sure the Defense is going to
9 get up here and they are going to say this is a
10 case about identity. And they would be right.
11 This is a case about identity. But the reason we
12 charged the Defendant, the reason law enforcement
13 charged him is because we have the ultimate
14 identifier called DNA.

15 And you are going to hear from a DNA analyst
16 who studies DNA for a living. This is what he
17 does. He is going to explain to you the science
18 behind DNA. He is going to explain where it is
19 found, how it is connected with the Defendant.

20 And finally you are going to hear from
21 Investigator Rob Martin. He was the lead
22 investigator on this case. And he is going to walk
23 you through it from beginning to end to where the
24 Defendant was charged.

25 Now, I know no one gave you an instruction

1 manual when you came in here today. I know it is
2 overwhelming being a juror. But the reason that no
3 one gave you any instructions is because each and
4 every one of you already has everything it takes to
5 be a juror. Every day when you are out on the
6 street judging people's credibility, that is
7 exactly what we are asking you to do here.

8 Credibility is believability. So I want you
9 to keep in mind, when witnesses come up here and
10 take the stand, think about what they have at
11 stake, why are they testifying, do they have
12 anything to gain from testifying, do they have
13 anything to lose? Keep all of that in mind. Use
14 your common sense. All of that is important and
15 all of that is going to go into your decision at
16 the end of this trial.

17 Now, as the State we carry the burden of
18 proving this case beyond a reasonable doubt. And
19 what that means is not beyond any doubt, not beyond
20 all doubt, but beyond a reasonable amount of doubt.
21 It is essentially proof that keeps you firmly
22 convinced of the Defendant's guilt. And in this
23 case, we welcome that burden because it is the same
24 burden that has been used in any case where any
25 Defendant has ever been found guilty.

1 Now, you are going to hear a lot of facts over
2 the next couple of days, so I ask you to keep your
3 common sense in mind. Listen to what the witnesses
4 have to say. And while this is maybe not the most
5 complicated case you have ever heard, it certainly
6 is important. It is important to us, to the
7 victim, to the Defense, and to the State of South
8 Carolina.

9 And after you have heard all of the evidence,
10 we'll come back before you and we're going to ask
11 you to hold the Defendant responsible for his
12 actions. We are going to ask you to find him
13 guilty of attempted armed robbery.

14 Thank you.

15 THE COURT: Ms. Dyar?

16 MS. DYAR: May it please the Court, Your
17 Honor?

18 THE COURT: Yes, ma'am.

19 OPENING STATEMENT

20 MS. DYAR: Okay. Picture this. There is this
21 bank. You walk in. There is a nice marble floor
22 with a big waiting area in this bank. Okay? And
23 in the waiting area there is a bunch of magazines,
24 newspapers, things you can read while you ARE
25 waiting. Okay? Nothing out of the ordinary.

1 This guy walks in. Okay? And nothing too --
2 I mean, he is covered from head to toe. You can't
3 really identify him. He doesn't say anything to
4 anybody. But he grabs one of the magazines and he
5 writes something down. He takes it up to the
6 teller at the counter. And the note says, I've got
7 a gun, give me all the money. She complies, gives
8 him all the money, he leaves, magazine left behind.

9 The police respond. They get the magazine.
10 It is tested for DNA. At this point there are
11 several people that have probably come in contact
12 with this magazine that the perpetrator used. We
13 have got possible bank employees, we've got banking
14 customers that have been sitting in that waiting
15 area, the mailman that delivered it, and the
16 suspect.

17 DNA is an identifier. It is. In this case it
18 would be able to identify anybody that came in
19 contact with this magazine that is now evidence.

20 You know, people like DNA because it is an
21 identifier. They like it. It is in CSI. I'm sure
22 you have seen that. CSI, you know, News Report,
23 Dateline NBC, any of those shows.

24 But the issue here that we want you to focus
25 on is there is -- we can't hold people responsible

1 for where their DNA is but the actions that are
2 commenced. Okay? And what I'm saying is, just
3 because someone's DNA is on a magazine in a bank
4 that is used in a bank robbery does not mean that
5 that person whose DNA was on there is a bank
6 robber.

7 That is exactly what we have in this case.
8 Okay? We have a bandanna. They didn't tell you
9 that. But there is a bandanna with not just
10 Michael's DNA on it, but at least three people's
11 DNA on it. That means no less than one, two, three
12 people's DNA is on this bandanna. They didn't tell
13 you that. And I'm saying at least because there
14 could be more. Okay?

15 My name is Alicia Dyar. Along with Anastasia
16 Walker, we represent Mr. Brown.

17 Now, we don't know how that bandanna with
18 Michael's DNA got there. We may never know. But
19 that doesn't mean that the person that walked in
20 the Chuck E. Cheese that night with a gun is
21 sitting over here.

22 They want you to believe that because
23 Michael's DNA is found on this bandanna, that he is
24 guilty. That just because his DNA is there, you've
25 got to find him guilty.

1 Well, we're saying that just because his DNA
2 is there does not mean that he is guilty, just as
3 in the bank robbery situation I just explained to
4 you.

5 The system is to hold people accountable for
6 their actions, not for DNA, or what their DNA has
7 done.

8 Now, like I said, this is a mixture, there is
9 a mixture. There is at a minimum three people's
10 DNA. You'll hear it out of the mouth of their DNA
11 person. He can't deny it. He's going to say at
12 least three people have DNA on this bandanna. And
13 that is not something that anybody is going to be
14 able to dispute.

15 There was also a wig located. And you are
16 going to hear them say, We weren't able to get any
17 DNA off of the wig.

18 And then they told you about the witnesses
19 that they'll put up that will testify to what they
20 saw, and to various things. What you are not going
21 to hear is that anybody is able to positively
22 identify anybody.

23 You are going to hear that two witnesses very
24 close to the incident who were there actually
25 identified somebody else minutes after this

1 happened.

2 One of them, Kyrie, you'll hear ID'd some
3 random guy at the gas station and said, Yes, that
4 is the guy that just came in here.

5 And you'll hear another guy who was the
6 manager that was at the Chuck E. Cheese say, Yes,
7 you know what, that might be him. It wasn't. They
8 picked the wrong guy.

9 A photo line-up was shown to some of the
10 witnesses with Michael's picture in it. No one
11 that was shown that photo line-up was able to
12 identify anybody.

13 Everybody that got a look at this person that
14 comes into Chuck E. Cheese that night agrees that
15 he has got a bandanna around his neck, not covering
16 his face, like the State just told you. You can
17 see it on the video. It is not the best video, but
18 it is one of the few things that you are sort of
19 able to see on the video. He is not covering his
20 face. It is tied around his neck. Nobody ID'd
21 him.

22 You'll get to see the video. It shows this
23 person coming in. It shows him leaving from one
24 angle. And that's it. Okay? Just a very small
25 area of the Chuck E. Cheese.

1 Now, you are going to hear some conversations
2 too. Investigator Martin, the lead investigator in
3 the case, he is going to get up here and tell you
4 about some conversations between him and Michael
5 when they arrested Michael.

6 I just, you know, ask you to consider those
7 statements and the context in which they were
8 given. Okay? Just do that.

9 You know, they get in there and Investigator
10 Martin tells him, We've got your DNA. We know it
11 is you. Okay?

12 Just -- we don't know what is going on in
13 Michael's head at this time, but just please keep
14 that in mind.

15 Now, you have heard the State tell you that
16 they have the burden to prove this case. And it is
17 a high burden and it rests solely with them and
18 they welcome it. They have to prove their case
19 beyond a reasonable doubt. That doesn't mean
20 beyond all doubt, it just means that doubt that
21 would cause -- that would make a reasonable person
22 hesitate to act.

23 Now, this might be a silly example of
24 reasonable doubt, but it has been explained to me
25 this way and it kind of makes sense. It is

1 compared to a milk jug. Okay? Milk in your
2 fridge. It has got an expiration date on it. You
3 go in and make yourself a peanut butter and jelly
4 sandwich, maybe eat some Oreos. You go in there
5 and you grab the jug of milk. You see that the
6 expiration date is tomorrow. Okay? And you open
7 it up, pour yourself a glass of milk, go to sit
8 down. And just before you go to drink the milk,
9 you smell it. And that hesitation to drink the
10 milk, the hesitation to act, that is reasonable
11 doubt. Okay? That is the best way I can explain
12 it.

13 Now, in this case nobody here is disputing the
14 fact that a man -- that a person went into the
15 Chuck E. Cheese on January 3rd, 2013 with a gun.
16 You are not going to hear us say that that didn't
17 happen. And that these poor people, these innocent
18 workers were just -- that they were subjected to
19 this. Okay? But that person was not Michael.

20 And once you hear all the evidence in this
21 case, once you hear all the testimony, once you
22 hear that there are at least three people's DNA on
23 this bandanna, you'll see that it doesn't rise to
24 the level of reasonable doubt and the State hasn't
25 met their burden. And find Michael not guilty.

1 Thank you.

2 THE COURT: All right. Is the State ready to
3 call their first witness?

4 MS. MOSER: Yes, Your Honor. The State calls
5 Deputy John Sullivan.

6 (Witness enters courtroom.)

7 THE BAILIFF: Place your left hand on the
8 Bible, and raise your right hand, please.

9 (Witness complies.)

10 THE CLERK: Do you solemnly swear or affirm
11 that the testimony you are about to give in this
12 case will be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Please have a seat, and state your
16 full name for the record.

17 THE WITNESS: John Robert Sullivan, Jr.

18 JOHN ROBERT SULLIVAN, JR.,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. MOSER:

22 Q Good afternoon, Deputy Sullivan. Actually, now, I
23 apologize, I believe you are an investigator; is
24 that correct?

25 A Yes, that is correct.

1 Q Okay. Where do you work?

2 A I work with the Richland County Sheriff's
3 Department.

4 Q Okay. How long have you been with the department?

5 A It has been over nine years now.

6 Q Okay. And you recently became an investigator;
7 correct?

8 A That's correct.

9 Q Back in 2013, what did you do?

10 A I was a patrol deputy.

11 Q Okay. And can you tell me little bit about your
12 duties?

13 A Yes. We patrol the area. I was assigned to Region
14 4, which is the Broad River Road area, and St.
15 Andrews, Irmo-Chapin. And also answer calls for
16 service in that area.

17 Q Okay. Thank you. I'm going to direct your
18 attention back to the night of January 3rd, 2013.
19 Do you remember that evening?

20 A I do.

21 Q Okay. And what do you remember about that evening?

22 A I was out on patrol. I received a call for a
23 attempted armed robbery in progress at the Chuck E.
24 Cheese, which is on Burning Tree Road.

25 I responded. When I got there, I met with the

1 employees that were inside there. Through the
2 initial investigation learned that a black male
3 suspect had come inside brandishing a handgun.
4 They said he was -- I learned that he was wearing a
5 wig and a red bandanna and dark clothing. He
6 grabbed one of the employees there and the other
7 employees kind of heard what was going on. And he
8 saw them, ran towards them, and they ran out the
9 front door. He wasn't able to get to them.

10 I was able to view some video. And you could
11 see him running behind the Chuck E. Cheese towards
12 a old restaurant/bar called El Toro.

13 Q I'm going to stop you there.

14 A Okay.

15 Q And just so we understand where this is all
16 located, you said the address was Burning Tree
17 Road?

18 A Yes.

19 Q Is that in Richland County?

20 A It is.

21 Q Okay. And what is the closest major road to
22 Burning Tree?

23 A Burning Tree -- right next to Chuck E. Cheese is an
24 Exxon, and in front of that Exxon is St. Andrews
25 Road, which is the main road there. And it is

1 parallel -- the frontage road to I-26.

2 Q Okay. And you mentioned El Toro. Could you tell
3 us exactly where that is in proximity to Chuck E.
4 Cheese?

5 A Yes. When you are looking at the front door of
6 Chuck E. Cheese, to the immediate left is the Exxon
7 gas station, and then I guess you say behind the
8 Chuck E. Cheese to the left, which is right beside
9 the Exxon, is the El Toro Club, or Bar and Grill.

10 Q Okay. So fairly close?

11 A Yes.

12 Q Can you tell me exactly how close?

13 A I don't know the exact --

14 Q Okay. But several feet away?

15 A Yes.

16 Q Okay. All right, let's go back. I know you said
17 you met with certain people there. Do you recall
18 who those people were?

19 A I'd have to look. They were employees.

20 Q And do you have copy of your notes?

21 A I do.

22 Q Okay. You can reference that if you need to.

23 A Okay. I met with the manager there, Ronnie
24 Kennedy, and two of the employees, Kyrie Green and
25 Kadeshia Green.

1 Q And what did you learn from them?

2 A That --

3 MS. A. WALKER: Your Honor, I would object.

4 It calls for hearsay.

5 THE COURT: Well -- sustained.

6 Q When you first arrived on the scene -- you were
7 called out originally for what again?

8 A Attempted robbery.

9 Q Okay. And you met with certain individuals;
10 correct?

11 A That's correct.

12 Q Did those individuals, what they told you about the
13 incident, did that lead you to do anything in your
14 investigation of that?

15 A Yes. We called for a general manager because they
16 have video. I requested to look at the video. I
17 also called our K-9 officers. From the video we
18 could see he ran out the front door. We called for
19 our K-9 to come see if they could track him and
20 hopefully to catch the guy.

21 The video showed him running out the front
22 door behind the business towards the Club El Toro.
23 Our K-9 officer, he had informed me that he found a
24 wig and a red bandanna on the back side, or side of
25 this club. And in the video it shows the guy

1 running out. He was wearing a wig and a red
2 bandanna and some glasses and some other dark
3 clothing and white shoes.

4 I ended up going to where he told me that he
5 found these items. I went there and I found a
6 red -- or a brown wig and a red bandanna laying
7 there.

8 MS. MOSER: Your Honor, may I approach the
9 witness?

10 THE COURT: You may.

11 MS. MOSER: Thank you.

12 BY MS. MOSER:

13 Q I'm going to show you what has previously been
14 marked as State's Exhibit 3. Do you recognize
15 that?

16 A I do.

17 Q Okay. Will you tell me what that is?

18 A This is the side or back side of El Toro Club.

19 Q Okay. Does it fairly and accurately represent what
20 you recall the club to look like?

21 A Yes, it does.

22 Q Okay. And did you take this picture?

23 A I did take this photo.

24 Q Okay. I'm going to show you what has previously
25 been marked as State's Exhibit Number 5. Do you

1 recognize this?

2 A I do. This is a photograph I took also.

3 Q You also took that. Okay. And what does that
4 depict?

5 A It depicts the red bandanna and the wig that was
6 found.

7 Q Okay. And were those also an accurate
8 representation of what you saw that evening?

9 A Yes, it is.

10 Q Okay. Finally I'm going to show you what has been
11 previously marked as State's Exhibit 4. And do you
12 recognize that?

13 A I do.

14 Q And did you take that picture?

15 A I did.

16 Q Okay. And what does that show?

17 A It is another picture of the location where the red
18 bandanna and the wig was found.

19 Q Okay. What building is that?

20 A It is El Toro.

21 Q Okay.

22 MS. MOSER: Your Honor, at this point I move
23 these into evidence.

24 MS. A. WALKER: Your Honor, if I could just
25 see them.

1 (Pause.)

2 MS. A. WALKER: No objection.

3 THE COURT: So admitted. Previously marked.
4 What are they?

5 MS. MOSER: They are State's Exhibits Number
6 4, 5, and 3.

7 (WHEREUPON, State's Exhibit No. 3-5 were
8 marked for identification and received
9 into evidence.)

10 MS. MOSER: May I publish them to the jury?

11 THE COURT: You may.

12 (Exhibits published to the jury.)

13 THE COURT: She has asked if she can publish
14 them. That means y'all can pass them around if you
15 would like to.

16 MS. MOSER: May I approach the witness?

17 THE COURT: Yes, ma'am.

18 MS. MOSER: Thank you, Your Honor.

19 BY MS. MOSER:

20 Q I am now showing you what has previously been
21 marked as State's Exhibit 11. Can you tell me what
22 that is?

23 A It is an evidence package that I packaged
24 containing the wig that was found and is in the
25 photographs.

1 Q Okay. So you recognize that. Do you recognize it
2 as the wig you saw that night?

3 A I do.

4 Q How do you know it was that same wig?

5 A I packaged it. And this is my handwriting, the
6 writing on the evidence label once I turned it in
7 to our evidence room.

8 Q Okay. And what is the proper procedure when you
9 package something, a piece of evidence?

10 A Well, we are wearing gloves, you know, not to
11 contaminate anything. And we place it in these
12 evidence bags, write all the information on it, and
13 the case number, the type of crime, and what it is
14 that we're packaging. I will sign my name on it
15 and then date and time when I drop it off at the
16 evidence room.

17 Q Okay. So what is the last thing you do with it?

18 A I drop it off at the evidence room.

19 Q Okay.

20 A In a secure mailbox.

21 Q Okay. And I'm also going to show you State's
22 Exhibit Number 10 -- previously marked as State's
23 Exhibit 10 for identification purposes. Would you
24 tell us what that is?

25 A This is the red bandanna I collected. It is also

1 in the photographs.

2 Q Okay. Again, how do you know that that is the red
3 bandanna that you collected from the scene?

4 A This was my handwriting. I collected it and wrote
5 everything in there.

6 MS. MOSER: Your Honor, at this time we would
7 also like to move into evidence State's Exhibits 10
8 and 11.

9 MS. A. WALKER: No objection, Your Honor.

10 THE COURT: All right. So admitted without
11 objection.

12 (WHEREUPON, State's Exhibit No. 10 was
13 marked for identification and received
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 11 was
16 marked for identification and received
17 into evidence.)

18 MS. MOSER: Thank you, Your Honor.

19 BY MS. MOSER:

20 Q Investigation Sullivan, what did you do when you
21 were done collecting the evidence? What was your
22 next step?

23 A The next step after we collect the evidence, I
24 wrote out my report, but then I went to our
25 evidence room that night or early that morning and

1 dropped these items off.

2 Q Okay. Did you question anyone else at the scene?

3 A Yes. Initially when I arrived I saw somebody that
4 matched the description as far as he was wearing
5 dark-colored clothing, which was told to us. He
6 was waving down a passerby. So we stopped him,
7 detained him.

8 The manager initially said, Hey, that might be
9 the guy. But we were later able to corroborate his
10 story where he said he had just gotten off work,
11 walked over the bridge. He walked over from
12 Lexington County over the interstate to the Exxon
13 area, which is where I saw him. And he was just
14 trying to get back home. We were able to talk to
15 the employees there at the restaurant that he
16 worked at and they corroborated the story that he
17 was there. And the time that he left was, if I'm
18 not mistaken, after the time that showed on the
19 video when this first occurred, if that makes
20 sense.

21 Q Okay. So he was temporarily detained?

22 A He was temporarily detained and let go.

23 Q Okay. Let go that night?

24 A Yes.

25 Q Okay. Did you develop any other suspects that

1 night?

2 A I did not.

3 Q Okay.

4 MS. MOSER: Beg the Court's indulgence.

5 (Pause.)

6 MS. MOSER: No further questions, Your Honor.

7 BY MS. MOSER:

8 Q Please answer any questions the Defense has.

9 MS. A. WALKER: May it please the Court, Your
10 Honor?

11 THE COURT: Yes, ma'am.

12 CROSS-EXAMINATION

13 BY MS. A. WALKER:

14 Q Investigator Sullivan; right?

15 A Yes, ma'am.

16 Q Investigator Sullivan. And you said that you
17 worked for Richland County for over nine years?

18 A Now it is.

19 Q And to become a police officer you went to the
20 academy?

21 A Yes.

22 Q And they do a bunch of things like physical
23 exercises as well as other lessons?

24 A That's correct.

25 Q Teach you how to take reports?

1 A Yes.

2 Q And record information?

3 A Yes.

4 Q How to respond to calls?

5 A From our basics.

6 Q And how to call backup if you need them?

7 A Yes.

8 Q And any other responders, like in this case you
9 called K-9?

10 A Yes.

11 Q And you do that because essentially every case is
12 important?

13 A That's correct.

14 Q And you don't want to forget any details?

15 A Yes, that's right.

16 Q So you want to write everything down?

17 A Um --

18 Q Or record it?

19 A We record basic information for the incident
20 reports.

21 Q Right. And you want to record as much as possible
22 because you may have to testify in the future?

23 A Yes.

24 Q And, for instance, this case happened roughly about
25 a year and a half ago; right?

1 A That's correct.

2 Q And you have responded to other cases since then?

3 A Yes.

4 Q You may have been working cases at the same time?

5 A Yes.

6 Q And you want all your reports to be very complete?

7 A Yes. These are just basic information on what was
8 told to me.

9 Q Right. And you want them to be accurate, you want
10 to write down the correct information?

11 A That is correct.

12 Q And you want to be thorough as much as you can
13 possibly include?

14 A Yes. I get the facts.

15 Q And in this case you were dispatched to the Chuck
16 E. Cheese?

17 A Yes.

18 Q And, according to your report, you were dispatched
19 at 9:42?

20 A P.M., yes.

21 Q And the dispatch, that is when you received the
22 call?

23 A Yes.

24 Q Okay. And that was p.m. And then you arrived
25 about 9:49?

1 A That's correct.

2 Q Okay. And when you are dispatched, you try to get
3 as much information about what you are about to
4 approach?

5 A We try to.

6 Q Right. Because you have absolutely no idea of what
7 it could be?

8 A Yes. We try to.

9 Q And you want to respond safely?

10 A Yes.

11 Q And you want to respond quickly?

12 A (No response.)

13 Q And so in this case did dispatch tell you that the
14 suspect is wearing a dark hooded sweatshirt?

15 A Yes.

16 Q And a wig?

17 A Yes.

18 Q And tells you that the suspect is armed with a gun?

19 A Yes.

20 Q So I want to talk about when you first arrived at
21 the Chuck E. Cheese. When you pull up you see
22 someone matching this basic description?

23 A Yes. Well, minus the wig and the gun, of course.

24 Q Right. And you said the manager came out?

25 A If I can refer and make sure.

- 1 Q Certainly.
- 2 A Yes.
- 3 Q That was Ronnie Kennedy?
- 4 A Ronnie Kennedy, yes.
- 5 Q And that is who you reported as the complainant on
- 6 your report; right?
- 7 A That's correct.
- 8 Q Ronnie Lee Kennedy?
- 9 A That's correct.
- 10 Q Okay. And he comes out and he says, Yes, this
- 11 might be the suspect?
- 12 A And he said, It may be.
- 13 Q And then Kyrie Green also comes out?
- 14 A Yes.
- 15 Q And Kyrie says, That is the guy?
- 16 A Yes, he did.
- 17 Q Okay. So you detain him and you ask him some
- 18 questions?
- 19 A (Nods affirmatively.)
- 20 Q And you are able to determine that is not the guy?
- 21 A Yes.
- 22 Q He had -- he told you where he had been?
- 23 A Yes.
- 24 Q And you were able to corroborate that?
- 25 A Yes, we were.

1 Q Okay. You were able to find other facts that
2 matched what he was saying?

3 A Yes, that is correct.

4 Q And so then you let him leave that night?

5 A Yes. Kyrie later said that wasn't the guy either.

6 Q Right. And you spoke to witnesses in this case?

7 A Yes.

8 Q And there were three. Kadeshia Green?

9 A Uh-huh.

10 Q Kyrie Green? And Ronnie Kennedy?

11 A That's correct.

12 Q Okay. And you take as much information from them
13 as possible?

14 A I take -- yes. The initial information is just for
15 the report.

16 Q But there is no -- the suspect isn't on the scene?

17 A Right.

18 Q He is gone?

19 A Correct.

20 Q He hasn't been caught yet?

21 A That's correct.

22 Q And this is a robbery where somebody came in with a
23 gun?

24 A That's correct.

25 Q Or they are saying there was a robber that came in

1 with a gun. And so you have to write some
2 statements?

3 A I did not.

4 Q You did not have to write statements?

5 A No, I did not.

6 Q Okay. But you did get some details from them?

7 A I got -- yes, the verbal, what the subject looks
8 like, what he did. And then as far as the details
9 go, then we passed it up to our investigators and
10 they handle it from there.

11 Q Okay. So you can catch the bad guy in the
12 future -- bad guy -- right? You want to take all
13 this information so that in the future you are
14 trying to catch this bad guy, the suspect?

15 A Well, we would like to catch any suspect, yes.

16 Q Right. But you are trying to catch -- let's try
17 this again. You are gathering information from the
18 witnesses?

19 A Uh-huh.

20 Q Because you can use that information to find the
21 suspect?

22 A Yes.

23 Q All right. Sorry about being confusing there.
24 Then we have a video in this case.

25 A Correct.

1 Q Right? And you have the general manager show up so
2 you can watch this video?

3 A Yes.

4 Q And that gentleman's name is Ron Jones?

5 A I have to look. I don't believe I wrote his name
6 down.

7 Q Okay. But a manager, a different manager than
8 Mr. Kennedy shows up?

9 A Yes.

10 Q And you are able to view the surveillance photo in
11 this -- or footage, excuse me -- the video?

12 A That's correct.

13 Q And you can see the suspect?

14 A That's correct.

15 Q You can see he was wearing a wig?

16 A Yes.

17 Q And you say in your report that you are able to see
18 the brown female wig?

19 A Yes.

20 Q And a possible fake mustache?

21 A Yes.

22 Q A red bandanna around the neck?

23 A Yes.

24 Q Eyeglasses?

25 A Yes.

- 1 Q White shoes?
- 2 A Yes.
- 3 Q Dark jeans with a hole?
- 4 A Yes.
- 5 Q Dark-colored jacket?
- 6 A Uh-huh.
- 7 Q Dark sweater underneath?
- 8 A Uh-huh.
- 9 Q A very detailed description?
- 10 A Yes.
- 11 Q And you can see this all from the video?
- 12 A Yes.
- 13 Q Because you didn't see the suspect?
- 14 A No, I didn't see the suspect.
- 15 Q And, in fact, you didn't even show what direction
- 16 he runs?
- 17 A That's correct.
- 18 Q Okay. And you can see that he runs around the
- 19 Chuck E. Cheese?
- 20 A Yes.
- 21 Q I'll jot this down. I'm certainly not an artist.
- 22 But basically we have St. Andrews Road. And then
- 23 this little cross street is Burning Tree, right?
- 24 It is a frontage road to the highway?
- 25 A Right.

1 Q Right. And so there is Chuck E. Cheese with a
2 front entrance being right here?

3 A That's right.

4 Q Okay. And then next-door is the Gaz-Bah, or the
5 Exxon?

6 A Correct.

7 Q And then there is a median of sorts and then the El
8 Toro is right here?

9 A Yes. The median separates the parking lots.

10 Q Right. And they have some trees, and things like
11 that. And that is certainly not to scale by any
12 stretch of the imagination.

13 A Sure.

14 Q And you are able to see that he runs around the
15 Chuck E. Cheese right here?

16 A I can see that he comes out the front.

17 Q Okay.

18 A And see the direction, he is going towards El Toro.

19 Q He goes to the El Toro. Okay. And you can see
20 this all from the surveillance video?

21 A Yes.

22 Q And you can see him go all the way around the
23 building?

24 A I don't remember which side, but, yes.

25 Q Okay. And in your investigation you were able to

1 talk to the manager about preserving the video for
2 future use?

3 A Yes, I spoke to him about, you know, we would
4 collect it.

5 Q And you were able to confirm that while the suspect
6 was in the Chuck E. Cheese he never touched
7 anything?

8 A That is what they told me, and from the video I
9 didn't see him touch anything.

10 Q Okay. So after seeing where the suspect runs, you
11 call the K-9 officer?

12 A That's correct.

13 Q And so you want him to be able to establish what
14 you call a track; right?

15 A Yes.

16 Q To see if he can find where the person ran off to?

17 A Yes, that is correct.

18 Q And this officer is specialized in handling police
19 animals, assuming you only use dogs?

20 A Yes.

21 Q And you are not a K-9 officer?

22 A No, I'm not.

23 Q You don't have a dog with you?

24 A No, I do not.

25 Q So you can call somebody else to come do that?

1 A That's right.

2 Q Okay. And you can call other officers to respond
3 too?

4 A To the scene, yes.

5 Q If you want a different -- other specialized
6 officers like crime scene investigators you could
7 call them?

8 A I could.

9 Q But in this case we didn't call --

10 A No, we did not.

11 Q Okay. And CSI, they process scenes?

12 A Yes.

13 Q That is what -- I think that is what you all call
14 it, processing a scene where you collect evidence?

15 A Yes, that is correct.

16 Q Try to take fingerprints, things like that?

17 A Yes.

18 Q Document? And they also can photograph a scene?

19 A They can.

20 Q And you took photographs in this case?

21 A Yes, I took photographs.

22 Q And do you have -- oh, I think the jury has the
23 photographs. It is three photographs that you
24 took; right?

25 A That's correct.

1 Q And these photographs are -- it is fair to say they
2 are at night?

3 A Yes.

4 Q And this -- this is the back of the El Toro; right?

5 A Yes.

6 Q Okay. Back of the El Toro. And so in this
7 picture -- again, not drawn to scale -- this -- it
8 is over in this area; right?

9 A Yes, that's correct.

10 Q So it is behind the Chuck E. Cheese and on the
11 other side of the El Toro?

12 A Yes.

13 Q Okay. And these are only three pictures you took?

14 A Yes.

15 Q But you were equipped with a camera that night?

16 A Yes, I was.

17 Q And you didn't take any other pictures?

18 A No, I did not.

19 Q No pictures of the Chuck E. Cheese or anything
20 else?

21 A No, I did not.

22 Q Okay. And K-9 responds. They locate wig,
23 bandanna. Or you -- or, I'm sorry, K-9 locates the
24 wig and bandanna?

25 A That's correct.

1 Q And then you go to where they say, Hey, we found a
2 wig and bandanna?

3 A Yes.

4 Q And then you go through the protocol to bag it and
5 tag it, so to speak?

6 A If you want to call it that, yes.

7 Q Right. So you put it in here and you put the
8 correct documentation and seal it, especially if it
9 is going to get tested, and things like that?

10 A Yes.

11 Q And you even photographed not just the scene, but
12 you photographed the evidence before you even
13 picked it up?

14 A That's correct.

15 Q Okay. And you transported it to the evidence
16 locker?

17 A Yes.

18 Q And then you don't do anything else with it?

19 A That is all I do with it.

20 Q Right. So that other people, if they need to test
21 it, or whatever they might need it for, they can
22 check it out and do the proper log?

23 A That's correct.

24 Q And there was no gun located?

25 A No gun was located.

1 Q Okay. Thank you very much, Deputy.

2 MS. A. WALKER: No further questions, Judge.

3 THE COURT: Anything else?

4 MS. MOSER: Just a few, yes, sir, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. MOSER:

7 Q Investigator Sullivan, you have been trained in the
8 proper way to collect evidence; correct?

9 A That's correct.

10 Q And there were two different videos in this case?

11 A Yes, there were.

12 Q Okay. Can you tell me again what is the difference
13 between the first and second?

14 A As far as?

15 Q What you could see?

16 A You could see him running out the front door and
17 the angle of the camera you could see him running
18 behind the location.

19 Q The second one was him running outside?

20 A Yes. Another camera on the building.

21 Q And when a suspect's story can be corroborated, you
22 don't charge them with a crime; correct?

23 A No, we don't want to take the wrong person to jail.

24 MS. MOSER: Thank you, Your Honor.

25 THE COURT: All right. Thank you,

1 Investigator. You can step down.

2 (Witness steps down.)

3 THE COURT: All right. Are y'all ready to
4 call your next witness?

5 MS. M. WALKER: Thank you, Your Honor. The
6 State calls Deputy Stephen Pearrow.

7 (Witness enters courtroom.)

8 THE BAILIFF: Place your left hand on the
9 Bible, and raise your right hand, please.

10 (Witness complies.)

11 THE CLERK: Do you solemnly swear or affirm
12 that the testimony you are about give in this case
13 will be the truth, the whole truth, and nothing but
14 the truth, so help you God?

15 THE WITNESS: Yes, ma'am.

16 THE CLERK: Please have a seat, and state your
17 full name for the record.

18 THE WITNESS: Stephen Pearrow.

19 STEPHEN PEARROW,
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. M. WALKER:

23 Q Good afternoon.

24 A Hi.

25 Q Where are you currently employed?

1 A Richland County Sheriff's Department.

2 Q And how long you been with the Sheriff's
3 Department?

4 A Four years this past June.

5 Q And what did you do before then?

6 A State trooper for 17 years.

7 Q So you have been in law enforcement for
8 approximately 21 years?

9 A Right.

10 Q What do you do over at the Sheriff's Department?

11 A I am K-9. I run -- I work with the K-9 Unit.

12 Q Can you describe for the jury what the
13 responsibilities of a K-9 deputy are?

14 A We -- I say we -- I run a -- right now he is a
15 7-year-old Belgian Malinois full service patrol
16 dog, which is many different disciplines:
17 Tracking, article search, narcotic search,
18 apprehension, building search. And our primary job
19 is to be on standby seven days a week, twenty-four
20 hours a day.

21 Q And does the dog live with you or --

22 A Yes.

23 Q So this is -- I guess he is your partner?

24 A Yes.

25 Q For lack of a better term. And does the dog go

1 through certain training?

2 A Yes. Well, when the dogs come in -- we get dogs
3 out of Holland. They are a P.H. I Title, which
4 show in the Netherlands is a very high title. They
5 come here. Normally by the time we get them their
6 obedience, apprehension work is pretty polished.
7 By the time we get them we do -- we have to put in
8 narcotics, put an odor of narcotics and tracking by
9 the time we get here. And it is a minimum of 15
10 weeks of the basics once you get a dog.

11 Q And how long do you keep a certain dog? Or how
12 long --

13 A Rule of thumb is they start watching -- we start
14 watching -- supervisors start watching dogs at
15 eight years old just for anything. Belgian
16 Malinois are a mixed breed dog. So are German
17 Shepherd and Great Dane. I don't know about German
18 Shepherds, but arthritis likes to set in at an
19 early age, around seven, eight, nine years old.
20 So -- some of them happen before then, before
21 eight, but at eight years old we start watching him
22 a lot more closely for any types of -- anything
23 that may slow him down.

24 Q And the dog that was used -- is the dog that you
25 are with now the same dog that you were with back

1 in January of last year?

2 A Yes, ma'am.

3 Q And how long at that point in time had you been
4 with that dog?

5 A I have been with that dog the first day I came
6 here. Four years.

7 Q So four years?

8 A Yes, ma'am.

9 Q So at that point that dog had been a K-9 with the
10 K-9 Unit for three years?

11 A Minus the 15 months that we did training. Actually
12 when I came here -- I came here June 10, 2010, and
13 the dog was here the end of June.

14 Q Okay. So y'all have been together a long time?

15 A Yes.

16 Q And by the time you responded to Chuck E. Cheese
17 y'all had been together a long time?

18 A Yes.

19 Q Let me ask you this. Once you are called out to a
20 scene -- and not this case specifically, I'll get
21 to that -- but once you are called out to a scene
22 with a K-9, what steps are you taking?

23 A Normally on the way -- we have -- other than some
24 of the road deputies have certain regions they have
25 to work, K-9 has no region. We have the entire

1 county. Normally there is two to three of us
2 working every shift every day. So we may or may
3 not be close to the area where we were asked to
4 come to. Normally if it is a five, ten, fifteen
5 minute ride, I listen to the radio to see what is
6 being said. We have --

7 Q When you say the radio, you are not talking about
8 listening to 104.7?

9 A No. What dispatch is saying, what the deputies are
10 saying, because nine times out of ten they are
11 going to be there first. We listen. We have NBT
12 computers in our cars that send the dispatches,
13 constantly updating what is going on, whether it is
14 sent to the radio or not, but it is constantly
15 updated, so while on the way you can look over and
16 glance and read anything that may have changed or
17 anything that has been added while on the way.

18 So while en route we find out --

19 MS. A. WALKER: I'm sorry, Your Honor.
20 Anything found out I believe from dispatch would
21 also be hearsay.

22 THE COURT: Pardon me?

23 MS. A. WALKER: I said anything found out from
24 dispatch would also be hearsay.

25 THE COURT: Overruled.

1 A Anything -- what we listen to is does the dog need
2 to have a ballistic vest on, was there weapons
3 involved, anything like that that we start
4 preparing ourselves for that. Where is my backup
5 going to be.

6 Every K-9 handler who is actually going to
7 work -- run his dog has to have someone with him
8 because we're not paying attention to what is going
9 on around us as much as we should because we're
10 concentrating on what the dog is doing.

11 Q So backup is for officer safety?

12 A Yes. My safety.

13 Q Your safety?

14 A Yes.

15 Q I want to take your attention back to January 3rd
16 of last year.

17 A Uh-huh.

18 Q Did you get dispatched to Chuck E. Cheese?

19 A Yes, I did.

20 Q And that is located here in Richland County?

21 A Yes, it is.

22 Q What information did you have when you were going
23 to Chuck E. Cheese?

24 A It came out as an armed robbery. It came out --
25 the initial dispatch had come out as that.

1 We don't, as far as K-9, do not have to wait
2 to be called. There are certain calls that we
3 automatically -- by our policy in K-9 we
4 automatically go to. I am not saying that any
5 other crime is worse than any others, but
6 carjacking, armed robberies, home invasions, we are
7 automatically called.

8 Q The more violent crimes?

9 A Right. And if we have to get turned around, we get
10 turned around. If we are not needed, then we are
11 not needed. We always are already on the way.

12 Q And tell me what you did once you got to Chuck E.
13 Cheese.

14 A I'm not sure exactly what my times were when I got
15 there, but it was pretty fast. I don't know if I
16 was in the area, or close to it, or whatever. But
17 we talked with the initial responding officer, the
18 road unit. And plus, like I said, the information
19 is being, you know, dispatched through and on the
20 computer, so you know a lot before you get there.
21 But then you are getting information from a car to
22 a dispatcher from a dispatcher to the deputies, and
23 it can get crossed here and there, so you want to
24 get with that responding deputy to find out exactly
25 what is taking place and what we are needed for.

1 When I got there, it was a single black male
2 had come out of the front doors and went around to
3 the back on foot. And the K-9 -- that's all I need
4 to know. If I've got something to track, then the
5 dog goes down. So basically I turn around, got the
6 dog ready, and we went.

7 Q When you say you got the dog ready, how did you
8 prepare the dog to go on the track?

9 A Being that it was a possible armed robbery with a
10 weapon, the ballistics vest goes on the dog. It
11 takes me about a minute, minute and a half,
12 depending on what his attitude is when we get out
13 of the car. And once the ballistic vest goes on
14 and a long leash, which is a 15- to 25-foot long
15 leash is attached, after four years -- well, then
16 two years, three years of service, they figure out
17 very, very quickly, when that vest goes on and that
18 long line goes on, they know what is fixing to
19 happen. They know what we're going to be asking.
20 They know exactly what we're asking them to do.

21 Q And once you put the vest on the dog, what did you
22 do?

23 A You bring them out of the car. Of course I let him
24 go to the bathroom very quickly. And we place him
25 down at the last point seen. I put him in down

1 stay, which is either a sit or DJ, it is a lay down
2 position. And lightly I take my hand and anywhere
3 from 8 to 12 inches above the ground I run my hand
4 above the ground and he immediately tries to find
5 the, you know --

6 Q And did this dog pick up a scent?

7 A He was able to be pick up a track immediately, yes.

8 MS. M. WALKER: Your Honor, may the witness
9 step down?

10 THE COURT: He may.

11 (Witness steps down.)

12 BY MS. M. WALKER:

13 Q I show you the Chuck E. Cheese area. And if you
14 can take us around.

15 THE COURT: Deputy, would you face back this
16 way? Get on that other side.

17 THE WITNESS: Yes.

18 THE COURT: So that you are speaking back to
19 the court reporter, please, sir.

20 MS. M. WALKER: Your Honor, I would like to
21 show the witness what has been marked as State's
22 Exhibit 13. Actually, I would like to introduce it
23 into evidence. I don't believe there is an
24 objection.

25 MS. A. WALKER: No objection.

1 THE COURT: So admitted.

2 MS. M. WALKER: Thank you, Your Honor.

3 (WHEREUPON, State's Exhibit No. 13 was
4 marked for identification and received
5 into evidence.)

6 BY MS. M. WALKER:

7 Q Just stand there.

8 A If this is the Chuck E. Cheese --

9 THE COURT: You need to speak up.

10 A I'm sorry. If this is the Chuck E. Cheese here,
11 Motel 6, Burning Tree. Okay.

12 Q Okay. And I guess this is -- is this the front?

13 A This is the Exxon station. This is the front.
14 There is an entrance here and then there is another
15 entrance just further down.

16 And what was stated is that the front
17 entrance, he came out of the front entrance, and
18 went around, I guess if you are coming out it would
19 be a left turn, a left turn and went behind the
20 building.

21 Q Use this and take a step back so that they will be
22 able to see.

23 A Out the front and then a left and then behind the
24 building.

25 Q And then --

1 A We were actually able to pick up right in this pine
2 straw and there was small bushes, hedges, that were
3 planted there. We were actually able to pick up
4 the track right there.

5 Q And where did the dog lead you?

6 A Basically there is a -- I want to say this was a
7 restaurant or a club right here. I think it was El
8 Toro at the time.

9 Q El Toro.

10 A We went completely back behind. He went across the
11 parking lot. Was able to -- this is a grassy area
12 again right here, pine straw area again right here
13 I believe. He came back across. He hugged the
14 wood line here. And we went back in along the side
15 and in the back of El Toro where he walked up,
16 tracked up to some items, and we called it in. I
17 know I had a backup unit with me. And I said, Call
18 that in, but I'm not going to stop.

19 Q At that point is your job to collect those items?

20 A No, we don't touch them.

21 Q You want to keep on the track?

22 A Right. It is a hot track. We don't want to stop.
23 We gave -- I gave him a chance because it is a
24 reward for him when he is able to find something
25 like that. We do give him the opportunity to stay

1 with it for a couple of seconds. I'm not going to
2 just yank him off of it. It was a wig and a
3 bandanna or a headband, or something like that.

4 Q Let me show you what has been marked as State's
5 Exhibit 5. Are these the items?

6 A Yes. Yes. Yes. And it was in a -- like a small
7 stairwell, or something like that.

8 Q And State's Exhibit 4.

9 A Yes. Because he turned into there. That's right.
10 That's right. So --

11 Q This is where your dog tracked, from Chuck E.
12 Cheese to these items?

13 A Right. Right. Whether it had -- I suspected it to
14 be relevant because he went straight to it, but,
15 like I said, that wasn't who we were looking for,
16 so we continued on.

17 Behind -- I'm not sure of the name of this
18 business here. It was more like a residence that
19 was turned into a business I think maybe. But we
20 went back behind -- across the parking lot and into
21 this area here. And there was a driveway I think
22 that came back around, like a little small parking
23 area, a driveway that came out back onto St.
24 Andrews Road. Once we got in that area, I lost the
25 track. I say, he lost the track.

1 We actually -- we casted for -- we casted the
2 dog out for at least another 40 minutes in every
3 direction. We actually crossed St. Andrews Road,
4 back over here to the Exxon station, all of this
5 area trying to cast out, through the wood line. He
6 showed no interest at all. I don't know what
7 happened to the track.

8 Q Is it uncommon for one of the K-9 dogs, one of the
9 dogs to lose a track?

10 A Absolutely.

11 Q That is common?

12 A Yes.

13 Q Do you know some of reasons why the dog may lose a
14 track?

15 A The way he was tracking, a vehicle, is one of the
16 things that I actually called on the radio, I said,
17 I think he may have gotten -- the suspect may have
18 gotten into a vehicle, because the way --

19 Q Behind here?

20 A Yes, ma'am. Because the way that it just dropped,
21 that is kind of why I suspected. The dog can get
22 bored. He can get tired of it. He can get hot.
23 And he just may not feel like doing it anymore. I
24 mean, it is -- but understanding your dog and the
25 way that all 16 of our handlers do, you know when

1 the dog is either getting tired or frustrated or
2 doesn't want to do it anymore or it is just not
3 there. And this is what I saw here is that, you
4 know, the track is gone. He was circling this
5 area. And, like I said, for another 40 minutes he
6 was trying.

7 Q But he was active?

8 A Yes.

9 Q He was alert?

10 A (Nods affirmatively.)

11 Q And he appeared interested in the search?

12 A Yes. Oh, yes.

13 Q And you called in at that point and said he may
14 have left in a vehicle?

15 A That was one of the things that I had put out on
16 the radio is that I thought that maybe there may be
17 a vehicle involved.

18 Q Which would explain how the track got lost?

19 A Yes.

20 Q Thank you. You can return back to the witness
21 stand. Thank you.

22 (Witness returns to witness stand.)

23 Q And after the dog lost the track behind that other
24 business, what did you do?

25 A After we went ahead and called the track, I brought

1 him back, allowed him to break for a few minutes,
2 let him get water. And we went into an article
3 search because of a possible weapon that may be out
4 there. Usually if there is a weapon involved and
5 we do not catch a suspect -- you know, this was a
6 childrens', you know, place to go, and so we
7 completely walked the area and made sure there was
8 no other weapon that we could find in the area. We
9 didn't find anything.

10 Q Okay.

11 MS. M. WALKER: Your Honor, beg the Court's
12 indulgence.

13 (Pause.)

14 MS. M. WALKER: Thank you, Your Honor. I
15 don't have any further questions.

16 THE COURT: Anything?

17 MS. A. WALKER: Your Honor, I have no
18 questions for this witness.

19 THE COURT: All right. Thank you, Deputy.
20 You may step down.

21 (Witness steps down.)

22 MS. M. WALKER: Your Honor, may we approach?

23 (WHEREUPON, a bench conference was held
24 in the presence of the jury but out of
25 the hearing of the jury.)

1 THE COURT: All right, ladies and gentlemen,
2 we are going to take a little bit of a break before
3 we continue. So I am going to let you step back to
4 the jury room. You can relax, have some
5 refreshments. Please don't discuss the case while
6 you are back there. And we will bring you back in
7 about 15 minutes or so. So go with the bailiff.

8 (WHEREUPON, the jury retires to the jury
9 room at 3:49 p.m.)

10 THE COURT: All right. We'll take a recess
11 for about 15 minutes.

12 (WHEREUPON, a break was taken.)

13 THE COURT: Mr. Dye, bring the jury in,
14 please.

15 THE BAILIFF: Yes, Your Honor.

16 THE COURT: Who is your next witness? Oh, you
17 are going to show a video?

18 MS. M. WALKER: Well, we are going to put the
19 video in through him and then play it.

20 THE COURT: Who is the witness?

21 MS. M. WALKER: Ron Jones. And then after him
22 we are going to call Kadeshia Green and then Kyrie
23 Green.

24 THE COURT: Is Mr. Jones here?

25 MS. M. WALKER: He's right there.

1 THE COURT: All right.

2 (WHEREUPON, the jury came into open
3 court at 4:07 p.m.)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: Do you want to call your next
6 witness?

7 MS. M. WALKER: Your Honor, the State calls
8 Ron Jones.

9 (Witness approaches.)

10 THE BAILIFF: Place your left hand on the
11 Bible, and raise your right hand, please.

12 (Witness complies.)

13 THE CLERK: Do you solemnly swear or affirm
14 that the testimony you are about give in this case
15 will be the truth, the whole truth, and nothing but
16 the truth, so help you God?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Please have a seat, and state your
19 full name for the record.

20 THE WITNESS: Ronald Stewart Jones, Jr.

21 RONALD STEWART JONES, JR.,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. M. WALKER:

25 Q Good afternoon. Sir, where do you currently work?

1 A I work for Chuck E. Cheese.

2 Q And where do you live?

3 A I currently live in Gilbert, South Carolina.

4 Q And what do you do for Chuck E. Cheese?

5 A I am the general manager of operations for the
6 Chuck E. Cheese located on Burning Tree Drive.

7 Q And that is the one here in Richland County?

8 A Yes, ma'am.

9 Q And as a general manager, what are your roles and
10 duties?

11 A To oversee the operations, hiring, terminations,
12 run P&O profit. I am basically responsible for
13 every action that takes place in my store.

14 Q I want to take your attention back to January of
15 last year. Were you called out to Chuck E. Cheese
16 after a robbery had taken place there?

17 A Yes, ma'am.

18 Q And tell me what you did once you got to Chuck E.
19 Cheese at that point.

20 A Once I arrived to Chuck E. Cheese I spoke with a
21 couple of the officers that were already there. I
22 had my employees that were there at the time write
23 statements. And then I ran the video back to the
24 police officers that were on the scene.

25 Q And how many different approximate camera angles

1 are there in that Chuck E. Cheese where you can see
2 videos?

3 A My Chuck E. Cheese currently holds 32 different
4 camera angles.

5 Q And did you -- at that point in time were you able
6 to view parts of aspects of that robbery?

7 A Yes, ma'am.

8 Q And were you requested by law enforcement to
9 actually download a video?

10 A Yes, ma'am.

11 Q And could you download all of the camera angles?

12 A No, ma'am.

13 Q But the camera angle that you could download, did
14 you download that?

15 A Yes, ma'am.

16 Q I guess the camera angles that you could not
17 preserve, did you show those to deputies?

18 A Yes, ma'am.

19 Q I want to ask you about a disk. Have you reviewed
20 a disk in preparation for your testimony here on
21 the computer?

22 A Just a little bit ago, the one you showed me.

23 Q And is that a camera angle inside of the Chuck E.
24 Cheese here in Richland County?

25 A Yes, ma'am.

1 Q And did that disk fairly and actually depict Chuck
2 E. Cheese?

3 A Yes, ma'am.

4 MS. M. WALKER: Your Honor, at this point we
5 seek to admit State's Exhibit Number 9 into
6 evidence.

7 THE COURT: Did you say no objection?

8 MS. A. WALKER: No objection.

9 THE COURT: All right. So admitted.

10 (WHEREUPON, State's Exhibit No. 9 was
11 marked for identification and received
12 into evidence.)

13 BY MS. M. WALKER:

14 Q Thank you, sir. I don't have any further
15 questions.

16 THE COURT: Anything?

17 MS. A. WALKER: Yes, Your Honor. Briefly.

18 CROSS-EXAMINATION

19 BY MS. A. WALKER:

20 Q And this -- you were called out on January 3rd for
21 this incident?

22 A I guess that is the date, yes, ma'am. I don't
23 recall the exact date.

24 Q And you were able to preserve a video?

25 A Yes, ma'am.

1 Q But it was just one angle?

2 A Yes, ma'am.

3 Q And you said you had 32 cameras at Chuck E. Cheese?

4 A There are approximately 32 cameras at Chuck E.

5 Cheese, yes, ma'am.

6 Q And 24 of those cameras, are they interior cameras?

7 A Without counting them I could not tell you off the
8 top of my head.

9 Q But you would agree that you also have exterior
10 cameras?

11 A Yes.

12 Q And more than one exterior camera?

13 A Yes, ma'am.

14 Q Okay. And you didn't turn over the video that
15 night; is that correct?

16 A Honestly I can't remember. Most of the time if I
17 don't burn it at that moment it is burned within 24
18 hours.

19 Q You think that --

20 A I don't --

21 Q -- you turned over the video within 24 hours?

22 A I honestly don't remember the timeframe for which I
23 burned the video.

24 Q Okay. But you are the one that burned the video?

25 A Yes, ma'am, I am the only one who has the ability

1 to burn the video.

2 Q Okay. Thank you, Mr. Jones.

3 THE COURT: Anything further?

4 MS. M. WALKER: Nothing, Your Honor. May the
5 witness be excused?

6 THE COURT: All right. Yes. Thank you, sir.
7 You are free to leave.

8 THE WITNESS: Thank you.

9 (Witness steps down.)

10 THE COURT: All right.

11 MS. MOSER: The State calls Kadeshia Green.

12 (Witness approaches.)

13 THE BAILIFF: Place your left hand on the
14 Bible, and raise your right hand, please.

15 (Witness complies.)

16 THE CLERK: Do you solemnly swear or affirm
17 that the testimony you are about to give in this
18 case will be the truth, the whole truth, and
19 nothing but the truth, so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Please have a seat, and state your
22 full name for the record.

23 THE WITNESS: Kadeshia Sharday Gloria Jean
24 Green.

25 KADESHIA GREEN,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. MOSER:

4 Q Hey, Kadeshia.

5 A Hello.

6 Q Kadeshia, how old are you?

7 A Nineteen.

8 Q Thank you. And do you live here in Columbia?

9 A Yes, ma'am.

10 Q Kadeshia, where do you work?

11 A At McDonald's on St. Andrews Road.

12 Q Okay. How long have you worked there?

13 A A year and a half.

14 Q Okay. Back in January of 2013, where did you work?

15 A At Chuck E. Cheese.

16 Q Chuck E. Cheese. Okay. And what did you do there?

17 A I was a cashier.

18 Q And can you tell us a little bit about your duties
19 as a cashier?

20 A I basically ran the kid check and frank counter.

21 Q Okay. And I am going to bring you back to the
22 night of January 3rd, 2013. Do you remember that
23 night?

24 A Yes, ma'am.

25 Q Okay. What were you doing that night?

- 1 A We was actually taking the salad bar down and we
2 was in the back of store.
- 3 Q What were you doing?
- 4 A Taking the salad bar down.
- 5 Q Okay. All right. So that was one of your duties?
- 6 A Yes, ma'am.
- 7 Q Okay. And who were you doing that with?
- 8 A With Kyrie Green.
- 9 Q Kyrie Green?
- 10 A Yes, ma'am.
- 11 Q Was there anyone else there that night that you
12 were working with?
- 13 A Yes. It was Ronnie Martin, and we also had -- I
14 forgot her name, but it was a kitchen aid.
- 15 Q Okay. And what happened that night?
- 16 A I basically seen the man coming into the store.
17 And when I seen him grabbing into his pocket, my
18 first instinct was to run. So I ran --
- 19 Q I am going to stop you there.
- 20 A Uh-huh.
- 21 Q Okay. So a man came into the store. Do you
22 remember what time this was?
- 23 A It was around 9:00, because we close around 10:00,
24 so we start cleaning up around 9:30.
- 25 Q Okay. Were there any other people there? Was it

1 just mainly employees?

2 A It was just employees.

3 Q Okay.

4 A Because it was like right after the last customer
5 left.

6 Q Okay. And go ahead and continue with what you were
7 saying. You said a man entered. And what
8 happened?

9 A And I ran. Yes, ma'am. My first instinct was to
10 run, so I ran to the back of store.

11 Q Okay. Why was that your first instinct?

12 A Because I -- he didn't look familiar. Not many
13 people come into a Chuck E. Cheese after 9:00 with
14 no kids with a bandanna on and digging in his
15 pocket.

16 Q And how did he appear to you? What was he wearing?

17 A He had dark clothing, red bandanna, and a wig on,
18 black shades, and a mustache. I remember all that
19 because I seen him coming into the door.

20 Q Okay. Will you describe what kind of glasses he
21 was wearing?

22 A It was dark shaded glasses.

23 Q Dark shaded. Okay. And then what else did he have
24 on his face?

25 A He had -- well, he had the bandanna on and the

1 ma -- the wig and the mustache.

2 Q Okay. What color was the wig?

3 A Brown. It was darkish, brownish red. Because I
4 seen it, because he also had a hoodie on.

5 Q Okay. And when he came in, where were you
6 standing?

7 A On the side of the salad bar. I was taking the
8 things out of the salad bar.

9 Q So can you tell me roughly how close you were to
10 him?

11 A Well, he was still at -- he was at the door. By
12 the time he got past kid check, I was gone.

13 Q You were where?

14 A I was running.

15 Q Okay. And so I keep asking the same questions but
16 I just want to make it clear. So why did you run?

17 A Because he was digging in his pocket and he didn't
18 look familiar. And my first instinct was to run.

19 Q Okay.

20 A It looked like something was going up.

21 Q Okay. Did you alert anyone?

22 A Yes. Me and Kyrie, we ran together, but I guess he
23 didn't run fast enough. He caught him.

24 Q Okay. Where did you run?

25 A We ran around, like the kitchen area.

1 Q Okay.

2 A Past the office, back out the front, and back to
3 the back of the store.

4 Q Why did you run in that direction?

5 A Because it was other people back there and I didn't
6 want to, you know, not be the only person that
7 knew.

8 Q Okay. So --

9 A Because when I ran -- I let Ronnie know that
10 somebody was behind me with a gun.

11 Q Okay. And who is Ronnie again?

12 A The manager. He was a manager that night.

13 Q Okay. So you informed him that there was a gun --
14 a man with a gun. Did you happen to see what
15 happened to Kyrie?

16 A Yes, ma'am. He wasn't that far apart from me, so I
17 did see him walk with Kyrie around with a gun to
18 his back. And then there is an opening to where
19 you can see into the kitchen from the floor.

20 Q Okay. So you did see the gun?

21 A Yes, ma'am.

22 Q Okay. And how was the gun positioned?

23 A It was basically positioned in the back of his
24 back.k

25 Q Okay. And you said you tried to alert people.

1 What did you say?

2 A I said, Ronnie the man has a gun.

3 Q Can you say it one more time?

4 A Ronnie, the man has a gun.

5 Q The man has a gun. Okay. And what did Ronnie do?

6 A He ran with me.

7 Q Okay. And did you run out of the store or --

8 A No, ma'am. We basically ran basically to the
9 bathroom to the back, because as I was running I
10 seen him run out the front door.

11 Q Okay. So you actually saw him leave?

12 A Uh-huh.

13 Q Okay. Do you remember how long this took
14 approximately?

15 A It really wasn't that long, because it was like an
16 in-and-out job basically, that is what it was
17 supposed to be, but he was in and out. So I guess
18 like after he seen that we was alert that his -- I
19 guess his first instinct was to run too.

20 Q That suspect, did you hear him say anything?

21 A No, ma'am.

22 Q You didn't? Okay. And at what point again did you
23 see the gun?

24 A When I was running to the back of the store. He
25 basically -- when he was first pulling it out of

1 his pocket, I didn't know what it was, so I first
2 assumed it was a gun.

3 Q And did he already have Kyrie?

4 A Yes, ma'am.

5 Q He did? Okay. And how did he -- did he grab him?

6 A He grabbed him like as in he had his shirt like
7 this and a gun to the back of his shirt and was
8 basically -- basically following him through the
9 store.

10 Q Okay.

11 A Because he came from the back -- to the back of the
12 kitchen and then basically ran back out.

13 Q Okay. And you said you did see him leave?

14 A Yes, ma'am.

15 Q Okay. Did you speak with any police officers that
16 night?

17 A Yes, ma'am, but I don't recall their name.

18 Q Okay. And that's fine. And how long did you stay
19 there?

20 A Not long. We had to write our statements and wait
21 for our rides.

22 Q Okay. And do you remember writing that statement?

23 A Yes, ma'am.

24 Q Okay. And what did you tell the police officer in
25 that statement?

1 A Basically everything I seen. I seen him walk into
2 the store and I took off. When he -- then I also
3 wrote when he had the gun to Kyrie's back.

4 Q Okay. And how did you feel when this happened?

5 A I was basically scared because I never was in a
6 situation like that. I actually quit the next
7 morning.

8 Q All right. No further questions.

9 MS. MOSER: No further questions, Your Honor.

10 THE COURT: Thank you. Anything?

11 MS. DYAR: Beg the Court's indulgence, Your
12 Honor.

13 (Pause.)

14 MS. DYAR: May it please the Court?

15 CROSS-EXAMINATION

16 BY MS. DYAR:

17 Q All right, Ms. Green. And you saw your statement
18 before you came to court today?

19 A Yes, ma'am.

20 Q Okay. And this was just a regular night?

21 A Yes, ma'am.

22 Q Okay. And you said you were at the back of the
23 store with Kyrie actually shutting down the salad
24 bar?

25 A Yes, ma'am.

- 1 Q Okay. But you see this guy as soon as he comes in?
- 2 A Yes, ma'am, because I was facing the door.
- 3 Q Okay. You are facing the door. Do you get a good
- 4 look at him?
- 5 A Yes -- well, actually, no, I can't really tell you
- 6 what he looked like because I didn't see him.
- 7 Q But you were able to tell what he had on?
- 8 A Uh-huh.
- 9 Q And that he had on dark shades?
- 10 A Uh-huh, because I also seen him run out the door.
- 11 I didn't see his face, but I seen him.
- 12 Q Okay. So you look at this guy and you think
- 13 something is not right about him?
- 14 A Uh-huh.
- 15 Q Okay. So you go to the kitchen to get Ronnie at
- 16 that point?
- 17 A Yes, ma'am.
- 18 Q Okay. And you said there was someone else in the
- 19 kitchen?
- 20 A Yes, ma'am.
- 21 Q Who was that?
- 22 A It was the cook. I actually don't know her name.
- 23 Q Okay. All right. And you think he was about to do
- 24 something?
- 25 A Yes, ma'am.

1 Q So you go get Ronnie?

2 A Uh-huh.

3 Q Okay.

4 THE COURT: I need you to say yes or no.

5 A Yes, ma'am.

6 Q Okay. And then you turn around and see the guy in
7 the kitchen?

8 A He was basically behind us as we was running, so --

9 Q Okay. You are already in the kitchen?

10 A Uh-huh.

11 Q Okay.

12 A I am.

13 Q You are already in the kitchen. Kyrie is still
14 back behind you; right?

15 A Yes, ma'am.

16 Q Okay. So you get in the kitchen and you let Ronnie
17 know what is going on?

18 A Yes, ma'am.

19 Q Okay. And then you turn around?

20 A We turn to the back of the store running out as you
21 come from around the corner.

22 Q Okay.

23 A We went back to the bathroom.

24 Q Okay. So do you see the guy in the kitchen at all
25 with Kyrie?

- 1 A Yes, ma'am, he was behind me whenever we was
2 running.
- 3 Q Okay, good. That's what I was trying to clear up.
4 Thank you. And you see that he has got Kyrie?
- 5 A Yes, ma'am.
- 6 Q You said by the shirt?
- 7 A Right. He had him by the shirt and the gun was
8 towards his back.
- 9 Q Okay. But you and Ronnie take off running, you
10 said?
- 11 A Yes, ma'am.
- 12 Q Because you were scared?
- 13 A Yes, ma'am.
- 14 Q A guy is robbing -- you know, he has come in with a
15 gun to the Chuck E. Cheese? Right?
- 16 A Yes, ma'am.
- 17 Q And that doesn't happen on a Thursday night when
18 you are trying to close down?
- 19 A No.
- 20 Q Okay. But you do get a good look at him when you
21 see him running out of the store?
- 22 A Yes, ma'am.
- 23 Q And you gave your statement to law enforcement.
24 You wrote it yourself?
- 25 A Yes, ma'am.

1 Q You handwrote everything down?

2 A Yes, ma'am.

3 Q Okay. And today you told us that -- you have
4 actually given us quite a few details about him;
5 right?

6 A Yes, ma'am.

7 Q That he had dark clothing on?

8 A Yes, ma'am.

9 Q That he had black shades on?

10 A Yes, ma'am.

11 Q A mustache?

12 A Yes, ma'am.

13 Q A bandanna?

14 A Yes, ma'am. And a wig.

15 Q A brown wig?

16 A Uh-huh, yes, ma'am.

17 Q And you said that you also saw he had on a hoodie?

18 A Yes, ma'am.

19 Q Okay. And law enforcement showed up after the guy
20 left, after you guys called 9-1-1, I guess?

21 A Yes, ma'am.

22 Q Okay. And the statement that you provided, did you
23 write that for law enforcement or was that for your
24 manager?

25 A Well, I was told to write a statement for law

1 enforcement.

2 Q Okay. And you didn't hear anybody say anything?

3 A No, ma'am.

4 Q Okay.

5 MS. DYAR: Beg the Court's indulgence.

6 (Pause.)

7 BY MS. DYAR:

8 Q And did you ever meet with Mr. -- Investigator
9 Martin?

10 A No, ma'am.

11 Q You never -- okay. That night you just spoke to
12 the deputy that responded?

13 A Yes, ma'am.

14 Q Okay. So you were never showed a photo line-up or
15 anything like that?

16 A No, ma'am.

17 Q Okay.

18 MS. DYAR: Nothing further.

19 THE COURT: Is that it?

20 MS. DYAR: Oh, yes, sorry. Nothing further.

21 THE COURT: Anything further?

22 MS. MOSER: No further questions.

23 THE COURT: All right, thank you, ma'am. You
24 may step down.

25 (Witness steps down.)

1 THE COURT: All right, call your next witness.

2 MS. M. WALKER: Thank you, Your Honor. The
3 State calls Kyrie Green.

4 (Witness approaches.)

5 THE BAILIFF: Place your left hand on the
6 Bible, and raise your right hand, please.

7 (Witness complies.)

8 THE CLERK: Do you solemnly swear or affirm
9 that the testimony you are about to give in this
10 case will be the truth, the whole truth, and
11 nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please have a seat, and state your
14 full name for the record.

15 THE WITNESS: My name is Kyrie Deveon Green.

16 KYRIE GREEN,

17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. M. WALKER:

20 Q Just back up from the microphone a little bit.

21 Okay. Speak slowly so that the court reporter can
22 take down what you are saying and that the jury can
23 understand you. Okay?

24 A Okay.

25 Q All right.

- 1 A My name is Kyrie Green. Kyrie Deveon Green.
- 2 Q How old are you?
- 3 A Twenty.
- 4 Q And where do you live now?
- 5 A I currently live in Columbia, South Carolina.
- 6 Q And do you work?
- 7 A Yes, ma'am.
- 8 Q What do you do?
- 9 A Painting.
- 10 Q Do you have any children?
- 11 A Yes, ma'am.
- 12 Q How many?
- 13 A One.
- 14 Q A little girl?
- 15 A Yes, ma'am.
- 16 Q How old is she?
- 17 A Two years old.
- 18 Q I want to take you back to January of last year.
- 19 A Okay.
- 20 Q Where were you working then?
- 21 A Chuck E. Cheese.
- 22 Q Where is that Chuck E. Cheese located?
- 23 A Burning Tree.
- 24 Q On Burning Tree?
- 25 A (Nods affirmatively.)

1 Q I need you to speak a little bit louder.

2 A Burning Tree Road.

3 Q Perfect. How long had you been working at Chuck E.
4 Cheese at that point?

5 A A year and about a month.

6 Q And what did you do at Chuck E. Cheese?

7 A I was a game room attendant.

8 THE COURT REPORTER: I'm sorry?

9 Q A game room attendant?

10 A Game room attendant.

11 Q And what did that mean?

12 A Like I basically was in control of games, fixing
13 the games, make sure there was no problems, make
14 sure all the kids had leave with a good time, make
15 sure --

16 Q So you were in charge of making sure the kids at
17 Chuck E. Cheese had a good time?

18 A A good time.

19 Q I want to take your attention specifically back to
20 January 3rd.

21 A Okay.

22 Q Were you working that night?

23 A Yes, ma'am.

24 Q Do you remember what time you guys closed?

25 A 10:00 o'clock.

1 Q And about what time did the place kind of clear out
2 of customers?

3 A That night it cleared out pretty early, I would say
4 about around 9:00, probably 9:15, 9:20.

5 Q Okay. And once the customers left, what did you
6 do?

7 A Started to clean up and close down.

8 Q Who else was working with you? Who else was -- I
9 guess you guys called it closing the restaurant?

10 A Uh-huh.

11 Q Who else was closing with you that night?

12 A Kadeshia Green, Ronnie Martin, the cook we had, her
13 name was Anna, she was back there. And that was
14 it.

15 Q And Kadeshia Green, is she related to you?

16 A No, ma'am.

17 Q Y'all just happen to have the same last name?

18 A Yes, ma'am.

19 Q Did anything out of the ordinary happen that night?

20 A We saw a man come in Chuck E. Cheese, had a wig.

21 Q Let me slow you down. Where were you when you saw
22 the man come into Chuck E. Cheese?

23 A Directly by the salad bar.

24 Q And when you saw the man come into Chuck E. Cheese,
25 what did he look like?

- 1 A It was a dark-skinned man. He had on a wig. He
2 had a bandanna around his neck. He was in dark
3 clothing, all black. And he had white shoes on.
4 And he had like some glasses on.
- 5 Q When you say dark skin, you are saying he is a
6 black man?
- 7 A It was a black man.
- 8 Q Okay. Do you remember his -- was he lighter than
9 you or darker than you or --
- 10 A He was lighter than me.
- 11 Q Lighter than your complexion?
- 12 A (Nods affirmatively.)
- 13 Q He had a bandanna on?
- 14 A Uh-huh.
- 15 Q What color was the bandanna?
- 16 A Red.
- 17 Q Where did he have it on?
- 18 A From right here on.
- 19 Q Down?
- 20 A Uh-huh (indicates).
- 21 Q A red bandanna like that?
- 22 A Yes, ma'am.
- 23 Q And he had on a wig?
- 24 A Uh-huh.
- 25 Q Describe that wig for me again.

1 A The wig was brown, looks like a darker brown.

2 Q About like this?

3 A Uh-huh.

4 THE COURT: I need you to say yes or no,
5 please.

6 A Yes, ma'am.

7 Q So there is a wig that comes down and a bandanna
8 right here?

9 A Uh-huh, yes, ma'am.

10 Q And where -- if you were at the salad bar, where
11 was Kadeshia?

12 A She was in front of me.

13 Q She was in front of you?

14 A Facing towards the door, looking at the door. And
15 I had my back towards the door.

16 Q So did she see him before you did?

17 A She saw him before I did. And she told me, said,
18 That man got a gun. And she ran. And that is when
19 I looked back. By the time I looked back he had
20 the gun out.

21 MS. M. WALKER: Your Honor, may the witness
22 step down?

23 THE COURT: He may.

24 Q Will you step down from the witness stand? He will
25 help you out.

1 (Witness steps down.)

2 MS. M. WALKER: Thank you, Mr. Dye.

3 BY MS. M. WALKER:

4 Q So you see -- how far are you -- tell me when to
5 stop. How far are you when the man comes in?

6 A Probably right to where the officer is sitting
7 right there.

8 Q This one?

9 A Uh-huh.

10 Q So you are -- it is like this?

11 A Uh-huh.

12 Q But your back is to him?

13 A Yeah, my back is to him.

14 Q And Kadeshia is in front of you?

15 A (Nods affirmatively.)

16 Q And she says, He has a gun, and she takes off
17 running?

18 A Yes, ma'am.

19 Q So then what happened? What did you do?

20 A I turned around and looked back around.

21 Q So if I'm you, you turn around like this?

22 A Turn around.

23 Q And what is the robber doing?

24 A And he had the gun out like that towards me.

25 Q And is he coming towards you still?

1 A Uh-huh.

2 Q So keep coming towards me. Does he have the gun
3 out?

4 A Uh-huh.

5 THE COURT: Say yes or no, please.

6 Q And you have got to speak up so she can hear you,
7 okay?

8 A Yes, ma'am.

9 Q He has the gun out. How close did he get to you?

10 A Very close.

11 Q Keep coming. Tell me when he stops.

12 A Right about here.

13 Q He said, Come here?

14 A Yes.

15 Q Did you go to him? Like this?

16 A Yes, ma'am.

17 Q Then what happened?

18 A He told me to turn around.

19 THE COURT REPORTER: I'm sorry, I can't hear.

20 A He told me to turn around.

21 Q Do it right here so that she can understand you.

22 A Okay.

23 Q So y'all got this far apart?

24 A Yes, ma'am.

25 Q And he told you to turn around?

- 1 A Yes, ma'am.
- 2 Q Did you?
- 3 A Yes, ma'am.
- 4 Q Like this?
- 5 A Yes, ma'am. And I hold my hands up.
- 6 Q You held your hands up like that?
- 7 A Uh-huh.
- 8 Q Did you see the gun at that point?
- 9 A Yes, ma'am.
- 10 Q Could you feel the gun?
- 11 A Yes, ma'am.
- 12 Q Where did you feel the gun?
- 13 A Directly in the center of my back.
- 14 Q Do it again.
- 15 A Directly in the center of my back.
- 16 Q Okay. So you and the robber are walking like this?
- 17 A Yes, ma'am.
- 18 Q But for a while you could see him face-to-face?
- 19 A Yes, ma'am.
- 20 Q Did he have anything else on his face other than
- 21 the bandanna and the wig?
- 22 A Mustache.
- 23 Q Mustache? Did he have any eyewear on?
- 24 A No, ma'am.
- 25 Q He didn't have any glasses or sunglasses?

1 A Yes, he had eyeglasses or sunglasses, yes, ma'am.
2 I thought you were talking about eyelashes or
3 anything.
4 Q Oh, no. Did he have sunglasses or regular glasses,
5 or could you tell?
6 A It was like regular glasses.
7 Q What color were they?
8 A Black.
9 Q He had black regular glasses?
10 A Yes, ma'am.
11 Q And you got much closer to him than Kadeshia did;
12 right? Eye-to-eye?
13 A Yes, ma'am.
14 Q But part of his face was covered?
15 A Yes, ma'am.
16 Q Well, once you have your hands up, the gun is in
17 his --
18 A The center of my back.
19 Q The gun is in?
20 A Center of my back. He told me to walk to the back.
21 Q So you walked --
22 A Start walking. And we get to the turn and get to
23 the turn in the kitchen and you go to the right.
24 And straight ahead is like a kitchen right there.
25 The kitchen -- you can see the kitchen and all

1 that.

2 Q Okay.

3 A And that is where the cooks -- and when I looked
4 forward ahead, Ronnie, my manager, was coming out
5 of the office.

6 Q The gun is still in your back at this point?

7 A The gun is still in my back. Soon as he saw
8 Ronnie, that's when he pushed me and left me and he
9 went towards Ronnie, because Ronnie started
10 running.

11 Q Which way did he push you?

12 A Towards the wall.

13 Q How hard did he push you?

14 A It wasn't that hard, but like that. And I caught
15 myself on the wall.

16 Q Okay. So you stop yourself?

17 A Yes.

18 Q And then he runs out. Okay. Can you get back on
19 the witness stand?

20 (Witness returns to witness stand.)

21 Q At that point -- how long did it take?

22 A I would say within five or ten minutes.

23 Q That's what it felt like to you?

24 A Yes, ma'am.

25 Q You had a gun in your back?

1 A Yes, ma'am.

2 Q Had you ever been in a situation like that before?

3 A No, ma'am.

4 Q And at the point in which he pushes you to the
5 side, did you hit the wall?

6 A Yes, ma'am.

7 Q What did you do next?

8 A Stopped. And I see where he was going to. And I
9 saw him running. That's when I went out. The way
10 I came in, I went out that way. And I saw Kadeshia
11 and Ronnie and them out there. And that is when he
12 stopped, he looked at us, all of us, we was in a
13 group, and that is when he took out the front door.

14 Q Okay. And it felt like five or ten minutes?

15 A Yes, ma'am.

16 Q Did you chase him?

17 A No, ma'am.

18 Q He had a gun?

19 A Yes, ma'am.

20 Q I want to show you -- I want to show you a video.
21 Tell me if you can see the scene from where you
22 are.

23 A Okay.

24 Q You can't see that, can you?

25 A No, ma'am.

1 Q Okay. Will you step down one more time?

2 MS. M. WALKER: If that is okay with Your
3 Honor?

4 (Witness steps down.)

5 THE COURT: Mr. Green, get on the other side
6 and face back towards the court reporter, if you
7 would, please. And you need to speak up, please,
8 sir.

9 BY MS. M. WALKER:

10 Q Do you recognize this?

11 A Yes, ma'am.

12 Q What is this?

13 A That is the front of Chuck E. Cheese, the entrance.

14 THE COURT: I need you to speak up.

15 Q You have got to speak up.

16 A At the entrance where you enter the Chuck E. Cheese
17 at.

18 Q Now, where is the salad bar? Can you see it?

19 A No, I can't see the salad bar from there.

20 Q So it was behind wherever this camera is?

21 A Yes. When you come in right here, that picture
22 where you see the kid check and all that, if you
23 look straight ahead, back towards the back, that is
24 where the salad bar is at.

25 Q And when you say kid cheek, what is kid check?

- 1 A Where the kids come in. You have got to give them
2 a stamp so to make sure they leave with the right
3 person when they leave out.
- 4 Q Okay. And is that on here?
- 5 A Yes, ma'am.
- 6 Q Is that that little center --
- 7 A Yes, ma'am.
- 8 Q -- podium?
- 9 A Yes, ma'am.
- 10 Q Okay. Is this what you saw?
- 11 A Yes, ma'am.
- 12 Q At this point did he have a gun to your back?
- 13 A Yes, ma'am.
- 14 (Video playing.)
- 15 Q And then he runs out?
- 16 A Yes, ma'am.
- 17 Q It takes about 25 seconds? It felt like five
18 minutes, though?
- 19 A That's right.
- 20 Q You can go back up on the witness stand.
- 21 A Okay.
- 22 (Witness returns to witness stand.)
- 23 Q And you wrote a statement for your manager that
24 night?
- 25 A Yes, ma'am.

1 Q And the things that you told us here today you
2 wrote in that statement?

3 A Yes, ma'am.

4 Q About the glasses?

5 A Yes, ma'am.

6 Q The bandanna, and all that?

7 A Yes, ma'am.

8 Q I want to show you -- I don't want to introduce it
9 into evidence right now, but I want to show you
10 State's Exhibit Number 7.

11 A Okay.

12 Q Do those look like the glasses the robber had on?

13 A Yes, ma'am.

14 Q What did you -- did he say anything? Did the
15 person say anything?

16 A Yes, ma'am.

17 Q What did he say?

18 A Take me to the money.

19 Q At that point did you know that there was a -- that
20 y'all were getting robbed?

21 A Yes, ma'am.

22 Q Were you scared?

23 A Yes, ma'am.

24 Q But you got about as close to him as you showed us,
25 about two --

1 A Yes, ma'am.

2 Q -- feet apart. Enough for him to grab you?

3 A Yes, ma'am.

4 Q And you got a good look at the parts of his face
5 that weren't covered?

6 A Yes, ma'am.

7 Q Thank you, sir. I don't have any further
8 questions. One of the Defense attorneys will have
9 some questions. You can answer them.

10 A Okay.

11 MS. DYAR: May it please the Court?

12 THE COURT: Yes, ma'am.

13 CROSS-EXAMINATION

14 BY MS. DYAR:

15 Q So this was just a regular night?

16 A Yes, ma'am.

17 Q Thursday night; right?

18 A Yes, ma'am.

19 Q You are trying to close up; right?

20 A Yes, ma'am.

21 Q You are trying to close down the salad bar?

22 A Yes, ma'am.

23 Q You are trying to get out of there?

24 A Yes, ma'am.

25 Q And then you see someone walk in the front door?

- 1 A Yes, ma'am.
- 2 Q Okay. And you notice he has a gun?
- 3 A Yes, ma'am.
- 4 Q And then he grabs you?
- 5 A Yes, ma'am.
- 6 Q And takes you into the kitchen?
- 7 A (Nods affirmatively.)
- 8 Q Okay. In the kitchen you see Ronnie and Kadeshia?
- 9 A Yes, ma'am.
- 10 Q Okay. And probably at this point you are thankful
- 11 to see them?
- 12 A Yes, ma'am.
- 13 Q Somebody else?
- 14 A Yes, ma'am.
- 15 Q All right. But then they run out of there; right?
- 16 A They run to the -- I was -- the kitchen, like.
- 17 When I saw them, that is when the man went towards
- 18 them, and that is when they ran out the kitchen.
- 19 Q And at this point is it just you and this man in
- 20 the kitchen, or is the cook in there as well?
- 21 A The cook is in there as well.
- 22 Q The cook is in there also. So out of everybody
- 23 involved, you probably had the most contact with
- 24 this person?
- 25 A Yes, ma'am.

1 Q For what seemed like five to ten minutes?

2 A Yes, ma'am.

3 Q With a gun on you. And then he leaves?

4 A Yes. Yes, ma'am.

5 Q Shortly thereafter an officer shows up; right?

6 A Yes, ma'am.

7 Q And then you come outside; right?

8 A Yes, ma'am.

9 Q And there is a man at the Exxon or the Gaz-Bah
10 right there next to Chuck E. Cheese?

11 A Yes, ma'am.

12 Q And you say that that is the guy that robbed you;
13 right?

14 A I didn't say -- no, I said that looked like him
15 because he had glasses on. That's why I said that
16 looked like him. He had the same type of glasses.

17 Q Okay. But that wasn't the guy; right?

18 A No, ma'am.

19 Q And then you wrote a statement. Do you remember
20 writing a statement?

21 A Yes, ma'am.

22 Q And you wrote -- on the statement you wrote out
23 everything that you knew about what happened;
24 right?

25 A Yes, ma'am.

1 Q You wanted to get everything out there that you
2 could?

3 A Yes, ma'am.

4 Q You wanted to help the police catch this guy?

5 A Yes, ma'am.

6 Q Because he is out there, got a gun; right?

7 A Yes, ma'am.

8 Q And so you want to write down everything that you
9 know?

10 A Yes, ma'am.

11 Q So that law enforcement has all they need to try to
12 find this guy, because he came in there and held a
13 gun to you?

14 A Yes, ma'am.

15 Q Right? And in your statement -- you remember
16 writing the statement?

17 A Yes, ma'am.

18 Q Do you remember what it says?

19 A Yes, ma'am.

20 Q And you said the guy had on a wig?

21 A Uh-huh, yes, ma'am.

22 Q That he was wearing glasses?

23 A Yes, ma'am.

24 Q You don't say anything about the color of the
25 glasses?

- 1 A I honestly don't remember.
- 2 Q Okay. And that he had a bandanna?
- 3 A Yes, ma'am.
- 4 Q A red bandanna?
- 5 A Yes, ma'am.
- 6 Q Tied around his neck?
- 7 A From here on down(indicating).
- 8 Q And you have seen your statement?
- 9 A Yes, ma'am.
- 10 Q Do you have a copy of it?
- 11 A No, ma'am.
- 12 Q I'll show you right here.
- 13 A This is it.
- 14 Q And can you read the part about the bandanna?
- 15 A He had a wig on with a red bandanna around his neck
- 16 with glasses on.
- 17 Q And you were able to tell that he had a mustache?
- 18 A Yes, ma'am.
- 19 Q Okay. So with this up over his face --
- 20 A Yes, ma'am.
- 21 Q -- up over the rag, you can see a mustache; right?
- 22 A Yes, ma'am.
- 23 Q Okay. But today you are telling us you saw his
- 24 mustache --
- 25 A Yes, ma'am.

1 Q -- but that it was up here?

2 A You could -- like how he had it, you could still
3 see a mustache up from around the bandanna.

4 Q Okay. And then now you are also saying that he
5 demanded money?

6 A Yes, ma'am.

7 Q He said, Take me to the money?

8 A Yes, ma'am.

9 Q But you never wrote that in your statement either?

10 A No, ma'am.

11 Q Okay. Right after the incident happened?

12 A Yes, ma'am.

13 Q Right when it was fresh in your mind?

14 A Yes, ma'am.

15 Q Okay. Let's see here. You -- did you ever speak
16 to Investigator Martin about this case?

17 A No, ma'am.

18 Q He never showed you a photo line-up, or anything
19 like that?

20 A No, ma'am.

21 Q And you were the person that spent the most time
22 with this individual?

23 A Yes, ma'am. Yes, ma'am.

24 Q Thank you. I will take that back from you.

25 MS. DYAR: Beg the Court's indulgence.

1 (Pause.)

2 MS. DYAR: Nothing further.

3 THE COURT: Anything?

4 REDIRECT EXAMINATION

5 BY MS. M. WALKER:

6 Q You said the other guy that you thought -- the guy
7 at the gas station?

8 A Yes, ma'am.

9 Q You recognized the glasses?

10 A Yes, ma'am.

11 Q Because they were pretty distinctive?

12 A Yes, ma'am.

13 MS. DYAR: Objection, Your Honor. Leading.

14 THE COURT: Don't lead.

15 MS. M. WALKER: Yes, Your Honor.

16 BY MS. M. WALKER:

17 Q Why did you recognize the glasses?

18 A Because they were the same similar type glasses.

19 Q Okay. And the ones that looked like that picture I
20 showed you?

21 A Yes, ma'am.

22 MS. M. WALKER: I don't have any further
23 questions.

24 THE COURT: All right, thank you sir. You may
25 step down.

1 (Witness steps down.)

2 MS. M. WALKER: May we approach, Your Honor?

3 May we approach?

4 THE COURT: About what?

5 MS. M. WALKER: Scheduling.

6 THE COURT: There you go. Call your next
7 witness.

8 MS. M. WALKER: Thank you, Your Honor.

9 Your Honor, the State calls Investigator Rob
10 Martin.

11 (Witness approaches.)

12 THE BAILIFF: Place your left hand on the
13 Bible, and raise your right hand, please.

14 (Witness complies.)

15 THE CLERK: Do you solemnly swear or affirm
16 that the testimony you are about to give in this
17 case will be the truth, the whole truth, and
18 nothing but the truth, so help you God?

19 THE CLERK: Please have a seat, and state your
20 full name for the record.

21 THE WITNESS: Robert Martin.

22 ROBERT MARTIN,
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. M. WALKER:

1 Q Investigator Martin, where are you currently
2 employed?

3 A With the Richland County Sheriff's Department.

4 Q And how long have you been with the Sheriff's
5 Department?

6 A About 14 years.

7 Q And what did you do before that?

8 A Before that I worked for the City of Camden as a
9 patrol corporal.

10 Q Patrol Corporal?

11 A Right.

12 Q Roughly how long have you been involved in law
13 enforcement?

14 A Nineteen years, I believe.

15 Q And what are your duties at the Sheriff's
16 Department?

17 A Currently I'm assigned to robbery as a robbery
18 homicide investigator. I have had those duties
19 since I think 2008. Before that I was the
20 supervisor in the cold case homicide squad about a
21 year. Before that I worked in the pursuit of sex
22 crimes with sex offenders.

23 Q And how long have you been with the robbery unit?

24 A Since I believe 2008.

25 Q So at the point in which this robbery happened,

1 that's about five years?

2 A Yes.

3 Q And did you become involved in the robbery of Chuck
4 E. Cheese on January 3rd?

5 A I did.

6 Q Tell us how you became involved.

7 A Officers responded. They did the initial
8 documentation. When the report came in it was
9 assigned to the robbery unit. At that time my
10 supervisor assigned it to me with the duty of
11 following up on the investigation.

12 Q And what did you do? What steps did you take once
13 that case was assigned to you?

14 A I reviewed some of the notes that came in from the
15 reporting officers, the statements that came in
16 from the witnesses. I made attempts to retrieve
17 the video from the store surveillance cameras that
18 was reported in the incident report. I checked the
19 evidence that was collected and made the request to
20 have the evidence submitted to DNA for testing.

21 Q And at that point in which the -- you submitted the
22 evidence and the testing, did that become -- did
23 those results become significant to you?

24 A They did. When the results came in, they came back
25 as a match. The match was Michael Orlando Brown.

1 And that is how we came to Michael Brown as the
2 subject in this case.

3 Q And at the point in which you have DNA from the
4 crime scene that matches a suspect, did you find it
5 important to talk to that suspect?

6 A Yes. I mean, we had witnesses who said that the
7 items recovered matched the items used in the
8 robbery. The DNA was significant in that those
9 items had DNA of I believe --

10 THE COURT REPORTER: I'm sorry, I didn't hear
11 you.

12 A Which part? I'm sorry.

13 THE COURT REPORTER: The DNA was
14 significant...

15 A Oh, the DNA was significant because it again was
16 matched to a person, and then we had reason to ask
17 that person who at some point where that item --
18 what their involvement was in the robbery.

19 Q And did you obtain video from that robbery?

20 A I did eventually get the video from the robbery.

21 Q Did you review the video?

22 A I did, several times. One, I am looking for
23 trends. Being a robbery unit, we work all the
24 robberies in that area, so kind of see if that is
25 something that was going on as a trend, something

1 we would look into as far as other potential
2 evidence.

3 And then again looking at what was distinctive
4 about the individual and the clothes they are
5 wearing, things of significance that would be part
6 of the investigation.

7 Q And upon reviewing the video, did you find things
8 that you thought were significant?

9 A I did. There was a gun. In reaching for his gun,
10 pulling the gun out, you can see that there is a
11 band on his ring finger that I found to be
12 significant. It looked kind of large, a bulky
13 piece of jewelry.

14 Q Let me pull the video up again so that you can show
15 the jury which parts you found significant.

16 MS. M. WALKER: Your Honor, may the witness
17 step down?

18 THE COURT: Yes, sir.

19 (Witness steps down.)

20 (Video played.)

21 BY MS. M. WALKER:

22 Q At any point in time I need to stop, just let me
23 know.

24 A You can stop here. You can see these white shoes.
25 We felt those were important. Most of the time

1 when robbers are wearing a disguise and they get
2 rid of any part of the disguise, they get rid of
3 stuff that is not significant to them, as in the
4 wig and bandanna, but things like shoes and pants,
5 and things like that, that they are kind of stuck
6 to, they kind of keep those on. So we kind of look
7 at the shoes, which in this case were white. They
8 would be white flat shoes.

9 THE COURT: I need you to speak up, please.

10 THE WITNESS: Yes, sir.

11 A In this scene you can see this reflective area on
12 the ring finger. Again, suggesting -- again, it is
13 a little bit blurry here on this display, but when
14 we look at it on the computer it stands out as
15 being a bulky piece of jewelry on the hand,
16 possibly a wedding ring. Again, it stands out.
17 Again, it is sharper when we look at it on the
18 computer. When we look at the image we have now,
19 the glasses are pretty distinct, plastic reading
20 type glass, kind of bulky, maybe 50s kind of era
21 kind of glasses. Trendy now, but that is what they
22 kind of look like. The mustache is a little bit
23 darker, but it is -- clearly it is kind of a
24 mustache shape. Again, the white shoes we found to
25 be -- there you go. And you can see that red

1 bandanna around the neck. Bulky jacket. Again, it
2 was January so it is colder outside, so the jacket
3 was needed at the time because obviously it is
4 cold, so we kept the jacket with us. So we were
5 interested in that jacket as well.

6 Q Okay. And point out that plastic thing, the thing
7 on his hand, the reflection.

8 A Right here. It is kind of right there. And it
9 moves with him. And it is part -- it is not just a
10 reflection, it is actually something that was
11 moving as he is going through the motions of
12 pulling. We were told the gun came out of his
13 pocket. He was having trouble getting it out of
14 the jacket, so he was reaching across and pulling
15 it out. And you can see that reflective material.
16 Here we go. I don't know if you can see it there,
17 it moves kind of quick. It is very quick. The
18 whole video is not very long. But as he moves
19 through you can see that reflective thing moves
20 through. Piece of jewelry.

21 Q You can take the witness stand.

22 (Witness returns to witness stand.)

23 Q And after reviewing that video and getting the DNA
24 hit back, did you -- were you able to in fact make
25 contact with Michael Orlando Brown?

1 A I did. He was arrested by our fugitive team and
2 brought to my office.

3 Q And where is your office located?

4 A It is at 5623 Two Notch Road. That is the main
5 Sheriff's Department on Two Notch Road at Fontaine.

6 Q And describe I guess -- did you sit him down in a
7 room and talk to him?

8 A No, actually the criminal investigation division is
9 stored on the second floor, and on the second floor
10 is an open office area similar to this, not as high
11 probably, but similar to this kind of layout, and
12 the offices are cubicles, and they are about four
13 foot high walls made out of drywall and I'm not
14 sure what else, wood tops, and they are high enough
15 that if you stand over you can see the person next
16 to you. So there is a little prairie dog laying
17 there. But it is an open space. I have an
18 adequate desk, a chair, and a filing cabinet in my
19 office. The spaces are roughly -- it is maybe six
20 or seven feet deep by five foot wide. Big enough
21 to sit down with a chair and have a conversation
22 with someone.

23 Q And did you and Mr. Brown in fact sit down and have
24 a conversation?

25 A We did. I Mirandized him of his rights and then I

1 began to interview him based on this case.

2 Q You say you Mirandized him?

3 A I did.

4 MS. M. WALKER: Thank you.

5 Q I want to show you what has been marked as State's
6 Exhibit 1. Do you recognize this?

7 A I do. This is the Advice of Rights form.

8 Q This was used with this Defendant?

9 A Yes. I filled it out. It has got my handwriting
10 on it. And it is Michael Brown and myself.

11 MS. M. WALKER: Your Honor, at this point the
12 State seeks to admit Exhibit 1 into evidence.

13 MS. A. WALKER: No objection, Your Honor.

14 THE COURT: So admitted.

15 (WHEREUPON, State's Exhibit No. 1 was
16 marked for identification and received
17 into evidence.)

18 BY MS. M. WALKER:

19 Q And describe for the jury, please, how you went
20 about Mirandizing this Defendant.

21 A Well, first of all, I did a little background. I
22 wanted to know his state of mind. So I asked him
23 some basic questions.

24 The first one I asked him if he graduated high
25 school. He said he did. Or how far he went in his

1 education. He said he graduated high school in
2 2000 at Airport High School.

3 Then I asked him if he had any alcohol or
4 drugs, or taken any alcohol or drugs. And he said
5 no alcohol or drugs today, to include marijuana.

6 I asked him when he last ate. He said he last
7 ate at 3:30 hours that day, which would have been
8 the 14th of March, 2013. He ate at 3:30 that
9 afternoon at Wendy's while he was on break from
10 work. He was arrested at his workplace.

11 I asked him the last time he slept and for how
12 long. He said he slept last night and for about
13 six hours.

14 And then I went through the Advice of Rights
15 form.

16 The top part has his name. I put Michael O.
17 Brown. Place was RCSD, which stands for Richland
18 County Sheriff's Department. It has my name on it.
19 The date, 3/14/2013. And the time at 1640 hours,
20 or 4:40 in the afternoon.

21 The first starts, says, Your Rights. And it
22 says:

23 Before we ask you any questions you must
24 understand your rights. And I have that box
25 checked.

1 You have the right to remain silent. I have
2 that box checked.

3 Anything you say can be used against you in
4 court. And I have that box checked.

5 You have the right to talk to a lawyer for
6 advice before we ask you any questions and to have
7 a lawyer with you during any questioning. And that
8 box is also checked.

9 If you cannot afford a lawyer one will be
10 appointed for you before any questioning if you
11 wish. And that box is checked.

12 If you decide to answer questions now without
13 a lawyer present you still have the right to stop
14 answering at any time. You also have the right to
15 stop answering at any time until you talk to a
16 lawyer.

17 That is witnessed by me and signed by Michael
18 Brown.

19 It goes on to, Waiver of the Rights. And it
20 says:

21 I have read this statement of my rights and
22 understand what my rights are. I am willing to
23 talk and answer questions. I understand and know
24 what I am doing. No promises have been made to me
25 and no pressure or coercion of any kind has been

1 used against me.

2 And coercion is circled. And the reason
3 coercion is circled is I asked Mr. Brown if he knew
4 what coercion meant. He said he did. And then I
5 explained again no one is forcing him to do
6 anything. If he tells me anything today, it is
7 because he wanted to talk to me about this case.

8 I signed -- I witnessed his signature and he
9 signed it.

10 There is a section here on the third line that
11 says -- it has two letters, RA, beside it. And
12 that stands for read aloud. And I put that there
13 because I had him actually read that line out loud.

14 It says: Anything you say can be used in
15 court. And he read that to me out loud reading
16 from this form. That is just to verify that he
17 could read and write.

18 So at that point we began the investigation
19 and interviewing.

20 Q When you are going over these Advice of Rights with
21 him, did he appear to understand?

22 A He did say -- he verbally said he understood his
23 rights and signed and waived his rights.

24 Q Did he appear coherent?

25 A He did.

1 Q Did he appear as though he was aware of the time
2 and place and why he was there?

3 A He did.

4 Q At any point in time did you threaten to make him
5 make a statement?

6 A No.

7 Q Did you use any pressure?

8 A No. We want him to tell a story and we want him to
9 feel comfortable to tell a story.

10 Q Did you make him any promises?

11 A No, I did not.

12 Q Can I see that? And this is the Advice of Rights
13 that he signed and then waived?

14 A Yes.

15 Q And at that point did he begin to talk to you about
16 this case?

17 A He did. He wanted to know more of the facts. We
18 discussed DNA and he wanted to know what type of
19 DNA was found, at which point I just told him it
20 was his DNA.

21 Q When you say, We began -- kind of walk us from the
22 beginning to the end. When you say, We discussed
23 DNA, how did y'all get to --

24 A The case?

25 Q Yes, how did y'all get to that point?

1 A I believe the -- he had known what the warrant had
2 said, it sounded like someone read him the warrant.
3 I didn't read him his warrant, someone else read it
4 to him. And when I went through -- he wanted to
5 know about the case and how we came to our evidence
6 and what was going on with our case. So he was
7 pretty much trying to interview me at that point.
8 And you have to kind of shut that down. The
9 questions go one way until we can kind of figure
10 out what is going on.

11 Q Is that a common tactic that suspects question you?

12 A How bad am I caught? What do you have on me? And
13 that is what they want to know. And it is also so
14 they can start to develop -- well, a lot of tactics
15 they use to development an alibi or come up with a
16 change or spin on something.

17 So I didn't tell him what we had for DNA, just
18 that it is his DNA, so he knew it was him.

19 And then I went through -- and, again, I
20 realized what his tactics were, so I just stopped
21 and said, Look, I know you were the one that
22 committed this robbery, and stopped those.

23 Do you want me to continue?

24 Q Yes, sir.

25 A At which point he said that he wasn't going to

1 challenge the DNA. He was looking to -- he wanted
2 to be charged with something lesser if he could.
3 He knew the DNA would convict him. He knew that --
4 he stated that he knew that -- he wanted a less
5 severe charge, and he wanted to discuss a plea.

6 I'm not at liberty to make those kind of
7 offers. I explained that it would be between his
8 attorneys and the Solicitor's Office to make any
9 kind of plea agreement.

10 Q Once confronted, though, he told you, I want to
11 plead guilty?

12 A He did say he wanted to plead guilty.

13 Q But are you in any position to make a plea offer in
14 a case?

15 A None at all.

16 Q Are you in a position to tell someone that they can
17 or can't plead guilty?

18 A No.

19 Q Once he -- continue with how y'all's conversation
20 developed.

21 A Again, we go to the fact where he again wasn't
22 making any denials that he was involved in this
23 case. He was wanting to know if he could be
24 charged with something lesser because he realized
25 that armed robbery he felt was severe. He wanted

1 to see if he could negotiate some kind of plea or
2 get a plea negotiated in his behalf. And I told
3 him I couldn't do that. If he would not plead
4 guilty he wasn't going to challenge the DNA because
5 he knew the DNA would convict him.

6 We moved on through that process. And then at
7 some point the interview was terminated and he
8 wanted to make a phone call to his girlfriend.

9 Q Before the interview was terminated, were there
10 certain physical characteristics about the
11 Defendant as he appeared that day that you felt it
12 important to document?

13 A Yes. I actually took photographs of him because of
14 his appearance. He had on white shoes similar to
15 the ones in the robbery. He had on a big ring that
16 I saw on his hand, which drew my attention. It was
17 pretty significant, this clunky piece of jewelry.
18 I made a note of that and took a photograph. He
19 had on the black sun -- or black eyeglasses, which
20 were similar to what was on the video and described
21 by the witnesses. And he had a little bit of a
22 mustache growing with a goatee, which if he had
23 something that was covering the bottom part you
24 might not see the goatee, but you could see the
25 mustache was there. And he had a hoodie on that

1 day.

2 So, I mean, looking at all those things
3 together and the size of his hands, it struck me as
4 being consistent with what was depicted on the
5 video.

6 Q Let me show you what has been marked as State's
7 Exhibits 6, 7, and 8.

8 A These are the photographs I took that day, or some
9 of them.

10 MS. M. WALKER: Your Honor, the State seeks to
11 admit Exhibits 6, 7, and 8 into evidence.

12 MS. A. WALKER: No objection.

13 THE COURT: So admitted.

14 (WHEREUPON, State's Exhibit Nos. 6-8
15 were marked for identification and
16 received into evidence.)

17 BY MS. M. WALKER:

18 Q You said you saw that reflection or what --

19 A It appeared to be a piece of jewelry on the video,
20 and then I saw it on his hand and it looked
21 similar.

22 Q So you decided to document that?

23 A I did.

24 Q Exhibit 6. And --

25 A Yes.

1 Q You said he had eyeglasses on?

2 A Yes. He had those glasses on the day he walked in.
3 Again, those look -- appear to be the same as the
4 ones -- or similar to the ones on the video.

5 Q And that would be -- over the course -- you guys
6 have that conversation. You document that. He
7 tells you he wants to plead guilty. And then what
8 happened?

9 A We had actually started with -- I did a timeline to
10 see if he had ever been to the Chuck E. Cheese to
11 see if there was any reason that -- again, and him
12 not knowing what the DNA was on -- I mean, he knows
13 what he left behind, but he didn't know if he had
14 DNA on it.

15 So I asked him is there any reason he had ever
16 been to the Chuck E. Cheese. He said he was there
17 in 2011 or 2012 for a birthday party and hadn't
18 been back since.

19 I asked him if he had been in that area on St.
20 Andrews and Burning Tree. And he said he hadn't
21 been in the area since he was there for that
22 birthday party back in 2011.

23 I asked him if he ever wore a wig. He said he
24 never wore a wig.

25 I asked him if he owned a handgun. He said he

1 never owned a handgun. And just to kind of
2 timeline and pinpoint some of the things that
3 happened in the robbery.

4 And then, as you said, the conclusion was is
5 that the interview was stopped and he wanted to
6 make a phone call, and I allowed him to make a
7 phone call.

8 Q And do you remember who he called?

9 A Ms. Castro.

10 Q And over the course of the investigation and him
11 calling Ms. Castro -- do you know who Ms. Castro is
12 to the Defendant?

13 A It is his girlfriend. As I have learned, it is his
14 girlfriend, maybe a little bit more than a
15 girlfriend.

16 Q And you allowed him to make that phone call?

17 A I did.

18 Q At some point did he start giving you alternative
19 theories as to how this DNA could have gotten on
20 this bandanna?

21 A He didn't give them to me. He was -- again, I told
22 him I knew that he was there. Ms. Castro doesn't
23 have that benefit. So she asked, What is
24 happening? What is going on? And then he comes up
25 with, Well, they found DNA on something.

1 And then he comes up with -- he was telling
2 her that somebody was trying to frame him, that
3 they were planting his DNA on an article.

4 And, again, this was going on, it wasn't him,
5 that kind of thing. He didn't do those rebuttals
6 to me when we were going through the interview, but
7 when he is talking to his significant other, then
8 he comes up with this, It is not me, I didn't do
9 it, this line of some other theory.

10 When he got off the phone I asked him about
11 that. I said, you know, Is there somebody who
12 would frame you, that kind of thing, trying to,
13 one, find out if there is any credibility to it.
14 And then, two, to shut it down if there is not.
15 And he didn't have any answers for me at that
16 point, so he couldn't tell me. His life was in
17 danger, he was involved in some bad stuff, bad
18 people. He couldn't actually give me a how it
19 could happen.

20 Q So when he -- I just want to make sure this is
21 correct. When he is talking to Ms. Castro, he says
22 he has been framed?

23 A Along those lines, yes.

24 Q And when he is talking to you he said, I want to
25 plead guilty?

1 A Correct.

2 Q Let me ask you this. Were you aware that the road
3 deputies, the line deputies that night had actually
4 detained another person?

5 A I did. I read that from the report.

6 Q And is it -- I guess as an investigation is
7 unfolding, are there times when someone is detained
8 then they are cleared and released?

9 A A lot, yes. I mean, just because -- whatever
10 reason they were detained, they matched the
11 description, they were in the area. Sometimes
12 descriptions aren't as precise as we would like
13 them to be, so people give out a description and
14 the officers will come in. What I described as
15 being one thing could be different than what
16 someone else sees.

17 So if they come in and they see something
18 close, they will stop that person and ask them,
19 What are you doing here? That kind of stuff.
20 Detain them. See if that is part of the case. If
21 it is not -- and, like I say, if it is not, then
22 they have to release them and let them go if there
23 is not a -- it is not to get somebody that is not
24 involved, it is to get somebody who is involved.

25 Q And if a suspect -- you ask him a question and he

1 is able to exonerate himself, you release him?

2 A Yes. You can show that what he said is true and
3 factual or it could be corroborated in some kind of
4 way, yes, he is released.

5 Q And that was done in this case? Not for him, but
6 for the other suspect at that time?

7 A Yes. The other person they detained that
8 evening -- coming in I think they saw someone
9 matching the description, they detained him, and
10 then there was some confusion of whether or not
11 that was him.

12 Q At that point what is your goal when you start
13 investigating, is it to make an arrest or is it to
14 make the right arrest? How -- when you are
15 eliminating people, why are you doing so? What is
16 your goal?

17 A It is to find the person that did the crime. It is
18 not to just make an arrest. I don't get any extra
19 credit for putting people in jail. I don't get
20 acknowledgment for doing it. I do it because the
21 person that committed the crime has been charged
22 for it.

23 Q And at that point were there -- after he talked to
24 Ms. Castro, then you talked to him again, what
25 happened?

1 A After the phone call?

2 Q Yes.

3 A Sat down and went through -- I asked him about
4 his -- may I refer to my notes?

5 Q Yes, go ahead.

6 A Again, I asked him -- because I heard that he was
7 telling Ms. Castro that he was being framed -- I
8 asked him, Who would want to frame him? And he
9 told me that he didn't want to tell because the
10 people were significant, and then went back into
11 trying to negotiate a plea and if I could offer him
12 a plea or help him with a plea, at which point
13 again I explained that I could not, it was between
14 the Solicitor's Office and his attorney, and that
15 would be down the road.

16 And the interview was terminated at that
17 point.

18 Q The man you interviewed that day, the man who said
19 he wanted to plead guilty to the armed robbery --
20 the attempted armed robbery at the Chuck E. Cheese,
21 do you see him in the courtroom?

22 A I do. It is Mr. Brown located at the table. Today
23 he doesn't have the goatee and the beard that he
24 had that day. He didn't have the dark
25 sunglasses -- the dark glasses on that he had that

1 day.

2 Q So the appearance changed?

3 A It is a little bit lighter too.

4 Q But he had -- then he had a goatee?

5 A A goatee.

6 Q I think we have a picture. And a goatee is like
7 a --

8 MS. M. WALKER: You're fine, sir.

9 A That's correct.

10 Q Are there different types of statements that y'all
11 take, written and verbal -- verbal statements? Do
12 y'all sometimes take a written statement from a
13 suspect?

14 A We prefer a written statement if they are willing
15 to.

16 Q Were you able to get a written statement in this
17 case?

18 A I was not.

19 Q But he verbally told you that he wanted to plead
20 guilty?

21 A Yes.

22 Q Thank you, sir.

23 MS. M. WALKER: I don't have any further
24 questions.

25 THE COURT: All right.

1 MS. A. WALKER: May it please the Court, Your
2 Honor?

3 THE COURT: Yes, ma'am.

4 CROSS-EXAMINATION

5 BY MS. A. WALKER:

6 Q Investigator Martin, you said that you have been
7 with Richland County for 14 years; is that correct?

8 A Yes.

9 Q And prior to that you were a patrol officer in
10 Camden?

11 A That's true.

12 Q Okay. And for how many of those years have you
13 been an investigator with Richland County?

14 A Since 2001.

15 Q Since 2001?

16 A Thirteen years.

17 Q So when you came to Richland County you pretty much
18 started as an investigator?

19 A No, I started on the road, became a regional
20 investigator, and was a deputy on the road. We
21 worked a lot of property crimes, petit larcenies,
22 shopliftings, simple assaults. Investigations was
23 devised or organized differently at that time. And
24 then I did that for a short period of time and then
25 promoted up to investigations.

1 Q So you have done -- you just testified you have
2 done an entire range of crimes, from petit larceny
3 to murder?

4 A I've done quite a few.

5 Q Okay. And a lot like lawyers do continuing
6 education and other occupations, you do continuing
7 education as well in your field?

8 A There is some requirements that we do, yes.

9 Q And you attend other trainings and conferences, and
10 things like that?

11 A I do. I am also a member of the bomb squad, so a
12 lot of my training comes from the bomb squad end of
13 it. The funding is there for those kind of
14 trainings and those count as for law enforcement
15 training.

16 Q And of course as an officer you have been trained
17 how to take reports, things like that?

18 A Yes, but --

19 Q And --

20 A I'm sorry.

21 Q Yes, I apologize. And you know how to record
22 information? Write it down?

23 A Yes.

24 Q And you also can audio record things?

25 A I have never been in a position to be able to audio

1 record anything, but they are able to in the cars
2 and I think they are able to record.

3 Q You own a phone; correct?

4 A I do own a phone.

5 Q And does your phone have recording capability?

6 A It might. I mean --

7 Q You're not sure?

8 A It is a smart phone. Smarter than me.

9 Q Did you say smarter than you?

10 A Yes, it is a smart phone.

11 Q But you have been trained how to interrogate
12 suspects?

13 A Interviews, interrogations, uh-huh.

14 Q And interview various witnesses?

15 A Uh-huh.

16 Q And take witness statements if necessary?

17 A If necessary, yes.

18 Q Okay. And there are methods and techniques and
19 certain protocol that you go through for each one
20 of these things?

21 A They are more like conversations that are just
22 documented. I don't know that there is a protocol
23 or a template. There is not a catchall to get
24 confessions or a catchall to get all the
25 information from statements. It is kind of a back

1 and forth speaking to someone to find out what they
2 know.

3 Q And you testified earlier how if certain things
4 start happening you can shut them down?

5 A You have to -- I say you can shut them down. You
6 challenge them. If you challenge them on those
7 points, they are either going to stick to them and
8 give you more information on them or they are going
9 to become less vague and work on something else.

10 Q So you -- it is fair to say you use different
11 techniques when you are talking to people,
12 depending on who you are talking to or what kind of
13 information you are trying to get?

14 A When you say techniques, it sounds like it came
15 from a textbook somewhere. It is kind of more of a
16 trial and error to see what works.

17 Q Right. You definitely have to experience, it is
18 not something you just read and do?

19 A Correct.

20 Q Right. And you want your reports and anything that
21 you write that other officers get, you want that
22 to be complete?

23 A Complete -- it is more of a -- if you are talking
24 about like a follow-up? It is more of a notes that
25 I keep to refresh my memory for court.

1 Q Right.

2 A It is actually kind of a timeline and a
3 documentation so that other investigators don't
4 have to redo the same things that I have done in
5 case I'm no longer here. The Sheriff's Department
6 will run on well after I'm gone. So it is just
7 kind of a working idea of what took place.

8 Q Right. And thinking about those possible things,
9 you want to leave enough information for somebody
10 else if they had to take over?

11 A You try. Like I said, it is not -- it is not a,
12 This is what needs to be in every case, it is kind
13 of a work in progress and you leave what you feel
14 are important.

15 Q But not an exact science?

16 A Interviewing? No.

17 Q Right. Or documenting?

18 A In my case it is not.

19 Q Okay. And you want to take down accurate
20 information?

21 A You do.

22 Q And you want to take down thorough information, as
23 much as you possibly can?

24 A I can't see a reason to exclude, but if you are
25 talking about thorough, as thorough as you can make

1 it.

2 Q Right. Not only for your own memory, but because
3 you might not be able to come testify?

4 A Well, strictly it is my memory. I mean, it is like
5 those are my notes. They are not -- what you get
6 out of them and what I get out of them -- they are
7 my notes to refresh my memory.

8 Q But you are -- as a lead investigator you oversee a
9 file; right?

10 A I'm in charge of that report.

11 Q Of that report. So you are aware of who -- where
12 each thing in the report comes from?

13 A Um --

14 Q If Deputy Sullivan generated a report you are aware
15 that that came from him and --

16 A It is just a document.

17 Q Right.

18 A To actually be able to hands on, take it to Deputy
19 Sullivan, it wasn't done. It is processed through
20 records. Records then forwards it to the
21 supervisor. The supervisor then assigns the case
22 to an investigator. And in that case it was handed
23 to me. It would have his name on the bottom of it
24 if he had some affiliation with it.

25 Q Right.

1 A If that is what you are asking me. I'm not real
2 sure.

3 Q No, that's right. That's right. And as an
4 investigator your job is to collect information and
5 collect facts?

6 A It is.

7 Q Okay. And you want to try to collect as much
8 information as possible or necessary in order to, I
9 guess for lack of a better term, solve a case?

10 A More information is good.

11 Q And you want to solidify your case, you want your
12 case to be airtight?

13 A A good case. I want the -- I'm not so much worried
14 about the case, I want the right person to be held
15 accountable.

16 Q Right. And you want facts corroborated, you want
17 to make sure that it is the right person that is
18 being held accountable?

19 A That's right.

20 Q Okay. And when you collect information you get it
21 from a variety of sources, you get it from
22 witnesses? Question mark. And you might get it
23 from other deputies like Deputy Sullivan?

24 A Yes.

25 Q And you could also get it from like crime scene

1 investigators?

2 A Yes.

3 Q And you also make sure as overseer of your case
4 that evidence was properly collected?

5 A No. Properly collected evidence would work out of
6 the evidence technicians and the evidence
7 custodian. If I collect it I try to make sure that
8 what I have done is within protocol. But I don't
9 oversee the deputies and what they collect.
10 Usually it is collected before I even get the case.

11 Q Okay.

12 A If the case happens on Friday night and I don't
13 come back to work until Monday, depending on the
14 type of case, it sits until Monday, so I really
15 have no knowledge of what took place or what was at
16 scene. I get the information later. So -- does
17 that answer your question?

18 Q Yes.

19 A Okay.

20 Q And as an investigator sometimes you collect
21 evidence?

22 A Yes.

23 Q And that can be a variety of things: Fingerprints,
24 weapons, video? All kind of things could be
25 evidence; correct?

1 A Yes.

2 Q And also as an investigator you interview
3 witnesses?

4 A Yes.

5 Q And you would like to interview anybody that has
6 information about this case, possible information
7 about this case?

8 A We would like to, yes.

9 Q And as many people as necessary to solve this case?

10 A Yes.

11 Q Okay. And if you need to you can interview
12 witnesses more than once, if you had follow-up
13 questions, or anything like that?

14 A Yes, you could.

15 Q And as part of an investigation you can produce
16 line-ups?

17 A Yes.

18 Q And the way that works generally with Richland
19 County -- correct me if I'm wrong -- they generally
20 you do like a 6-pack line-up, is what you call it?

21 A We used a 6-pack line-up in this case. It wasn't
22 developed by us, it was developed by SLED.

23 Q Okay. And is that traditionally what kind of
24 line-up you use?

25 A Traditionally. I'm not aware of any others at this

1 time.

2 Q And can you tell the jury just what a 6-pack
3 line-up is?

4 A It is -- in this case it was generated by SLED, so
5 we submitted information on the person of interest,
6 in this case Michael Brown. SLED then looked at
7 Michael Brown and determined five similar looking
8 persons. They might have enhanced the photos. I'm
9 not sure how they get to where there are five
10 similar looking photos and not so that one stands
11 out so they all kind of look similar, and then that
12 way you show them all at one time and you explain
13 to the witness that they don't have to pick, it is
14 not a game, they don't win a prize. If they see
15 someone involved in the case, point out and make
16 note of it. If they don't, not to. They are also
17 told not to compare them. Don't take the eyes from
18 this one and nose from that one and try to match a
19 person. They either see the person of interest or
20 they don't. And, again, like I say, there is no
21 prize. And they are always -- sometimes worried
22 about picking out the wrong person. And they -- we
23 are asking them to pick out "the" person. If there
24 is no validity to that, then that person will be
25 exonerated. There is no picking --

1 Q Right. So sometimes they can pick somebody and
2 sometimes they can't?

3 A That's true. And it depends on how much
4 involvement they had and if they were in disguise
5 and the lighting and everybody's own just fear,
6 their adrenalin, what they see, what they remember.
7 Everybody is a little bit different.

8 Q Okay. And you probably handle probably hundreds of
9 cases a year; is that number accurate?

10 A Oh, that is probably not accurate. It is probably
11 maybe 150 a year.

12 Q Okay. And so you definitely need to keep notes to
13 keep all your cases separate?

14 A Each one gets filed. Each one gets put to the
15 side. The problem having that many cases -- and
16 robberies are a little bit severe. You want to
17 have resolution of robberies because the robber
18 usually robs more than one person. So when we get
19 those kind of cases they require a lot of extra
20 work, but the -- it depends on how many of them
21 come in at a time. I mean, you can be working --
22 at one given time I am not working just one case, I
23 can be working 10 to 15 cases.

24 Q And, like I said, you write it down, you don't want
25 to forget anything important?

1 A You try to document.

2 Q And you also know that it could be a little while
3 before a case is resolved?

4 A Absolutely. I have a missing person case that is
5 still going on. It is at least two years old.

6 Q Right. And this case is a year and a half old
7 about; right?

8 A With our DNA turnaround time it was pretty much
9 average, I mean, with the distance. You are
10 talking from then to today?

11 Q Uh-huh.

12 A It is not unlikely to have a lengthy turnaround
13 time different parts of evidence or even witnesses
14 that come forward, arrested at some point and come
15 forward and then want to talk about a different
16 case. Former witnesses or usually girlfriends tell
17 pretty bad, like if they get mad at the boyfriend
18 they come up and tell us something. And it is at a
19 later date.

20 Q And you operated as a lead investigator on this
21 case?

22 A Well, I was the assigned investigator. There
23 wasn't another.

24 Q And that means that you aren't necessarily called
25 out the night it happened?

1 A In this case I was not. Sometimes it does happen,
2 depending on the trend, what they have, person in
3 custody. It all varies. It depends on what
4 happens at night and what is requested of me by the
5 road supervisor at the time. If they call and say
6 they want an investigator to go out, I go out.

7 Q And in this case you weren't assigned until after
8 the event the day after?

9 A That's correct.

10 Q Okay. And one of first things you do is you sign
11 off on some reports?

12 A Like what?

13 Q As the approving officer, sometimes when a
14 responding officer -- you'll approve a report?

15 A Like approving the --

16 Q Like incident report?

17 A I don't believe I would have been signed off on it.
18 It would have been signed off by the supervisor.

19 Q Okay. And you wouldn't have been the supervisor on
20 that case?

21 A I shouldn't have.

22 MS. A. WALKER: Beg the Court's indulgence.

23 (Pause.)

24 A Unless they didn't have it generated at the time.
25 But I shouldn't have signed off on the incident

1 report.

2 MS. A. WALKER: Beg the Court's indulgence.

3 (Pause.)

4 BY MS. A. WALKER:

5 Q I apologize. You signed off as the follow-up
6 officer; is that right?

7 A No, that is not true either. I was assigned the
8 case and that is how they track the records, who
9 the case is assigned to.

10 Q Okay. So you necessarily didn't sign off on this,
11 it is just recorded information?

12 A It is -- no, it is assigned to the unit, robbery,
13 and the supervisor of robbery would then look at
14 the report and see where his caseload is or what
15 officers are working what area and then he would
16 assign that report. So what he would do is then
17 pen in on that portion of the report my name, in
18 this case, and my badge number, and then he would
19 forward the record so that if a person called in
20 and said -- who is working this case -- they could
21 go to that report and say, Oh, it has been assigned
22 to Investigator Martin, and forward my number.

23 Q Okay. So one of the first things you did do in
24 this case was try to get the video?

25 A Yes, I attempted to get the video from the store.

1 I was in touch with one manager and he didn't have
2 access to that, so I had to wait until I could get
3 in touch with the second manager.

4 Q Right. And you attempted to call the manager on
5 January 7th to try to get that video?

6 A If you say -- that sounds correct.

7 Q Okay. And who is Tedder?

8 A Tedder is an investigator with the Sheriff's
9 Department. He is there in a part-time capacity.
10 And his main mission is, one, to track down
11 shoplifters and shoplifting video. And then if he
12 is out, he goes out during the day and he will
13 collect video from different places to assist us.

14 Q Okay. You try to work with him to help you get the
15 video?

16 A Again, that is what he does. When he is out in the
17 area I ask him if he would go by and pick it up.
18 When I spoke to the man he said they would have it
19 ready at a certain time, and it wasn't ready when
20 he showed up.

21 Q And on January 8th Tedder wasn't able to get the
22 video?

23 A If you are saying that is the date. I know Tedder
24 was unable to get the video.

25 Q And I believe this is all from your -- the notes

1 that you have regarding the statement and
2 everything?

3 A On -- the one I'm looking at -- there might be a
4 different one -- but on January 22nd I got a call
5 from Tedder that said the video was ready.

6 Q Right. And it looks like that on 16th you were not
7 able to get the video, then on the 22nd you weren't
8 able to get the video?

9 A Right.

10 Q Okay. And so then you were able -- you finally
11 called Mr. Jones and told him, Look, you need to
12 get me this video.

13 A Yes.

14 Q And if you don't cooperate, we're going to probably
15 close the investigation without your help?

16 A Without their assistance -- they are the victim.
17 The crime took place there. They are the ones that
18 are main part of the investigation. That is how we
19 get started. I mean, they reported it. Unless
20 there is a dead body, I mean, I have to have a
21 victim to work with.

22 Q And they told you that video would be ready that
23 day?

24 A They said they'd bring it.

25 Q Okay. But you don't actually get the video until

1 the next day, the 23rd?

2 A Well, they brought it. I believe I went home. So
3 it is not their fault. They brought it, delivered
4 it, and then I don't actually get in my hands until
5 I come back into work.

6 Q Okay. So you don't receive the video in this case
7 until 20 days after the robbery?

8 A I would say that is fair. If you have done the
9 math on it, that sounds about right.

10 Q And you viewed the video?

11 A I did.

12 Q And it is one angle?

13 A It is.

14 Q It is one angle. And the event takes roughly 30
15 seconds?

16 A Yes.

17 Q And in that video the suspect is only on screen for
18 a portion of that video?

19 A That's correct.

20 Q And, again, it is the angle of the front door that
21 we all just watched?

22 A Yes.

23 Q And but you, in knowing your case, you know that
24 Deputy Sullivan was -- well, Investigator Sullivan
25 now -- was able to view other videos?

1 A It was referenced in his report, yes.

2 Q And he is actually able to see him run around the
3 building and go towards the El Toro, according to
4 his report?

5 A I believe he testified to that, yes.

6 Q And -- but you can't see that in the video that we
7 have?

8 A No, you cannot.

9 Q Here in court today. And you can't see anything
10 past the front door of that video?

11 A No.

12 Q Okay. And you have been to Chuck E. Cheese?

13 A I have.

14 Q Did you go to Chuck E. Cheese in your capacity as
15 an investigator in this case?

16 A Yes.

17 Q You did. And so you know that Chuck E. Cheese is
18 obviously larger than just the front door?

19 A It is -- yes, it is a big play area and the
20 kitchen. I don't know how big it is, but it is a
21 restaurant, jungle gym.

22 Q Right. There is like a prize area where you can
23 pick out if you get tickets, and things like that.
24 That is how Chuck E. Cheese works. There is a
25 stage at the back?

1 A Okay.

2 Q Is that fair to say?

3 A Sure.

4 Q Okay. And there is all these different areas. You
5 know, there is an area for the salad bar, there is
6 games, there is many different areas of Chuck E.
7 Cheese?

8 A I think they are all one area and they are just
9 kind of divided with pass-through windows. I mean,
10 there are all kind of -- it is all one area, I
11 think.

12 Q Except for like the kitchen?

13 A Well, even that you can see through a pass-through
14 window that is wide so they can pass the orders to
15 and from.

16 Q And -- but you know there is a kitchen that is not
17 accessed by the general public? And there is an
18 office?

19 A There is an office, which isn't very big. It is
20 small.

21 Q And there is more than one exit to the Chuck E.
22 Cheese?

23 A I think there are some employee entrances. I think
24 the main entrance and exit is through the front
25 door because that is how they keep track of the

1 kids.

2 Q And there is actually more than one surveillance
3 camera?

4 A They said -- testified there was 30 some
5 surveillance cameras, but they don't all record.

6 Q So you are aware that there are 32 cameras at Chuck
7 E. Cheese?

8 A I heard them testify to that today.

9 Q And that there are cameras in the exterior?

10 A I don't think they said exterior, but I know they
11 said there was 30 some cameras.

12 Q But you went to the Chuck E. Cheese; right?

13 A I did.

14 Q Are you aware that there are exterior cameras?

15 A I can't say there is or isn't. Sure. If you want
16 to say there is, there might be. I don't know if
17 there is or not. But there is cameras there.

18 Q And but what we have here is just one?

19 A That is correct. That was all he was able to get
20 video for was one camera. And I think the main
21 problem is because their whole objective is to keep
22 track of children so that the right children
23 don't -- the wrong children don't go with the wrong
24 parent, that kind of thing. They are trying to
25 keep kids from being lost or taken. You talk about

1 catastrophic for a child is would be if something
2 happened to one of the children.

3 Q So out of 32 cameras we have one?

4 A That's what I have.

5 Q And you didn't take any photos of the Chuck E.
6 Cheese?

7 A No.

8 Q And you didn't assign anybody else to take photos?

9 A No.

10 Q And so while you were assigned this case nobody
11 went to the Chuck E. Cheese to take photos of just
12 the Chuck E. Cheese?

13 A I have no idea if somebody went to take Chuck E.
14 Cheese. I didn't take photos of the Chuck E.
15 Cheese. And I didn't ask anybody to go take photos
16 of the Chuck E. Cheese. If there was a crime scene
17 investigator that went out, I mean, that is not
18 what they needed to take photographs of. As far as
19 I know, nobody took a picture of the Chuck E.
20 Cheese.

21 Q You think a crime scene investigator went out
22 there?

23 A I believe I misspoke. I don't believe --

24 THE COURT: All right, let's wrap up with the
25 photos, okay?

1 MS. A. WALKER: Certainly, Your Honor.

2 THE COURT: We are going to break for the
3 evening.

4 BY MS. A. WALKER:

5 Q And there are a number of witnesses in this case?
6 There are three specifically, Kadeshia Green, kyrie
7 Green, and Ronnie Kennedy?

8 A Yes.

9 Q And you did speak to Ronnie Kennedy after you were
10 assigned to the case?

11 A Yes. I believe it is hyphenated Ronnie Kennedy
12 Martin.

13 Q And you determined in talking to him that he had
14 nothing to add to the investigation?

15 A He said he didn't have anything else to add. He
16 went over the case and didn't have anything that
17 was additional that stood out as a part to what was
18 already collected.

19 Q Okay. And you didn't interview the other witnesses
20 yourself?

21 A I tried. The young lady quit and it was hard to
22 get in touch with her. I tried reaching out to
23 her. The phone numbers that we had weren't
24 working. Again, if I had dedicated more time in
25 this case I would have, but in just moving on to

1 the next.

2 Q And you didn't interview Mr. Green, Kyrie Green?

3 A I didn't.

4 Q Okay. But you did have two statements from him?

5 A I had statements that were provided by -- I believe
6 their management asked them to do reports after the
7 incident.

8 Q Okay.

9 A And I think they were -- under the impression they
10 were given to law enforcement. That is not usually
11 how we do it.

12 Q That is not the proper protocol of how you would
13 take a statement?

14 A I didn't say it was protocol. I said it is
15 probably not how we do it. We probably want to
16 have a little more in depth interview and ask some
17 more questions. But what they provided was what
18 they provided within the guidelines of their
19 company, so they were kind of doing it as employees
20 instead of --

21 Q And your testimony is that you weren't able to get
22 in touch with them after you were assigned?

23 A I was not, no.

24 Q And then we talked about the photo line-up in this
25 case that you had --

1 THE COURT: All right, we are going to stop
2 here.

3 MS. A. WALKER: Certainly, Your Honor.

4 THE COURT: We will resume in the morning.

5 Ladies and gentlemen, we are going to go ahead
6 and break for the evening. Again, I am going to
7 ask that you not discuss the case with anyone while
8 you are gone tonight. When you come back in the
9 morning don't discuss the case with each other.
10 Don't do any investigation. Don't get on the
11 computer. Don't do anything that would jeopardize
12 your hard day's work. And we will start tomorrow
13 morning at 9:30. Please be here a few minutes
14 before. Y'all have a nice evening. And you are
15 free to leave at this time.

16 (WHEREUPON, the jury retires for the
17 evening at 5:30 p.m.)

18 THE COURT: All right, we will be in recess
19 for the evening. Have a nice evening. We will
20 start at 9:30 in the morning. Thank you.

21 MS. M. WALKER: Thank you, Your Honor.

22 MS. A. WALKER: Thank you, Your Honor.

23 THE COURT: Investigator Martin, don't discuss
24 your testimony at all while we are gone, okay?

25 THE WITNESS: Yes, sir.

1 THE COURT: With anybody. Thank you, sir.

2 THE WITNESS: You're welcome.

3 (WHEREUPON, the proceedings concluded
4 at 5:31 p.m.)

5 AUGUST 5, 2014

6 THE COURT: Is the State ready?

7 MS. M. WALKER: Yes, Your Honor.

8 THE COURT: Is the Defense ready?

9 MS. A. WALKER: Yes, Your Honor.

10 THE COURT: All right, let's bring the jury in
11 if you could, please.

12 (WHEREUPON, the jury came into open
13 court at 9:31 a.m.)

14 THE BAILIFF: The jury is seated, Your Honor.

15 THE COURT: Good morning, ladies and
16 gentlemen. Nice to see you this morning. I hope
17 you had a nice evening.

18 And before we turn this back over to
19 Ms. Walker, let me ask you a couple of questions if
20 you don't mind.

21 Has anybody had any conversation about this
22 case with each other or with anyone else since we
23 left yesterday? Or were you approached by anyone
24 to discuss this case since we left yesterday
25 afternoon?

1 THE JURY: (Nods negatively.)

2 THE COURT: Did anybody do any of their own
3 investigation or make any internet inquiry about
4 anything involved in this case since we left
5 yesterday afternoon?

6 THE JURY: No, sir.

7 THE COURT: All right, ladies and gentlemen,
8 as you recall when we broke yesterday afternoon
9 Ms. Walker was in the midst of her
10 cross-examination of Investigator Martin.

11 So, Ms. Walker, if you will proceed, please,
12 ma'am.

13 MS. A. WALKER: Thank you, Judge. May it
14 please the Court?

15 THE COURT: Yes, ma'am.

16 CROSS-EXAMINATION CONTINUES

17 BY MS. A. WALKER:

18 Q Investigator Martin, I believe the last thing I
19 asked you when we were talking a little bit about
20 the witnesses in this case that you were unable to
21 interview the other two?

22 A That's correct.

23 Q And you spoke to Ronnie Kennedy but you did not
24 speak to Kadeshia or Kyrie Green?

25 A That's correct.

1 Q And you said you couldn't locate them?

2 A I had a hard time locating them, yes.

3 Q Okay. And what did you do to locate them?

4 A I called the numbers that were provided by the
5 business and on the report and could not locate
6 them with that number.

7 Q And we talked a little bit about a photo line-up in
8 this case?

9 A Yes.

10 Q You had a photo line-up generated by SLED?

11 A That's correct.

12 Q And that photo line-up included Michael's
13 photograph?

14 A Correct.

15 Q And you showed that line-up to Ronnie Kennedy?

16 A I did.

17 Q He was unable to make an identification?

18 A He didn't identify anyone from the line-up, that's
19 correct.

20 Q And you did not show the line-up to Kadeshia or
21 Kyrie, you didn't interview them again?

22 A That's correct.

23 Q And you didn't write anything in your report about
24 a line-up?

25 A I made notes on the line-up sheet itself that says

1 what day and what time I showed it to --

2 Q And you still have your report with you; right?

3 A I do.

4 Q Okay. I just wanted to make sure. And but in that
5 report you don't say anything about a line-up?

6 A The whole case file is my report, so if you are
7 talking about my follow-up, it is not in the
8 follow-up, but the whole case file in general is my
9 report. I don't annotate what is in the statements
10 that are taken or things that go on, but there are
11 documents inside that report that support different
12 times and events, and there is a document in that
13 case file that shows when I spoke to Mr. Kelly,
14 what day and what time.

15 Q Okay. And let's talk a little bit about the DNA in
16 this case. In this case, Investigator Sullivan --
17 deputy at the time -- collected a wig and a
18 bandanna?

19 A That's correct.

20 Q And on January 7th you sent a request to have them
21 tested?

22 A I don't have the document in front of me, but that
23 sounds correct.

24 Q Okay. I believe that -- it looked like that is in
25 your follow-up that on January 7th you submitted a

1 DNA request for wig and bandanna?

2 A Correct. At some point, yes.

3 Q Okay. And there was a match?

4 A Yes, there was.

5 Q And the match related to the bandanna?

6 A Yes.

7 Q There was no DNA found on the wig?

8 A I don't have a report saying there was DNA on the
9 wig.

10 Q Okay. And based on that you had a warrant issued?

11 A Yes.

12 Q Okay. And based on just the DNA you had the
13 warrant issued?

14 A There were other factors that were considered.

15 MS. M. WALKER: Your Honor, we may have a
16 matter of law.

17 THE COURT: You may or?

18 MS. M. WALKER: We have a matter of law.

19 THE COURT: All right, ladies and gentlemen,
20 let me let you step back to the jury room just a
21 minute. Please don't discuss the case while you
22 are there. And I'll take up whatever the matter is
23 with the attorneys, and we'll bring you back as
24 soon as we can.

25 (WHEREUPON, the jury retires to the jury

1 room at 9:37 a.m.)

2 MS. M. WALKER: Your Honor, the witness,
3 Investigator Martin, was asked if the DNA was the
4 only factor that led him to issue -- to get a
5 warrant for this particular Defendant. He has been
6 advised not to go into things that he knew about
7 similar crimes located in other jurisdictions,
8 things of that nature. I think that is why he was
9 hesitant to answer the question.

10 I think if that is her line of questioning,
11 then there are other things that went into his
12 decision about obtaining a warrant for this
13 particular Defendant, including similar
14 characteristics of other crimes that he committed
15 in a different jurisdiction. So things that he
16 kind of -- his hands are tied in being able to give
17 a full answer to that question.

18 MS. A. WALKER: And, Your Honor, I'm going by
19 Investigator Martin's follow-up report. It doesn't
20 indicate other than once the DNA was given that
21 then the warrant was issued. It doesn't indicate
22 anything about the other crimes or prior bad acts,
23 or anything of that nature, influenced his
24 decision. I'm just going by his report.

25 THE COURT: All right, well, what were the

1 other factors, Investigator?

2 THE WITNESS: He was arrested in West
3 Columbia -- I'm sorry, Springdale -- for committing
4 a similar robbery wearing a wig and a bandanna, and
5 the ring was visible in that, and the black
6 glasses, and the gun was recovered in Springdale.
7 And this robbery was before our robbery, but he was
8 arrested after our robbery. And those factors
9 helped weigh in on the decision to arrest him.

10 THE COURT: But he was arrested after you
11 arrested him?

12 THE WITNESS: No, he was arrested after this
13 incident by Springdale. Their incident took place
14 before ours, I believe on Christmas Eve.

15 THE COURT: All right. But who arrested who?
16 Did y'all make the arrest first or did Springdale
17 make the arrest first?

18 THE WITNESS: Springdale arrested him first.

19 THE COURT: Do you want him to go into that?

20 MS. A. WALKER: I don't. So I will certainly
21 withdraw the question.

22 MS. M. WALKER: It is -- the question has
23 already been asked, Your Honor. And he -- the
24 question has been asked. The impression that is
25 left before this jury is that there is a DNA hit

1 and that is the only thing that led Investigator
2 Martin to --

3 THE COURT: All right. Well, he has testified
4 that there were other factors that he considered as
5 well, and we'll let it go at that.

6 MS. A. WALKER: Thank you, Your Honor.

7 THE COURT: All right. Bring the jury in.

8 (WHEREUPON, the jury came into open
9 court at 9:40 a.m.)

10 THE BAILIFF: The jury is seated.

11 THE COURT: Thank you. Ms. Walker, proceed,
12 please, ma'am.

13 CROSS-EXAMINATION CONTINUES

14 BY MS. A. WALKER:

15 Q In this case there was a mixture of DNA found on
16 the bandanna; is that correct?

17 A That's correct.

18 Q And you only swore out a warrant for Michael?

19 A Yes, the primary contributor to the DNA sample.

20 Q And he -- this incident happened January 3rd, 2013?

21 A Yes.

22 Q Michael was arrested March 14th, 2013?

23 A Correct.

24 Q October, two months later?

25 A That would be correct.

1 Q And he was brought to you at headquarters?

2 A He was.

3 Q And you took photographs of Michael?

4 A I did.

5 Q I believe that was after you spoke with him; is
6 that correct?

7 A Yes.

8 Q And you took a picture of a ring?

9 A I did.

10 Q And we watched a video yesterday and you indicated
11 from that video you could tell there was a ring?

12 A Yes.

13 Q And this is the photograph that Ms. Walker showed
14 you earlier regarding the photograph and that ring;
15 is that correct?

16 A Yes.

17 Q I believe it has been marked by the State. Is this
18 the same photograph?

19 A Yes.

20 Q Okay. And you also said that the suspect when you
21 watched the video was wearing white shoes?

22 A Yes.

23 Q And you said that was significant?

24 A Yes.

25 Q And you said that was significant because Mr. Brown

1 was wearing white shoes when he was arrested?

2 A I believe I said that, yes.

3 Q Okay. And you took this photograph?

4 A I did.

5 Q Can you tell me what color shoes?

6 A Those are red.

7 Q Those are red shoes?

8 A Yes. I misspoke. I saw the picture of something
9 else.

10 Q Okay. So he was wearing red shoes when he was
11 arrested?

12 A That is correct.

13 Q Okay. And you indicated that you -- you said that
14 this ring, that we were talking about, that this
15 ring is distinctive?

16 A It is kind of a -- on his finger it stands out. It
17 is kind of a wide piece of jewelry.

18 Q And it is fair to say that it is a silver band? Is
19 that what we call it, a band?

20 A It is a silver band.

21 Q Okay. And the photograph that you took of Michael,
22 including this photograph -- I believe this is the
23 other photograph you took; is that right?

24 A I took several.

25 Q I think there were three total that we have here?

1 A I don't know how many are entered. I'm not sure
2 how many I took.

3 Q There you go.

4 A Yes.

5 Q And these are photographs you took of Michael on
6 March 14th?

7 A I did.

8 Q And that is two months after the incident?

9 A It is.

10 Q And you said that you wanted to talk to Michael in
11 this case once he was arrested?

12 A Correct.

13 Q And you advised him of his rights?

14 A I did.

15 Q And you went through his Miranda rights?

16 A Yes.

17 Q The ones we see on TV, right to remain silent, et
18 cetera, et cetera?

19 A TV is not real life, so I used the ones that we
20 use.

21 Q Right. You went over each one? You showed us the
22 form and you went over each right here?

23 A That is correct.

24 Q I believe that was the form from earlier. And I
25 think you went through it. And you didn't record

1 this interrogation?

2 A No.

3 Q You didn't take video?

4 A No.

5 Q You didn't take audio?

6 A No.

7 Q And but you did take notes?

8 A Yes.

9 Q And you took notes in your follow-up report?

10 A Yes.

11 Q Okay. And the first thing you tell Michael,
12 according to your notes, is that his DNA was
13 located at the crime scene?

14 A Correct.

15 Q Okay. And if I misspeak, you have your notes, I'm
16 looking at your notes, so certainly correct me.

17 Brown asked what type of DNA was recovered at
18 the crime scene.

19 A He did.

20 Q And you said, It is Brown's DNA.

21 A Yes, it is his DNA.

22 Q Right. So when he asked you what type, you said,
23 It is your DNA?

24 A Yes.

25 Q Okay. And then you asked him some questions: When

1 was the last time you were at the Chuck E. Cheese?

2 And he says, I think either 2010 or 11?

3 A Correct.

4 Q And you added something about a birthday party
5 earlier?

6 A He added that. He said that he was there for a
7 birthday party for -- his girlfriend at the time,
8 Ms. Castro, had a relative that had a birthday
9 party.

10 Q And that he hadn't been to the St. Andrews area
11 since then?

12 A Correct.

13 Q Okay. And at that point he says he does not wear a
14 wig and has not worn one?

15 A Correct.

16 Q Okay. And, let's see. And then the next thing you
17 say is, Investigating Officer told Brown there was
18 no doubt it was he who was wearing the wig in
19 committing the robbery?

20 A I did.

21 Q You said there was no doubt that he was the one in
22 the video?

23 A There is no doubt.

24 Q And there is a -- the video that we have all seen
25 is the one camera angle exiting the Chuck E.

1 Cheese, or entrance or exit? And you did not tell
2 him there was mixture of the profile?

3 A I did not.

4 Q Okay. And you told him it was his DNA?

5 A Yes.

6 Q And let's keep going. So after you told him there
7 was no doubt, the next thing he says is, I'm not
8 going to fight the DNA?

9 A Yes. He conceded that he wasn't going to fight the
10 DNA.

11 Q And Brown wanted to know if he would be charged
12 with something not as serious?

13 A Yes. He said he knew that robbery carried a severe
14 penalty so he wanted to be charged with something
15 lesser.

16 Q Okay. But you didn't put that he knows that
17 robbery has serious penalties? You didn't put that
18 in here?

19 A I believe I did, but you won't let me read.

20 Q Oh, I'm sorry. All right, go right ahead.

21 A Okay.

22 MS. A. WALKER: Your Honor, may we approach?

23 A Specifically --

24 (WHEREUPON, a bench conference was held
25 in the presence of the jury but out of

1 the hearing of the jury.)

2 MS. A. WALKER: Thank you, Your Honor.

3 BY MS. A. WALKER:

4 Q And we'll move on in the statement of what you
5 recorded.

6 And you said that he makes a phone call to a
7 girlfriend or an ex-girlfriend?

8 A I believe his girlfriend at the time was
9 Ms. Castro.

10 Q Okay. And he stated it wasn't him?

11 A He said -- he gave her a story that -- he said --
12 give me just a second to refresh my memory.

13 (Pause.)

14 A He said that it wasn't him, that he was being
15 framed, someone was setting him up.

16 At the end of the conversation I asked him --
17 give him that opportunity if he had someone was
18 framing him who would frame him, to try to vet that
19 and see if there was any truthfulness to it. And
20 he was unable to find any details, anything that
21 substantiated that claim.

22 Q And then you earlier said a statement that Mr.
23 Brown said something like, DNA will convict me. Is
24 that the statement that you said earlier?

25 A Yes.

1 Q Okay. And can you show me where that is in your
2 report?

3 A That is not in my report. It is part of my
4 testimony.

5 MS. A. WALKER: Beg the Court's indulgence.

6 (Pause.)

7 BY MS. A. WALKER:

8 Q Thank you, Investigator Martin. I have no further
9 questions.

10 THE COURT: Anything in redirect?

11 MS. M. WALKER: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. M. WALKER:

14 Q Ms. Walker just asked you about the -- you get a
15 DNA hit and then you immediately go out and get a
16 warrant for Michael Brown's arrest?

17 A That is not true.

18 Q Were there other factors that you -- don't tell me
19 what the factors were, but were there other factors
20 that you considered when determining whether or not
21 to arrest this Defendant?

22 A Yes, there were.

23 Q And, briefly, let me show you what has been marked
24 as State's Exhibit Number 12. Do you recognize
25 this?

1 A Yes, this is a buccal swab. And this is the one I
2 took from Michael Brown at a later date on -- it
3 looks like -- it would be on the box -- on the 9th
4 of April, 2014.

5 Q April 9th, 2014?

6 A Correct.

7 MS. M. WALKER: Your Honor, at this time the
8 State seeks to introduce Exhibit 12 into evidence.

9 MS. A. WALKER: Your Honor, I just think that
10 will have to come in through the DNA expert who
11 tested the buccal swab.

12 MS. M. WALKER: We will mark it for ID then.

13 THE COURT: I think he can testify that he
14 took the buccal swab. Is he in fact the one that
15 took it?

16 MS. M. WALKER: Yes, Your Honor, I believe he
17 testified to that.

18 THE COURT: I think he can testify that that
19 is the swab that he took. I don't know that he can
20 testify as to anything more than he did a swab on
21 the Defendant.

22 MS. A. WALKER: Yes, Your Honor.

23 THE COURT: I will admit it for the purposes
24 of -- or if you want to mark it for ID at this
25 point in time, whatever y'all want to do, but he in

1 fact took the swab from the Defendant on whatever
2 the date is.

3 MS. M. WALKER: Thank you, Your Honor.

4 BY MS. M. WALKER:

5 Q And you -- once you took this swab --

6 MS. M. WALKER: I'll mark it for
7 identification at this point as State's Exhibit 12.

8 (WHEREUPON, State's Exhibit No. 12 was
9 marked for identification only.)

10 BY MS. M. WALKER:

11 Q You took the swab on April 9th of 2014?

12 A Yes.

13 Q Do you remember where you collected the swab?

14 A Here.

15 Q At the courthouse?

16 A Yes.

17 Q Ms. Walker also asked you about the conversation
18 that this Defendant had with Judy Castro?

19 A Yes.

20 Q After that conversation with her, did he again tell
21 you he wanted to plead guilty to this charge?

22 A Yes.

23 Q And, Investigator Martin, the Defendant, the person
24 from whom you collected that buccal swab and the
25 person who told you he wanted to plead guilty to

1 these charges, is he here in the courtroom?

2 A He is, Mr. Brown sitting at the table.

3 Q Thank you, sir. I don't have any further
4 questions.

5 THE COURT: Anything further?

6 MS. A. WALKER: Beg the Court's indulgence.

7 (Pause.)

8 MS. A. WALKER: Very briefly.

9 RECROSS-EXAMINATION

10 BY MS. A. WALKER:

11 Q Just going back to your report, Investigator
12 Martin. There are two statements you write
13 regarding a plea in this case. The first one at
14 the bottom of Page 1 said, He planned on trying to
15 plead to this charge. Is that correct?

16 A Where are you looking? Yes, I see it.

17 Q Okay. And then as you turn the page, on the second
18 page, first paragraph, fifth one down, Brown asked
19 if Investigating Officer would help him with a
20 plea.

21 A It does say that.

22 Q Okay. And those are the two statements in your
23 report regarding Mr. Brown's questions about
24 pleading?

25 A These are notes to refresh my memory.

1 Q Certainly. Is that all that is in your notes?

2 A That is in my notes.

3 Q Thank you. No further questions.

4 THE COURT: Thank you, Investigator. You may
5 step down.

6 THE WITNESS: Thank you.

7 (Witness steps down.)

8 THE COURT: All right. Do you want to call
9 your next witness?

10 MS. MOSER: The State calls Ronnie Kennedy
11 Martin.

12 THE BAILIFF: Place your left hand on the
13 Bible, and raise your right hand, please.

14 (Witness complies.)

15 THE CLERK: Do you solemnly swear or affirm
16 that the testimony you give in this case will be
17 the truth, the whole truth, and nothing but the
18 truth, so help you God?

19 THE WITNESS: Yes.

20 THE CLERK: Please have a seat, and state your
21 full name for the record.

22 THE WITNESS: My name is Ronnie Lee Kennedy
23 Martin, Jr.

24 RONNIE LEE KENNEDY MARTIN, JR.,
25 after being duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. MOSER:

3 Q Hey, Ronnie. How are you?

4 A I'm all right.

5 Q Good. Ronnie, how old are you?

6 A Twenty-eight.

7 Q Okay. And where do you live?

8 A I stay in Charleston, South Carolina.

9 Q All right. And where do you work?

10 A Charleston Rush.

11 Q Now, back in January of 2013, where did you live
12 then?

13 A Columbia, South Carolina.

14 Q And where did you work?

15 A Chuck E. Cheese.

16 Q Okay. And what did you do at Chuck E. Cheese?

17 A I was the senior manager.

18 Q Can you tell me a little bit about that role?

19 A I basically operate the whole store. I managed
20 everybody.

21 Q Okay. So what were some of your duties?

22 A To make sure all the guests is happy and just make
23 sure the store is running. Basically I was in
24 charge. When the GM leaves, it is basically my
25 store.

1 Q Now, I am going to draw your attention back to
2 January 3rd of 2013. Do you remember that evening?

3 A Uh-huh.

4 Q Okay, fine. What if anything happened that
5 evening?

6 A What if anything happened. Are you talking about
7 the robbery?

8 Q Yes.

9 A Okay.

10 Q If you can just tell me -- first of all, what time
11 did you get to work that day?

12 A I always get there at 2:00 o'clock.

13 Q 2:00 o'clock?

14 A Uh-huh.

15 Q And what time do you usually close?

16 A We close at 10:00 o'clock.

17 Q 10:00 o'clock. Okay. And around 9:00 o'clock that
18 evening?

19 A We don't have no one. It is normally be slow. We
20 don't have nobody there. So for an hour we
21 don't -- it is basically dead.

22 Q Okay. So for the last hour at work usually there
23 aren't any kids there or any new customers coming
24 in?

25 A Basically my employees.

1 Q Okay. And what do you recall happening around that
2 time?

3 A Well, I was right there by the kid check. And I
4 always look out the window outside and just to see
5 what is going on just in case. You don't never
6 know.

7 I just -- it seemed like I seen somebody
8 across the street right there by Motel 6, looked
9 suspicious. I didn't think nothing about it. I
10 see a lot of people walk all the time.

11 Q Let me stop you right there. You said he looked
12 suspicious?

13 A I didn't say -- I said every -- it is a lot of
14 people that walk, so in my -- whoever walks --
15 again, this is a dark parking lot regardless, so
16 just assume, you know, so --

17 Q Right.

18 A It is a security thing to me.

19 Q Okay.

20 A You know.

21 Q And as manager you are concerned with security?

22 A Right.

23 Q You said you were at the kid check. What is that
24 exactly?

25 A It is basically to make sure all the kids gets out

1 with their parents. We have two ropes just like
2 this.

3 Q Okay.

4 A We keep them locked and we stamp the kids with the
5 mom or dad every time. And we check their wrist to
6 make sure nobody don't take nobody else kids,
7 something like that.

8 Q Okay. But at this point, like you said, there was
9 no one really coming in anymore?

10 A No.

11 Q Okay. And you said you were looking out the window
12 and you noticed someone?

13 A Well, I just seen somebody walk. I didn't -- you
14 know, like I said, I didn't think nothing of it
15 after that because I just went to the office and
16 started doing my paperwork.

17 Q Okay.

18 A Then the next thing I know, Kadeshia is running
19 saying, We getting robbed. And I just bolted.

20 Q Okay.

21 A Yes.

22 Q Okay. Where did you go?

23 A We ran out the kitchen door, me and her.

24 Q Okay.

25 A Yes. I just got a glimpse, you know.

1 Q You just got a glimpse?

2 A Well, I seen a red bandanna, the glasses and --

3 Q Okay.

4 A -- it is a -- I want to say it is a Hollister
5 fleece.

6 Q Okay. Do you remember what color it was? Light?
7 Dark?

8 A It was a dark color.

9 Q Okay. What about the glasses? Was there anything
10 distinctive?

11 A It was clear lens, open lens.

12 Q Okay. Could you make out his face at all?

13 A It was a black -- it was like black light skin.

14 Q Okay. Light-skinned black man?

15 A Yes, it was black.

16 Q Okay. And what about his build? What was he like?

17 A Just like a regular -- I can't give you the actual
18 precisely size like height or weight, or anything
19 like that. So, you know, just a normal average
20 guy.

21 Q Okay. Do you remember if he was wearing anything
22 else on his head?

23 A He had a wig.

24 Q Okay.

25 A And I seen a gun, and that is all I need to see.

1 Q Okay. Now, what color was the wig?

2 A It was like a brownish wig.

3 Q Okay. And you saw the gun?

4 A Yes, it was a black gun.

5 Q A black gun?

6 A I don't know if it was a .45, a .25, or just one of
7 them others, I don't know. But, like I said, I'm
8 not going to go up to him and say, Let me see the
9 gun. I'm just gone.

10 Q Right.

11 A Yes.

12 Q So you were in your office when you heard what was
13 happening?

14 A Uh-huh. Yes. She ran and came -- she ran to the
15 office. So we both ran out the kitchen door.

16 Q You said we both. Who?

17 A Me and Kadeshia Green.

18 Q Okay. And how did you feel in that moment?

19 A Scared.

20 Q Okay. And you went back to the kitchen; is that
21 correct?

22 A Did I went back to the kitchen? No. We ran out
23 the kitchen.

24 Q You ran out the kitchen?

25 A My office is right by -- there is a kitchen door

1 right there and my office right here in the back,
2 so -- I'm a track runner, so I can run pretty fast.

3 Q Okay. Good. And what happened after this?

4 A Nothing. It is like we both, me and her was about
5 to head out the exit door going towards the
6 bathroom, and he bolted out the back out the door.

7 Q Back out which door?

8 A He came out the kitchen door where we were coming
9 at, then he just out the exit door. The entrance
10 where he came in, he headed back.

11 Q And do you know -- do you know what happened to
12 Kyrie during this time? You were with Kadeshia.
13 Where was Kyrie?

14 A Like I said, I ain't even see Kyrie. I was in the
15 office. Soon as she told me -- till she ran and
16 told me we were getting robbed, we both ran out. I
17 didn't see nobody after that.

18 Q Okay. Now, did you talk to any police officers
19 after this?

20 A I called the cops.

21 Q You called the cops?

22 A And that's it. After that, then, you know, that
23 was it.

24 Q Okay. Did they get there pretty soon?

25 A Oh, yes.

1 Q Okay.

2 A There was a lot of them.

3 Q There were a lot?

4 A Uh-huh.

5 Q Okay. How long did you stick around that night?

6 A We had to still close the store even though we was
7 all shaked up, and stuff like that. So probably
8 about 30 minutes, 35 minutes, or so, you know.

9 Q Do you remember ever being shown a line-up?

10 A Yes.

11 Q Okay. Did you identify anyone on that line-up?

12 A No. I couldn't.

13 Q Now, would you be able to recognize the Defendant?

14 A (Nods negatively.)

15 Q Would you be able to recognize --

16 THE COURT: Is that a no or a yes?

17 THE WITNESS: No, sir.

18 Q Okay. But you did recall what identifiers? A wig?

19 A Glasses.

20 Q Bandanna?

21 A And he was black.

22 Q Okay. And what was the color of the skin again?

23 A Well, light skin. Not light skin, but like brown
24 skin.

25 Q Okay.

1 A And, like I said, it happened so fast, so I just
2 got a glimpse. Kyrie is like the main guy. Like I
3 said, I was in the office. Kadeshia, she ran in
4 the kitchen. We both ran out.

5 Q Okay. No further questions. Please answer any
6 questions the Defense has.

7 A Okay.

8 CROSS-EXAMINATION

9 BY MS. DYAR:

10 Q Hey.

11 A How you doing?

12 Q I just want to clear up. So your name is Ronnie
13 Lee Kennedy Martin?

14 A Jr.

15 Q Jr. Okay, great. Okay. So you are working,
16 right, trying to close-up the Chuck E. Cheese?

17 A Uh-huh.

18 Q Trying to get out of there; right?

19 A (Nods affirmatively.)

20 Q A regular Thursday night?

21 A (Nods affirmatively.)

22 Q Probably have been dealing with lots of kids all
23 day?

24 A Yeah.

25 Q Yeah? It had been a long night, a lot going on to

1 get out of there. So, and you said you had seen
2 this guy outside?

3 A I ain't see no guy. I just said I seen a person
4 walking.

5 Q You saw a person out there?

6 A Yes.

7 Q Okay.

8 A Like I said, I see a lot of people walk back and
9 forth, but, like I said, it is a dark area.

10 Q Okay.

11 A Where we at. And once it get dark, you can't
12 really can't tell nothing, so, you know, I always
13 look at my surroundings.

14 Q Okay. So you didn't see anything distinctive about
15 the person at all?

16 A No, other than seeing him walking down the alley,
17 that is all.

18 Q So you are at the kid check you said?

19 A Uh-huh.

20 Q And is that where Kadeshia is too at the same time?

21 A She was at the salad bar.

22 Q She is at the salad bar? Okay.

23 A Uh-huh.

24 Q And so then you go back to your office to finish
25 closing up?

- 1 A Uh-huh.
- 2 Q And that is when you hear Kadeshia?
- 3 A No, she ran --
- 4 Q She ran?
- 5 A -- and she actually had called my name. Ronnie,
- 6 run, we getting robbed.
- 7 Q And you just get out of there?
- 8 A Yes, we both did.
- 9 Q You get out of there quick?
- 10 A Uh-huh.
- 11 Q You are a track star?
- 12 A Hey.
- 13 Q Okay. You didn't give a statement, though, to law
- 14 enforcement; right?
- 15 A I believe I did wrote a statement. I'm not sure.
- 16 If anything, they would have it at Chuck E. Cheese
- 17 and they would have give it to the investigator.
- 18 If I did. If I did.
- 19 Q But you don't specifically remember writing
- 20 anything down?
- 21 A No. Like I said, I don't recall. Like I'm not
- 22 sure.
- 23 Q Okay. But you were the one that called 9-1-1?
- 24 A Yes.
- 25 Q And you were able to give them a description of the

1 person?

2 A I didn't give a description. I just said, We are
3 just now getting robbed. Like we was at a robbery,
4 so they just come quick.

5 Q All right. Because that is what you do in a
6 situation like this is you call 9-1-1; right?

7 A Right.

8 Q Because you want them to get there?

9 A Right.

10 Q You have been robbed. And you told the dispatcher
11 that he, the person, was wearing a wig?

12 A Well, when they got there, that is when I told
13 them.

14 Q Okay.

15 A You know.

16 Q Okay. So you told them?

17 A I just told them that -- they just started doing
18 their thing. Then I just stayed there. After
19 that, you know, I was trying to calm everybody
20 down.

21 Q Right. Okay. So when Deputy Sullivan arrives,
22 that is whenever you tell him the person was
23 wearing a wig?

24 A Yes. I told him.

25 Q Okay.

- 1 A I told him what I seen, that is all.
- 2 Q Okay. And that he had on a black jacket? Is what
- 3 you told Deputy Sullivan?
- 4 A It was a dark-colored jacket. It was a Hollister
- 5 jacket.
- 6 Q Okay. So in this brief time you were able to tell
- 7 he had on a Hollister black jacket; right?
- 8 A And a wig and a red bandanna.
- 9 Q Okay.
- 10 A Uh-huh.
- 11 Q And some sort of glasses?
- 12 A Clear glasses.
- 13 Q And that he was a brown-skinned guy?
- 14 A Yes.
- 15 Q Okay. And you remember that night you came out of
- 16 the Chuck E. Cheese when Deputy Sullivan arrived?
- 17 You meet him outside?
- 18 A Did I meet him outside?
- 19 Q Yes. Do you remember when he gets there?
- 20 A I stayed inside. I locked the door. After all
- 21 that stuff happened --
- 22 Q Right?
- 23 A -- I locked the door until the cops came.
- 24 Q Okay.
- 25 A And when they came, I opened the door.

1 Q Okay. And so you remember that that night there
2 was actually another guy at the gas station, and
3 you said, That might be the guy that robbed us?

4 A Well, there was a guy walking. It looked -- Kyrie
5 the main -- like, he was the main guy that
6 actually -- Kyrie could actually really, I guess --
7 well, Kyrie, after all that happened, I guess he
8 grabbed him. I don't know what happened. Like I
9 said, I just -- like I was telling the young lady
10 right there, like it happened so fast. So, but he
11 do -- that guy did look -- that is why Kyrie
12 pointed him out. Kyrie talked to the cops. So I
13 didn't say nothing. Kyrie the one that said
14 something.

15 Q Okay. So the next thing that happens is you get a
16 phone call from Investigator Martin; right?

17 A Yes.

18 Q I'm sorry?

19 A I said -- you said I get a phone call?

20 Q You get a phone call from Investigator Martin who
21 told you he is investigating this case?

22 A Yes, he called.

23 Q A few days later?

24 A Uh-huh.

25 Q Okay. And he's trying to get the video; right?

1 A Uh-huh.

2 Q And you tell him how he can go about doing that?

3 A Yes. My general manager handled all of that,
4 like --

5 Q But he didn't ask you really any more questions?

6 A He talked to the general manager. Like I was
7 there, the general manager was there -- not there,
8 but the general manager basically took care of all
9 the videos or anything, you know.

10 Q You were actually one of the people that was there
11 that night?

12 A Right.

13 Q And he was asking you questions about that?

14 A But I don't have access to the videos, or anything
15 like that.

16 Q Right.

17 A We are a big corporation, so --

18 Q Right. Right.

19 A -- the general manager have to get all that.

20 Q And so you give the cops the information for Mr.
21 Jones?

22 A Right.

23 Q And he doesn't ask you to give a statement about
24 what happened that night?

25 A Like I said, I don't believe -- I think I wrote

1 one. I'm not sure. If they don't have one, that
2 mean I didn't write one. Because, like I say, it
3 happened so fast with me, like, you know, I just
4 got a visual, you know.

5 Q Right.

6 A I didn't stay there that long to see what was going
7 to happen, you know.

8 Q But you see something?

9 A Right.

10 Q You were able to recall --

11 A Right.

12 Q -- a good bit of details?

13 A I did.

14 Q Okay. And then eventually, a couple of months
15 later, you are shown a photo line-up; right?

16 A Right.

17 Q You can't pick anybody; right?

18 A No.

19 Q But the person you saw that night, he's got a
20 bandanna on, you were able to see that; right?

21 A Yes, he had a bandanna on.

22 Q Just around his neck? But you can't -- you can't
23 see --

24 A He didn't have it on his neck. He didn't have it
25 covered up.

1 Q So you were able to see that?

2 A I seen -- I seen enough.

3 Q Okay.

4 A Enough. You know. I didn't want to say -- I ain't
5 going to say it was on the neck.

6 MS. DYAR: Beg the Court's indulgence.

7 (Pause.)

8 MS. DYAR: Nothing further.

9 THE COURT: Anything?

10 MS. MOSER: Nothing further, Your Honor.

11 THE COURT: All right, thank you, sir. You
12 may step down.

13 (Witness steps down.)

14 THE COURT: All right, call your next witness.

15 MS. M. WALKER: Your Honor, the State calls
16 John Barron.

17 THE BAILIFF: Place your left hand on the
18 Bible, and raise your right hand, please.

19 (Witness complies.)

20 THE CLERK: Do you solemnly swear or affirm
21 that the testimony you are about to give in this
22 case will be the truth, the whole truth, and
23 nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Please have a seat, and state your

1 name for the record.

2 THE WITNESS: My name is John Barron,
3 B-A-R-R-O-N.

4 JOHN BARRON,
5 after being duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. M. WALKER:

8 Q Good morning, sir.

9 A Good morning.

10 Q Can you tell me where you are currently employed?

11 A Richland County Sheriff's Department.

12 Q And what do you do at the Sheriff's Department?

13 A I'm a DNA analyst.

14 Q What is a DNA analyst?

15 A It is a scientist who specializes in doing the DNA,
16 if you will, that you have heard talk about this
17 morning, and probably yesterday. Does the actual
18 analysis in the laboratory. Develops what we call
19 DNA profiles. And we compare those profiles to
20 known standards to see whether or not they match.

21 Q And can you tell us a little bit about your
22 training, your education, and your background that
23 led you to become a DNA analyst?

24 A Yes. I have a bachelor of science degree in
25 microbiology from Clemson University. I began my

1 forensic science career prior to DNA analysis, but
2 in the year 1999 I became part of the original
3 group at the State Law Enforcement Division, or
4 otherwise known as SLED, who took on and learned
5 and developed and wrote procedures and protocols at
6 SLED with the present DNA technology under the
7 direction of Dr. Gray Amick, who was our technical
8 leader at the time.

9 In 2000 -- in that year also, to continue my
10 education in DNA, I took two graduate level courses
11 at the University of South Carolina, one in
12 statistics regarding forensic DNA analysis, and
13 another in molecular biology.

14 I worked at SLED until 2004 doing DNA analysis
15 and testifying as an expert to the results.

16 2004, Dr. Gray Amick and I came to Richland
17 County Sheriff's Department and set up the DNA
18 laboratory there.

19 And to this day that is where I'm still
20 employed .

21 Q So you and Dr. Amick went from SLED to Richland
22 County to help set up a DNA lab at the Sheriff's
23 Department?

24 A That is correct.

25 Q And can you tell us a little bit about the DNA lab

1 at the Sheriff's Department?

2 A Well, the DNA laboratory at the Sheriff's
3 Department meets all the requirements by what we
4 call -- well, we have several different agencies
5 involving accrediting our laboratory so it meets
6 all the national standards of every DNA laboratory
7 in the United States. We meet all the standards
8 required by the FBI, who houses the national DNA
9 database so that we can contribute to that. We
10 meet all the criteria established by the American
11 Society of Crime Laboratory Directors who certify
12 us, who is one agency that certifies crime
13 laboratories in the United States. We are
14 inspected on a yearly basis to see whether or not
15 our protocols and procedures are following those
16 standards. And at this point we are still and
17 intend to maintain that accreditation.

18 Q How many accredited DNA labs are there in the
19 state, do you know?

20 A Yes. There is SLED, a state lab, and there is two
21 other county labs, one in Greenville, and one in
22 Beaufort.

23 Q Greenville, Beaufort, and Richland County?

24 A Richland County. Richland County was the first
25 after SLED. SLED, in this technology, became

1 certified in 1999, 2000, in that timeframe. We
2 came over in 2004. And by the end of 2004, the end
3 of 2005, we were certified.

4 Q Have you testified as an expert in DNA analysis
5 before?

6 A Yes, both at SLED and Richland County,
7 approximately 50 times.

8 MS. M. WALKER: Your Honor, at this point we
9 offer John Barron as an expert in DNA analysis.

10 MS. A. WALKER: No objection, Your Honor.

11 THE COURT: Any voir dire?

12 MS. A. WALKER: No, Your Honor.

13 THE COURT: All right. Ladies and gentlemen,
14 as I told you, if scientific, technical, or other
15 specialized knowledge will assist you, the trier of
16 the facts, in understanding any evidence of
17 determining any facts that may be in issue, then a
18 witness may be qualified as an expert by virtue of
19 his or her knowledge, skill, experience, training,
20 or education, and as such can offer opinions in his
21 or her areas of expertise.

22 I find Mr. Barron to be qualified as an expert
23 in the field of DNA analysis, and as such he can
24 offer opinions in this field.

25 You are to give his testimony such weight and

1 credibility as you deem appropriate, as you will
2 with any and all witnesses who testify in this
3 trial.

4 MS. M. WALKER: Thank you, Your Honor.

5 BY MS. M. WALKER:

6 Q When you start to analyze specific items for DNA --
7 actually, let's start with, what is DNA?

8 A DNA is a molecule within in the nucleus of every
9 cell in your body. It defines basically who you
10 are in the animal kingdom as a human being. Your
11 DNA will determine the fact that you are a human
12 versus a monkey or a dog, or anything like that.

13 But it also has locations in the molecule that
14 defines who you are, your race, your hair color,
15 what are your tendencies as far as your size, et
16 cetera, you know, your -- who you are individually.

17 DNA is unique to you individually. You and
18 you alone have that particular type DNA unless you
19 have an identical twin. In such case, they would
20 be identical and not be able to tell the
21 difference.

22 DNA is used, of course, in many different
23 things in the scientific world, but it has -- it is
24 used presently also in the forensic science world
25 for identification.

1 A certain portion of the DNA molecule that are
2 used for that purpose and that purpose only, and
3 that is the part of the DNA molecule that we are
4 interested in in the forensic science laboratory.

5 Q Thank you. And what type of things can you -- and
6 what kind of items can you collect DNA?

7 A Well, DNA, like I said, it is present in any cell
8 in your body that has a nucleus. So your blood
9 would have white blood cells that would have DNA in
10 it. If you are a male, your semen would have sperm
11 cells that would have DNA in it. If you are a
12 female, you would have DNA in your vaginal cells.
13 Every cell in your body. If you have hair, that
14 hair would have -- particularly the root area where
15 there is some tissue -- would have DNA. So
16 therefore any tissue in your body would probably
17 have cells that have DNA. And also your skin.
18 Your skin has nucleated cells. Your skin on your
19 body, the skin on the inside of your cheeks, skin
20 cells there. Any type of cell that has a nucleus.
21 So most of those cells in your body would have a
22 nucleus. So any piece of biological material from
23 your body has the potential of developing your DNA
24 profile, and your DNA profile alone.

25 Q Let me ask you this. If I cut myself here and left

1 blood, could you collect DNA from that?

2 A Absolutely.

3 Q If I -- if my hair got pulled out, could you
4 collect DNA from that?

5 A Yes.

6 Q What if I'm just rubbing this surface?

7 A Yes. Of course, there are some types of material
8 that have more DNA than others and would give us a
9 better opportunity of developing your DNA, but any
10 of that type of material as I described would
11 contain DNA.

12 All the clothing that you are wearing today,
13 it is highly likely if it was submitted to my
14 laboratory there would be a very good chance I
15 would get your DNA off of it.

16 Q So a conception that you have to bleed on something
17 would be a misconception about the way to leave
18 DNA?

19 A Not with the present DNA technology. Now, when DNA
20 first came out, it was a different technology and
21 it required a lot more nuclear material to do that,
22 so we needed a lot of blood, we needed a lot of
23 semen, we needed a lot of material, tissue, to do
24 that with. But with the advancing in technology
25 and the forensic DNA world, it is so sensitive now

1 that just a few cells in your body can develop a
2 DNA profile.

3 Q And once you start -- once you get items to test
4 them for DNA, can you explain to the jury how that
5 process works?

6 A Well, it is a laboratory step-by-step, pretty much
7 a cookbook protocol you follow. If you are dealing
8 with blood, you would simply collect the blood on a
9 swab or cut it out of a piece of clothing it might
10 be on, put it into a tube, you apply extraction
11 material on it. You put it in a heat block and
12 heat it and allow that digestive enzymes and
13 material to strip away the pure DNA molecule from
14 the other stuff in the cells.

15 And in the case of forensic science, you are
16 also getting other dirt and debris and various
17 other material. You obviously would have DNA from
18 animals and plant material as well possibly. But
19 we are basically stripping away everything and just
20 leaving DNA.

21 And then we purify only human DNA from that.
22 We have procedures in the laboratory to do it,
23 various ways to do it, but we use a particular type
24 of automated procedure that isolates and extracts
25 and gives us a small drop, if you will, of purified

1 DNA.

2 Then at that point we would want to know,
3 first of all, if there is DNA there, because if
4 there is not, we're going to stop with our
5 procedure. But if there is DNA there, we want to
6 know how much, because if there is too much DNA, in
7 order to put it on our instruments, which are very
8 sensitive, we don't want to quote, overload it, and
9 yield us confusing results. So we would dilute it
10 to get the proper percentage of DNA in the sample.
11 Or if it is just a small amount, then we just go
12 ahead from that point on and begin to what we call
13 amplify it.

14 We will put it in a mixture of material that
15 contains all the right ingredients, if you will, to
16 target a certain portion of the DNA molecule. In
17 this case, we used a particular reagent kit that
18 targeted 15 locations on the molecule, plus the XY
19 chromosome. If you are a male, it would give us
20 both of those, a marker from the X chromosome as
21 well as the Y to identify the sex. Those 15
22 markers then are compared to known 15 markers from
23 an individual to see whether or not they match.
24 They can also be entered into a database to see if
25 there is anyone in the database that may happen to

1 match the evidence that we develop.

2 Q And is this the process that the Richland County
3 Sheriff's Department DNA lab uses whenever they are
4 processing certain items?

5 A That's correct. And it depends on what type of
6 item we're dealing with --

7 Q Okay.

8 A -- that dictates how we process.

9 Q I want to turn your attention to this case
10 specifically. Were there a number of items
11 received by your lab that y'all were requested to
12 test for DNA?

13 A Yes. We received a wig, a bandanna, a buccal swab,
14 which is a swab from the inside of your mouth, your
15 cheeks, your gums, from Michael Roscoe and
16 eventually a Michael Brown.

17 Q Let me show you what has been marked as State's
18 Exhibit -- State's Exhibits 21 and State's Exhibit
19 12 and ask you if you recognize these items?

20 A Yes, these are items that were processed in our
21 laboratory.

22 Q Thank you.

23 MS. M. WALKER: Your Honor, at this point the
24 State seeks to admit Exhibit 12 into evidence.

25 MS. A. WALKER: No objection, Your Honor.

1 THE COURT: All right, so admitted.

2 (WHEREUPON, State's Exhibit No. 12 was
3 admitted into evidence.)

4 BY MS. M. WALKER:

5 Q And were there tests performed on these? Well, let
6 me start. When you just receive a bandanna or a
7 wig, do you know if you are going to find DNA on
8 those items?

9 A No, I don't know for sure because I cannot
10 necessarily see the skin cells. I can see blood
11 and I can perform serological testing for semen,
12 but a skin cell is something less. If there is a
13 lot of dandruff on it or something like that, I
14 wouldn't necessarily be able to visualize or test
15 for. So what we do then is just proceed to attempt
16 to process the items to recover any possible skin
17 cells that might be present.

18 Q And specifically let's talk about Item Number 11
19 first, the wig. Was there DNA extracted from the
20 wig in this case?

21 A The wig was processed. The wig and the bandanna
22 would be processed similar. We scrape and swab to
23 try to loosen and recover any skin cells that might
24 be present. The wig, however, when we extracted it
25 and tested to see if there was human DNA present,

1 there was none.

2 Q And what about the bandanna?

3 A Yes, there was human DNA on the bandanna, and so
4 therefore we went to the next step to see if we
5 could develop the DNA profile.

6 Q And were you able to develop a DNA profile from the
7 bandanna?

8 A Yes, we got some DNA results from the bandanna
9 and --

10 Q Were the results submitted to a database of known
11 DNA samples?

12 A Part of it was.

13 Q Right, a part. So you don't want to submit the
14 whole thing and destroy --

15 A Well, it depends. If we develop DNA from only one
16 individual, then the whole thing will go into the
17 database. If we develop a mixture, then what we
18 are going to attempt to do is determine if we can
19 discern a distinct individual out of that mixture.
20 And very often we can because some mixtures have
21 what we call a major contributor along with minor
22 contributors, major meaning the majority of the DNA
23 belongs to this individual, and there is also a
24 small portion that belongs to someone else.

25 Q And on the bandanna you said -- did you get a

1 mixture?

2 A I did. And I got what we call major/minor
3 contributor. The major contributor is easily
4 discernible, and so that DNA contribution on that
5 profile was submitted to a database.

6 Q In layman's terms, a major -- how much more DNA is
7 there from a major contributor than a minor
8 contributor in this case?

9 A Oh, in this case -- you know, it depends on each
10 locus, but sometimes it may be ten times more. It
11 is very easily discernable within our computer
12 readout, if you will, of the DNA, the amount of DNA
13 from each contributor.

14 Q Okay. And are you able to determine how many -- if
15 you have a mixture, are you able to determine how
16 many possible contributors of DNA there are?

17 A Most of the time we can get a pretty good estimate
18 as to the number of contributors, yes.

19 Q And in this case, in your expert opinion, how many
20 contributors were there to DNA found on this -- on
21 the bandanna?

22 A Well, first of all, let me explain what would
23 determine a mixture.

24 Q Okay.

25 A At each of those 15 locations on the DNA molecule

1 we are looking for what is called an allele,
2 probably a term you may or may not heard of if
3 remember your biology. But an allele is simply a
4 piece of DNA that was contributed from either your
5 mom or your dad, so that is who you are. You are a
6 combination of DNA from your mother and your
7 father. And so you could have two pieces of DNA at
8 that location, one from mom and one from dad.

9 So if you have two or one, because your mom
10 and dad can actually contribute the same what we
11 call type or link of DNA present at that location,
12 so we could only see one number, if you will, or
13 one particular strand of DNA that was copied.

14 So for a single source, it would be one allele
15 or two. So naturally if we see three, we're going
16 to say, Oh, well, there is obviously another person
17 present.

18 So if you have two people, you could have up
19 to four, two from each one. Now, if you have more
20 than four, then you start thinking of three, okay?
21 I think that is pretty self-evident.

22 So we count the number of alleles at each
23 locus and then if the most we find is four, then
24 there is a high likelihood that there is only two
25 people involved. If there is only one or two on

1 each one, then it is one person.

2 However, when you have a major contributor,
3 what I am going to see is each locus is going to
4 have a major contribution with either one or two of
5 major or a lot of DNA from this particular type.
6 And that is what I'm talking about when I am
7 talking about a major contributor.

8 Now, the minor contributor will be present in
9 a smaller level. And sometimes a minor contributor
10 is enough to also discern and match to another
11 person as well, just depending on how much minor
12 contribution there is.

13 So in this particular evidence, it is
14 clearly -- most of the DNA, maybe up to nine, you
15 know, ten times as much, belonging to one
16 individual, and then there is a smaller amount
17 belonging to another individual, and then there is
18 one particular location that has five alleles.
19 So -- but there is only -- it is only in just that
20 one location and it is a very, very small amount.
21 It is even less than the minor contributor that I
22 was referring to. So that would be like a
23 minor/minor contributor. But that one extra allele
24 there, really it doesn't tell me a whole lot about
25 who that is at all. That just tells me that

1 somebody who maybe breathed on it or coughed on it
2 or touched it one way, or it could have been a
3 contaminant, but that particular allele probably
4 has absolutely nothing to do with the contribution
5 of the DNA other than that one stray allele.

6 But the major contributor in this case and the
7 minor contributor could be compared to individuals.

8 Q So two DNA samples?

9 A Yes. Two portions of DNA from this mixture
10 potentially could be matched to known individuals.

11 Q And one was a minor contributor and the major
12 contributor had ten times more DNA?

13 A Yes, a lot more DNA.

14 Q A lot more DNA?

15 A Exactly. Easily discernible with any qualified DNA
16 analyst.

17 Q And you said the next step was at that point
18 sending those into a database of known DNA samples?

19 A Correct.

20 Q And --

21 A The minor contributor I would say is not sufficient
22 to put in the database because there are minimum
23 qualifications to go in the database, but it could
24 be compared to somebody.

25 The major contributor was plenty of DNA. It

1 was as if -- I could treat it as if it was there by
2 itself. It was so much more than the others I
3 could basically ignore it and put that profile in
4 the database as a single source.

5 Q And did that database give you an individual?

6 A It did.

7 Q And who was that individual?

8 A Michael Brown. At that point we would notify our
9 investigations that the DNA that was developed
10 from that bandanna matched Michael Brown, he would
11 be a potential suspect in your case, and they would
12 collect a known buccal swab, a swab from his mouth,
13 to submit to the laboratory for us to test to prove
14 whether or not that potential match was indeed a
15 match.

16 Q And that buccal swab is Item 12 as we already
17 discussed?

18 A That's correct.

19 Q I want to ask you in terms of -- let me ask you
20 this. Do you know approximately how many people
21 there are on earth right now?

22 A Last I looked, somewhere around 7 billion, getting
23 close to 7 billion.

24 Q Billion?

25 A Yes.

1 Q How many zeros does billion have?

2 A It would be seven followed by nine zeros.

3 Q Seven followed by nine zeros?

4 A That's correct. Of course not all of those
5 7 billion people are in Richland County.

6 Q Right. Well, in terms of the results from this
7 case, were you able to determine how many times
8 this DNA profile, the one that you found on the
9 bandanna and the buccal swab, the one that matched,
10 would occur?

11 A Yes. When we say something matches, what we do is
12 apply a statistical weight to it. In other words,
13 how rare it is in the population.

14 And so there are a couple of ways to do that.
15 The way I chose to do it is what we call a
16 likelihood ratio. In other words, how likely is it
17 to be this person versus just somebody picked at
18 random out of the population, because that is what
19 we're talking about.

20 If the person says, it is not my DNA, well,
21 then it is somebody else's, well then it has to be
22 somebody else who has exactly the same DNA.

23 So the way to determine how rare that DNA is
24 is to compare it to what it would be in the random
25 population.

1 Q And were you able to do that in this case?

2 A Yes.

3 Q And what statistic did you get?

4 A Based on the statistical analysis involved in all
5 15 of those 15 that we developed, got good results
6 for each one, the result is -- using a database
7 developed by the National Institute of Standards,
8 which is a federal standard organization, they
9 determine all the standards in the scientific
10 world, or at least the majority of them -- it came
11 out to some number -- and we try to be
12 conservative, but it is still greater than 9
13 sextillion times more likely to be the DNA of
14 Michael Brown versus a random individual. And
15 sextillion is a number that I'm probably sure that
16 you haven't heard of because it is so big, but it
17 is much larger than billion.

18 Q I have never heard of sextillion. How many zeros,
19 9 sextillion?

20 A Nine sextillion. So that would be 9 followed by 21
21 zeros as opposed to 9 zeros.

22 Q You said 21 zeros?

23 A Correct. So that being, you know --

24 Q And that is a conservative estimate?

25 A Yes. We try to use a conservative estimate, yes.

1 So that number obviously is much larger. So, in
2 other words, in order to find someone else at
3 random who had the same DNA, you would have to,
4 statistically speaking, go 9 sextillion times
5 picking -- before you actually found another
6 person.

7 So what that means in the realm of the DNA
8 scientist and any competent qualified DNA scientist
9 would tell you that within all reasonable
10 scientific certainty that that DNA belongs to
11 Michael Brown.

12 Q And that is the DNA we recovered from the bandanna?

13 A That's correct.

14 MS. M. WALKER: Beg the Court's indulgence,
15 Your Honor.

16 (Pause.)

17 BY MS. M. WALKER:

18 Q How common is it to get a mixture on items of
19 clothing, or things of that nature?

20 A Well, the sensitivity that is being developed with
21 our present technology, it is not unusual to get
22 mixtures. As a matter of fact, it is a common
23 thing we deal with. When we are dealing with skin
24 cell type DNA or touch DNA or clothing, we don't
25 know how many people have touched an object or

1 could have worn it once or twice, but usually when
2 we have a major contributor, that means that that
3 person has come in very strong contact with that
4 object.

5 Q And when you talk about different cells like skin
6 cells, how could those -- how could skin cells get
7 on an item?

8 A Well, you know, our body is constantly replacing
9 its skin cells, so you have skin cells falling off.
10 So if you have ever seen an old mattress or clean
11 one, you will see a lot of skin cells present.
12 Dandruff is an example of skin cells that are
13 coming off of your body. When you have a wound
14 that heals, those skin cells that are damaged are
15 being replaced by skin cells that are healthy. So
16 our body is constantly shedding and replacing its
17 skin cells.

18 Q And once you send a DNA profile into that database
19 of known DNA profiles, how do you get notification
20 back there is actually a match?

21 A Well, the national DNA database is comparing it to
22 known samples that are present and other samples
23 developed from crime scenes every week. If there
24 is a match, I'm notified electronically by the FBI
25 or SLED, who is also tied in and is responsible for

1 the DNA database in South Carolina. But every
2 state has a database. And all that is tied into a
3 national database. And --

4 Q And -- I'm sorry, I didn't mean to interrupt you.

5 A Okay. So I would then see that a match existed. I
6 would request the agency that housed that
7 particular known profile and request an
8 identification. They would then make sure that the
9 individual by matching a fingerprint and running
10 their known sample again is indeed the one matching
11 that profile. And then they would provide me that
12 name.

13 Q And once you -- and did you get an additional
14 buccal swab in this case?

15 A I did.

16 Q Other than the one for Michael Roscoe?

17 A Michael Brown was not the initial buccal swab
18 submitted with the evidence. Another fellow by the
19 name of Michael Roscoe was submitted.

20 Q And were you able to eliminate him as contributing
21 to the DNA in this case in any way?

22 A Yes. He is not the major contributor, neither is
23 he the minor contributor.

24 Q Thank you, sir. I don't have any further
25 questions.

1 MS. A. WALKER: May it please the Court, Your
2 Honor?

3 THE COURT: Yes, ma'am.

4 CROSS-EXAMINATION

5 BY MS. A. WALKER:

6 Q Good morning, Mr. Barron.

7 A Good morning.

8 Q Earlier you testified that only identical twins
9 have identical DNA patterns; is that right?

10 A That is correct.

11 Q And that is true when you examine 100 percent of
12 the DNA?

13 A Well, they would have the same as far as what we
14 are testing as well. I have actually tested my
15 brothers, twin brothers and me. They have the same
16 DNA.

17 Q Oh, you have a twin brother?

18 A I have a brother who has a twin.

19 Q Oh, I understand. And in a forensic situation you
20 examined 15 loci. These are those locations you
21 were referring to; right?

22 A Right. Loci is the scientific word for a location
23 on a DNA molecule.

24 Q Right. And one of those loci is the gender locus
25 that tells you whether it is male or female DNA?

1 A That is correct.

2 Q And these 15 loci, they represent less than one
3 percent of the total amount of DNA?

4 A Correct. Like I say, most of the DNA is identified
5 as the bodily functions, the fact that you have a
6 heart that beats and you have a brain that works
7 and that you have hair and skin and you are a human
8 being. But obviously we can look around the room
9 and see differences, and that is because of their
10 DNA.

11 Q Right. So there are more than 15 loci in a
12 person's DNA?

13 A Oh, absolutely. As a matter of fact, our present
14 technology we target now 22 -- well, actually 23,
15 but 22 that we use for statistical purposes.

16 Q And the more loci you examine the more accurate
17 your examination?

18 A It is going to give you a bigger number, that is
19 correct.

20 Q Okay.

21 MS. A. WALKER: Beg the Court's indulgence.

22 (Pause.)

23 BY MS. A. WALKER:

24 Q And this is why we do a statistical analysis?

25 A Correct.

1 Q Okay.

2 A A match has to be weighted, and it is weighted by
3 likelihood ratios or frequencies, or anything else
4 of a statistical nature.

5 Q And the only time you can be a hundred percent sure
6 is when somebody -- a profile is excluded? You can
7 be a hundred percent sure that it doesn't match
8 that DNA when it has been excluded from a person?

9 A Correct. Michael Roscoe is 100 percent excluded
10 from this mixture.

11 Q And then when we start talking about inclusion,
12 that is when we start talking about statistics?

13 A Well, we talk about -- there is mixture inclusions.
14 There is also match statements that are involved
15 when you have single sources and major
16 contributors.

17 Q And that is when we start talking about numbers?

18 A Correct.

19 Q Okay. And so there are two subspecialties of
20 genetics, one being molecular genetics and one
21 being population genetics; right?

22 A That is true. Population genetics, you know, like
23 if you want to trace your ancestry and see where
24 they came from in the globe and how they migrate to
25 where you are at. That is one way you could do

1 that, yes.

2 Q And molecular genetics is the actual laboratory
3 work leading to generating a profile?

4 A Well, they would all involve some migratory work.
5 If you want to trace somebody's lineage you are
6 going to have to require some analysis from the
7 laboratory.

8 Q And your statistical analysis answers how many
9 people could match a profile?

10 A Correct.

11 Q Okay. And this demonstrates that because you are
12 not analyzing 100 percent of the DNA then we have
13 to do this statistical analysis to weight it, is
14 what you said; right?

15 A Well, it is all based upon frequency as to how
16 often these alleles show up in the population.

17 Now, the National Institute of Standards ran a
18 significant portion of individuals to determine the
19 frequency of these alleles showing up in the
20 population in the world.

21 Q And the technology used in this case, it is
22 specifically called a polymerase chain reaction,
23 PCR? Right?

24 A That is how it is copied.

25 Q Okay. And that is how it is copied for you to -- I

1 guess it is copied and amplified; is that correct?

2 Is that a correct language?

3 A It is kind of -- copied is kind of a layman's term
4 and amplification is sort of a scientific term, but
5 it means the same thing.

6 Q Okay. And that is so you can analyze it? You have
7 to amplify it to analyze it?

8 A Correct. You know, we are dealing with minute
9 amounts of DNA. We copy only that portion of DNA
10 that is used for human identification.

11 Q And using this technology you can develop a DNA
12 profile using just a few cells?

13 A That's correct.

14 Q And when you work in the laboratory you wear
15 gloves?

16 A Yes.

17 Q And you wear gloves because samples can easily be
18 contaminated?

19 A Yes. Skin cells can slough off onto the evidence,
20 and we do not want that to happen.

21 Q And when working in a laboratory, do you change
22 your gloves often?

23 A Yes.

24 Q And that is because even your gloves can have your
25 skin cells on them and transfer from one sample to

1 another?

2 A We use an awful lot of gloves.

3 Q And how often would you say you probably clean and
4 sterilize your work area?

5 A Each piece of evidence is treated separately. It
6 is -- after it is analyzed, you change gloves, you
7 clean the area, you use separate cleaning material.
8 You now process another piece of evidence. So you
9 don't get any cross-contamination.

10 Q And, again, to avoid cross-contamination. And when
11 you get DNA results, does that indicate the race of
12 the profile?

13 A The present technology that we use is not racially
14 specific, no. But there is technology coming out
15 that will be that we're excited about getting
16 within the next five years or so.

17 Q And can the DNA results indicate the age of the
18 donor?

19 A No, it cannot.

20 Q Okay.

21 A Regardless of whether you are one year old or 100
22 years old, it is going to be the same.

23 Q Right. And the DNA results don't indicate when the
24 sample was left on the evidence?

25 A No. It just says who was on the evidence.

1 Q And it doesn't -- and I know that you testified
2 that you can do tests to see if it is blood?

3 A Correct.

4 Q And you can do tests for semen?

5 A Correct.

6 Q But the result doesn't indicate how the DNA got on
7 the surface?

8 A Well, in this case it is not blood, it is not
9 semen, it is skin cells, would be the only
10 reasonable scientific explanation for that DNA
11 being on something that you wear on your body.

12 Q Okay. And you testified that your clothing would
13 have DNA, that if you tested anybody's clothing it
14 would have their DNA on it?

15 A More than likely, unless they just don't shed many
16 cells and they just put on a very clean -- for
17 example, if you just got it out of the dry cleaners
18 this morning.

19 Q And if more than one person, without dry cleaning,
20 wore those clothing, you would be able to tell
21 there is more than one profile?

22 A That is where mixtures tend to come in is when more
23 than one person touch or wear or handle or you
24 actually cough on it or sneeze on it, blow your
25 nose on it, bleed on it obviously. If I were to

1 bleed on your clothes, I would get my DNA off the
2 blood and your DNA off the clothes -- other parts
3 of the clothes.

4 Q And some people actually leave DNA more readily
5 than others? I think you used the term skaw, is
6 that...

7 A Slough?

8 Q Slough.

9 A Slough off?

10 Q Yes.

11 A You know, I have found just based on experience in
12 the laboratory analyzing hundreds of thousands of
13 pieces of evidence like this -- for instance, the
14 wig had nothing. Okay? So whatever reason, I
15 don't know, there wasn't any on there. But the
16 bandanna had plenty of DNA on it. So some people
17 may -- like, I have a lot of dandruff so you are
18 probably going to find my DNA a lot more easily
19 than somebody who doesn't have a lot of dandruff.

20 Q And in this case you analyzed two objects?

21 A Correct.

22 Q The wig and the bandanna?

23 A As far as evidence is concerned. But I did analyze
24 the buccal swab.

25 Q Oh, yes, I'm sorry. In this case, as far as

1 evidence that was taken from the scene, you have
2 analyzed the wig and the bandanna and, as you said,
3 the wig had no DNA on it?

4 A Correct.

5 Q And when the bandanna was analyzed, a mixed sample
6 was found?

7 A Yes, it was a mixture, major/minor contributor with
8 a possible third person there.

9 Q Okay. And your report actually says that the DNA
10 result from Item 2 is a mixture of at least three
11 individuals?

12 A That's right. It is at least three.

13 Q At least three.

14 A It is not -- there isn't indication of a third
15 person, as I testified, so it is not likely that it
16 is four or five, but it as at least three. There
17 is indication on my results of at least three
18 potential people being on that piece of evidence.

19 Q And your DNA, the results you are able to get from
20 this object, they don't indicate how long the DNA
21 had been on the bandanna?

22 A No. With a piece of clothing, you know, some
23 people wash their hair fastidiously and wash their
24 clothing. Others may -- especially a bandanna may
25 be worn over and over again without being washed.

1 Q And we said there was a mixed profile. Do your
2 results indicate in any way what order those
3 profiles got on the bandanna?

4 A No, they couldn't do that.

5 Q So it doesn't indicate who touched it first or who
6 touched it last?

7 A No.

8 Q And it doesn't indicate who touched the bandanna
9 during the incident?

10 A It tells me who the major contributor is, it tells
11 me that there is one pretty decent minor
12 contributor, and then there is a possible third
13 person present.

14 Q And you did population, genetics, statistics for
15 the DNA pattern that was found on the bandanna
16 regarding the ones that were consistent with
17 Michael Brown?

18 A Correct. I did the major profile of the results of
19 the mixture on the bandanna. It matched Michael
20 Brown. But statistics is done on the evidence, not
21 on the known sample.

22 Q Okay. And then your report regarding the
23 statistics has this caveat that the statistic is
24 more likely to be the source than a random
25 unrelated individual; right?

1 A Nine sextillion times more likely. That means if
2 you were to pick at random an individual, it would
3 take about 9 sextillion times before you came up
4 with this profile. And since Michael Brown is
5 matching, then he is one of those nine sextillion
6 people who would match it.

7 Q Like I said, and it has a caveat regarding
8 unrelated individuals; right?

9 A Yes.

10 Q Okay. And that means -- and that means just by
11 chance that if you did a profile for someone
12 closely related to Mr. Brown that it could match
13 for somebody closely related to Mr. Brown?

14 A It wouldn't match unless he was an identical twin,
15 but it could be more closely related. We can tell,
16 like your parents. In fact, that is one thing we
17 do, we do parentage studies. We can take your
18 mother and your father's DNA and see if you are the
19 child. So if you are related, then the number
20 of -- the likelihood ratio would be less. In other
21 words, would be more likely that maybe your brother
22 could have done this as opposed to you, but it
23 would not match your brother, unless he was an
24 identical twin.

25 Q And in this case you didn't test any of Mr. Brown's

1 relatives, or anything like that?

2 A No. And we only test what was submitted to the
3 laboratory.

4 Q Certainly. No further questions. Thank you, Mr.
5 Barron.

6 THE COURT: Anything further?

7 MS. M. WALKER: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. M. WALKER:

10 Q You testified your lab is accredited?

11 A Yes, it is.

12 Q And there are precautions you guys take to make
13 sure that there is no cross-contamination of items
14 or samples?

15 A That's correct. In order to be accredited you have
16 to have procedures in place to make sure that there
17 is minimizing contamination.

18 Q And were those protocols taken in this case?

19 A Yes. They are followed in every single case we
20 work on.

21 Q Right. Is there any evidence of contamination in
22 this case, based upon your results?

23 A There is no contamination from any of our
24 laboratory workers or anyone that could handle
25 evidence in the evidence room or crime scene or any

1 people like that because we know their DNA and if
2 it is the contaminated by them we will know it.

3 Q And let's say a family with a father and mother and
4 a brother and sister. Are those four people going
5 to have the same DNA?

6 A They are not going to have identical DNA. Well,
7 mother and father obviously aren't going to have
8 the same -- or anywhere close to the same DNA
9 unless it is just a random thing, unless they
10 married within their family then they may do so.

11 Q And when you say a DNA match -- this DNA profile
12 matches this known DNA standard, is a match a
13 match? Is there any more to that than --

14 A A match means that what we found on the evidence is
15 identical to what was found in his known sample.
16 Now, how strong was the match, that is where the
17 statistics come in.

18 Q And there is a major contributor in this case, and
19 that person's DNA is on there ten times more than
20 the minor contributor?

21 A Approximately.

22 Q And who was the major contributor?

23 A Michael Brown.

24 Q And what are the statistics that you came up with
25 in this case?

1 A Nine sextillion times more likely to be Michael
2 Brown than someone picked at random in the
3 population that is unrelated.

4 Q And there are 7 billion people on earth right now?

5 A Correct.

6 Q Whose DNA was on the bandanna?

7 A In my scientific opinion, Michael Brown's DNA is on
8 the bandanna.

9 Q Thank you, sir. I don't have any further
10 questions.

11 THE COURT: Anything further?

12 MS. M. WALKER: Your Honor, very brief
13 recross.

14 RECROSS-EXAMINATION

15 BY MS. A. WALKER:

16 Q You testified earlier the labs now have -- well, at
17 the time you analyzed the lab analyzed 15 loci?

18 A Correct.

19 Q And now there are labs that analyze, did you say 22
20 is what the technology is now?

21 A Yes. We were one of the first ones in the United
22 States to actually go to that technology.

23 Q Okay. And if you can analyze more loci, that is
24 the way to go?

25 A Well, what happens when you do more is when you get

1 to like a partial profile it gives you a more -- a
2 greater likelihood that it belonged to a person
3 versus less.

4 In this case if I analyzed more it is just
5 going to increase that number a million fold times,
6 but I think that is a sufficient number for
7 identity.

8 Q And if you analyze a profile and just one of those
9 loci is a non-match, then that person is excluded?

10 A Unless there is some type of mutation.

11 Q Unless there is what?

12 A Some type of mutation. You can have a mutation.

13 Q Certainly.

14 A But that has to do more of population -- I mean,
15 relatedness than it does identity with evidence.

16 Q Thank you, Mr. Barron.

17 A Okay.

18 THE COURT: All right. Thank you, sir. You
19 may step down.

20 (Witness steps down.)

21 THE COURT: Ladies and gentlemen, we are going
22 to go ahead and take break for about 15 minutes or
23 so. I will let you step back to the jury room.
24 Please do not discuss the case while you are back
25 in the jury room. We will bring you back in just a

1 little bit, please.

2 (WHEREUPON, the jury retires to the jury
3 room at 10:54 a.m.)

4 THE COURT: All right, what do y'all have
5 next?

6 MS. M. WALKER: Your Honor, that was our last
7 witness.

8 THE COURT: That was your last witness?

9 MS. M. WALKER: Yes, sir.

10 THE COURT: Is your witness going to testify,
11 your Defendant?

12 MS. A. WALKER: Your Honor, as far as us
13 putting on a case, I think at this juncture we're
14 not putting on a case.

15 THE COURT: So y'all are going to be ready to
16 argue and charge?

17 MS. A. WALKER: Yes, Your Honor. If I can
18 make my appropriate motions now at the close of the
19 State's case.

20 THE COURT: All right.

21 MS. A. WALKER: Thank you, Your Honor. May it
22 please the Court?

23 Your Honor, at this point in the case I would
24 move for a directed verdict. In taking the
25 evidence in the light most favorable to the State,

1 I believe that the State has failed to provide a
2 basis to the jury in order to find my client guilty
3 beyond a reasonable doubt.

4 THE COURT: What is the standard for a
5 directed verdict?

6 MS. A. WALKER: Well, Your Honor, I believe
7 that it has to provide a basis to find the
8 Defendant guilty beyond a reasonable doubt as
9 provided by Jackson v. Virginia.

10 THE COURT: The standard for a directed
11 verdict is there has to be a basis so that the
12 Defendant can be found guilty beyond a reasonable
13 doubt?

14 MS. A. WALKER: That the State would have to
15 provide the jury with a basis, Your Honor.

16 THE COURT: All right.

17 MS. A. WALKER: And, Your Honor, in this case
18 in particular I find -- my analysis is that the
19 circumstantial evidence that has been presented to
20 the jury in this case does not rise to the level of
21 substantial circumstantial evidence in order to
22 submit this case to the jury.

23 And, Your Honor, if I could, there is a recent
24 directed verdict case that has come down that I
25 will hand up if Your Honor will allow me to

1 approach.

2 THE COURT: Sure.

3 (Complies.)

4 MS. A. WALKER: And I believe this case was
5 just published. And, Your Honor, this is State v.
6 Pearson.

7 Your Honor, in this case I don't believe that
8 the circumstantial evidence that has been provided
9 in this case rises to the level of proof in the
10 case.

11 Your Honor, we have absolutely no physical
12 evidence that places him directly on the scene.
13 Your Honor, we have a bandanna that is found two
14 buildings away that just shows that my client was
15 in possession of this bandanna at some point in his
16 life. We don't even know if it was even close to
17 the time of the event. That is the only evidence
18 that places him at this location, Your Honor. I
19 think that only raises a mere suspicion of guilt.

20 Your Honor, Pearson outlines quite a few cases
21 where circumstantial evidence was insufficient to
22 go to a jury. Here specifically in the Pearson
23 case there is a fingerprint on a car. DNA matches
24 that of a Co-Defendant on a case. And they at all
25 points deny ever being around the victim's things

1 or his property. And the Co-Defendant completely
2 denies knowing the Defendant and the Defendants
3 deny knowing the Co-Defendant.

4 In that case there was a fingerprint on a car,
5 another mobile object, and there is only DNA
6 matching the Co-Defendant.

7 Your Honor, in this case all we have is DNA on
8 a bandanna. That's all we have. Nobody is able to
9 identify him. The DNA on the bandanna is a
10 mixture. They indicate that there is a minor
11 contributor of at least three people. That is at
12 least three people.

13 The witness himself testified that you can't
14 place a time on that. You can't place that he was
15 the one that was wearing it at the time of the
16 robbery.

17 I think that that is merely circumstantial
18 evidence, Your Honor, and not substantial enough to
19 rise to the level to be able to submit the case to
20 the jury.

21 MS. MOSER: Your Honor, taking the evidence in
22 the light most favorable to the State, I do believe
23 that we have direct and substantial circumstantial
24 evidence in this case.

25 First of all, we have presented evidence of a

1 suspect entering a business in Richland County with
2 a gun and demanding money. We have got -- that
3 suspect is identified directly by three different
4 witnesses who say he was wearing a bandanna, a wig,
5 distinctive eyewear, clothing, dark -- a dark
6 hoodie, white shoes, ring. And the bandanna was
7 found just feet from the incident location. We had
8 a K-9 officer testify to the fact that his dog
9 tracked the trail to that bandanna and there was a
10 match to the Defendant. That is the same bandanna
11 that was identified by several witnesses in this
12 case. And that, in our opinion, that is clear
13 substantial circumstantial evidence.

14 Your Honor, in addition, once this Defendant
15 was detained, he went on to be questioned by the
16 investigator. He actually -- there was testimony
17 he tried to work out a deal in this case so that he
18 could plead to the charge.

19 And based on that and all the circumstantial
20 evidence, we do believe we presented sufficient
21 evidence in this case for it to go to the jury.

22 MS. A. WALKER: Is it okay if I respond, Your
23 Honor?

24 THE COURT: Sure.

25 MS. A. WALKER: Your Honor, I think that is a

1 misstatement of the evidence. She said that there
2 were three suspects that identified the suspect.
3 Nobody identified the suspect.

4 We -- nobody in this courtroom is saying that
5 there was not a gentleman that entered the Chuck E.
6 Cheese with a gun. I am certainly not saying that
7 that did not happen. What I'm saying is that that
8 is not my client that did that. There is only --
9 only circumstantial evidence that says my client
10 was the one that did that. And even then I
11 don't --

12 THE COURT: The standard in a directed
13 verdict, is there any direct evidence -- any --
14 any -- which could be a scintilla of evidence -- or
15 is there any substantial circumstantial evidence.

16 The evidence in this case is somebody went
17 into Chuck E. Cheese with a bandanna, a wig,
18 glasses, dark clothing, and attempted to rob the
19 place but was unsuccessful. They ran out the front
20 door. They ran out the building and went around to
21 the back of the building. At some point in time a
22 dog picked up the scent from the location and
23 followed it exactly to where the bandanna and the
24 wig was found.

25 When the wig and bandanna were found, they

1 ultimately were analyzed, and DNA appeared on the
2 bandanna belonging to your Defendant. Nothing
3 appeared on the wig. Your client was ultimately --
4 which is all circumstantial, but to me that is
5 substantial circumstantial evidence to identify,
6 one, the individual that committed the robbery.
7 The scent was picked up and went to the location of
8 where this was found.

9 In addition, there is direct evidence when
10 your client was arrested he made a statement which
11 indicated that he did not believe that he could
12 contest the DNA, that he wanted to go ahead and
13 enter a plea to something, as to some charge. I'm
14 a little confused as to whether he wanted to enter
15 a plea to the attempted armed robbery or something
16 else, but he indicated, according to the officer's
17 testimony, that he wanted to enter a plea to
18 some -- which would be direct evidence, in my
19 opinion, a scintilla of direct evidence at least,
20 that he is admitting that he committed this offense
21 in the course of his confession.

22 And that is what the standard is. Now,
23 whether that is sufficient for the jury to convict
24 him or not is going to be up to what the jury
25 determines to be -- what they believe is the facts

1 of the case. So I am going to deny your motion.

2 MS. A. WALKER: Thank you, Your Honor.

3 THE COURT: Okay. We need to figure this out
4 because I had been told that we were going to be
5 going all day today and weren't going to argue
6 until tomorrow when I have a commitment at lunch.
7 So can y'all -- plus we have got to get the charge.
8 Can y'all come back to my office and let's figure
9 out what we are going to do?

10 We will stand in recess for a few minutes.

11 (WHEREUPON, a break was taken.)

12 THE COURT: Mr. Brown, let me get you to stand
13 and raise your right hand, if you would, please,
14 sir.

15 (Defendant complies.)

16 THE COURT: Do you swear or affirm any
17 evidence, testimony, or statements you give will be
18 the truth, the whole truth, and nothing but the
19 truth?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Now, again, I am going
22 to not ask you anything about the facts of this
23 case, but I want to discuss with you your
24 testifying in this trial. Your lawyer, Ms. Walker,
25 indicated that the State is about to rest and that

1 y'all intend to not offer any evidence in the case,
2 which tells me that you don't intend to testify.

3 Is that in fact correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you talked to Ms. Walker
6 about this matter?

7 THE DEFENDANT: Yes.

8 THE COURT: About testifying or not
9 testifying?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you understand that you have a
12 right to testify, to get up and tell your side of
13 the story if you'd like to. Do you understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And of course if you do that, in
17 addition to telling your side of the story, you
18 will be subject to being examined by the
19 Solicitor's Office. And they can ask you anything
20 they want to ask you that may be relevant in this
21 case, including attempting to impeach you, show
22 that your testimony may not be credible. Do you
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Of course one of the ways that

1 they may attempt to impeach you is to show that
2 you may have a prior record. I don't know what if
3 anything you might have in terms of a record, but
4 if you have a record and it qualifies under the
5 rules, they could attempt to impeach you on that
6 record. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And of course you have the right
9 not to testify. The constitution of this state and
10 the United States gives you the protection against
11 self-incrimination. You wouldn't have to testify.
12 And if you elect not to testify in this trial,
13 which you have indicated that that is what you want
14 to do, then I will instruct the jury they can't
15 even consider the fact that you didn't testify in
16 the course of their deliberations. Do you
17 understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And that is the decision you have
20 made is to not testify in the trial?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So it is your decision and your
23 decision alone?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has anybody threatened you,

1 coerced you, forced you, or pressured you into
2 making that decision?

3 THE DEFENDANT: No, sir.

4 THE COURT: You are doing so freely and
5 voluntarily?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you are doing so because you
8 think it is in your best interest to do so?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you had any alcoholic
11 beverages or taken any drugs or heavy medication in
12 the last 24 hours?

13 THE DEFENDANT: No, sir.

14 THE COURT: So none of that would affect your
15 decision here today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you think you fully understand
18 your rights; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And, Ms. Walker, you have heard me
21 inquire of your client about his testifying, and he
22 indicates he doesn't wish to testify. And of
23 course you informed me a few minutes ago that you
24 believed that was his desire. And you have been
25 able to counsel him about this?

1 MS. A. WALKER: Yes, I have, Your Honor.

2 THE COURT: Testifying or not testifying?

3 MS. A. WALKER: Yes, Judge.

4 THE COURT: And you told him and discussed all
5 the pros and cons of both testifying and not
6 testifying, I assume; is that correct?

7 MS. A. WALKER: We have, several times, Your
8 Honor.

9 THE COURT: All right. And he has indicated
10 to you as well he wishes to elect to not testify;
11 is that correct?

12 MS. A. WALKER: Yes, Your Honor.

13 THE COURT: And you believe this decision is
14 his decision and his decision alone?

15 MS. A. WALKER: Yes, Your Honor.

16 THE COURT: You believe he fully understands
17 the ramifications of either testifying or not
18 testifying?

19 MS. A. WALKER: I do, Your Honor.

20 THE COURT: Okay. Thank you, sir.

21 (Defendant seated.)

22 THE COURT: All right. Did you want to say
23 something?

24 MS. M. WALKER: Yes, Your Honor. The note
25 that we received from the jury while we were in

1 chambers that you read aloud to Defense counsel as
2 well as Ms. Moser and myself, it is concerning in
3 that it seems as though that jury has already
4 started deliberating against your instructions.

5 THE COURT: Well, I don't know that they
6 deliberated. They might just have these questions
7 in their mind. I don't know anything in here that
8 indicates they want to talk to anybody about this.

9 MS. M. WALKER: My understanding from your
10 instruction is that you told the jurors; At this
11 point you don't need to deliberate the case --

12 THE COURT: I told the jury don't discuss the
13 case with each other because if they do and in
14 doing so one might affect the other and it might
15 preclude them from -- allow them to formulate some
16 opinion about the case before they heard
17 everything.

18 MS. M. WALKER: Yes. It seems as though this
19 juror has already formulated an opinion.

20 THE COURT: Well, I don't know whether they
21 formulated or not. I would assume as the case goes
22 along in every case they start to have some
23 opinions about matters. In fact, it is not unheard
24 of for jurors to submit questions to the Court for
25 the Court to ask the questions on behalf of those

1 jurors in the course of the trial. It doesn't mean
2 they necessarily formulated an opinion. It may be
3 that they are seeking to secure information.

4 MS. M. WALKER: Okay.

5 THE COURT: I don't know anything in here.
6 I'm going to tell them that they have to decide
7 this case based on the evidence that has been
8 submitted in this case and that I am certainly not
9 in a position to respond to any of their questions
10 at this time. They will have to rely on their
11 memory and their review of the evidence in the
12 course of their deliberations when they begin to
13 deliberate the case.

14 MS. M. WALKER: Okay. Thank you, Your Honor.

15 THE COURT: All right. Y'all are going to
16 rest; correct?

17 MS. M. WALKER: Yes, Your Honor.

18 THE COURT: And y'all don't intend to offer
19 anything?

20 MS. A. WALKER: We don't, Your Honor.

21 THE COURT: And then we will go forward with
22 the closings.

23 All right, let's bring the jury in. Are y'all
24 going to open on the law?

25 MS. M. WALKER: No, Your Honor. We will go

1 straight through.

2 THE COURT: Pardon me? Oh, they get the final
3 argument, I forget. Y'all didn't offer any
4 evidence in the case, did you?

5 MS. A. WALKER: No, Your Honor.

6 THE COURT: Sorry. All right, are they
7 bringing the jury in?

8 THE CLERK: Yes, sir.

9 (WHEREUPON, the jury came into open
10 court at 11:17 a.m.)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: All right. Anything further from
13 the State?

14 MS. MOSER: The State rests, Your Honor.

15 THE COURT: All right. Anything from the
16 Defense?

17 MS. A. WALKER: No, Your Honor.

18 THE COURT: All right, ladies and gentlemen,
19 the State has rested, which means the State has now
20 completed the presentation of their evidence and
21 their case in chief. And the Defendant, as I told
22 you, has elected not to offer any evidence in this
23 case because they have no burden in this case.
24 They don't have to do anything in the case at all.
25 So we are getting ready to go to the phase of

1 the trial where we allow the lawyers to speak to
2 you again, and then I will charge you with the law.

3 Now, I received a note while we are on break
4 from Juror Number 73. I don't have my list. I
5 don't know what happened to my list. But Juror 73,
6 who would that be?

7 THE JUROR: Dimetrius Fletcher.

8 THE COURT: All right, ma'am. I can't answer
9 these questions. You are going to have to listen
10 to the evidence in the case and make whatever
11 decision you make ultimately and the jury makes
12 based upon the evidence in the case. I'm not in a
13 position to respond to any of these questions that
14 you have submitted. Okay?

15 THE JUROR: Yes, sir.

16 THE COURT: All right, thank you, ma'am.

17 All right, with that said -- Ms. Walker, are
18 you going to make the closing?

19 MS. M. WALKER: Yes, Your Honor.

20 THE COURT: All right. Are you ready to
21 proceed?

22 MS. M. WALKER: Yes, Your Honor. May it
23 please the Court?

24 THE COURT: Yes, ma'am.

25 CLOSING STATEMENT

CLOSING STATEMENT BY MS. M. WALKER

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1 MS. M. WALKER: Good morning.

2 THE JURY: Good morning.

3 MS. M. WALKER: Before I get started and talk
4 to y'all about this case, the first thing I want to
5 do on behalf of Chuck E. Cheese, on behalf of
6 Kadeshia and Kyrie Green, on behalf of the victims
7 that were located in Chuck E. Cheese on January 3rd
8 of last year, and on behalf of Richland County is
9 thank each and every single one of you for your
10 service here over the past few days.

11 I know as y'all were coming to the courthouse,
12 jury service can be a stressful time because you
13 are away from your job, you are away from your
14 family, you are away from the things that you
15 should be doing, and you are coming into a
16 situation which you don't know what sort of facts
17 or what sort of cases are going to be presented
18 before you.

19 But I really want to again thank each and
20 every single one of you for showing up, for
21 serving, and for paying such close attention to the
22 evidence that was presented before you.

23 And as you guys were driving here and
24 preparing for jury service and trying to figure out
25 what you may be listening to, Ms. Moser and I were

1 sitting down preparing this case and trying to
2 figure out what kind of defense may be utilized in
3 a case like this.

4 Whenever we walk into a courtroom, we don't
5 know what the defense may be. Sometimes it is, I
6 didn't do it, you have the wrong person. Sometimes
7 it is, I can tell you exactly where I was at the
8 time of the offense. Sometimes the defense is to
9 blame specifically someone else and say, No, that
10 person did it.

11 But this case, this case is unique. This is
12 the first time this defense that was used this week
13 has ever been used. And we had an indication from
14 Investigator Robert Martin's report as to what the
15 defense was going to be.

16 Someone stole my DNA, put it on the bandanna,
17 went and robbed the Chuck E. Cheese, left the Chuck
18 E. Cheese and, with my stolen DNA, they framed me
19 for this armed robbery of Chuck E. Cheese.

20 That is that what he told the girlfriend
21 happened as Investigator Martin listened to that
22 phone conversation.

23 Of all of the 7 billion people on earth and in
24 all of the cities in the world, this group of DNA
25 thieves decided to frame Michael Orlando Brown for

1 an attempted armed robbery at Chuck E. Cheese in
2 Richland County. That is what he told law
3 enforcement.

4 Does that ring true to anyone in this
5 courtroom? Does that sound credible? That this, I
6 guess, specialized group of DNA thieves, who could
7 frame anybody for anything once they have stolen
8 their DNA, decided not to frame some politician or
9 some fan, celebrity, or some powerful judge, they
10 decided to frame that guy? That is what he told
11 his girlfriend happened.

12 And remember when Investigator Martin was
13 testifying and he said at that point in which he
14 said that there were people who wanted to frame him
15 for this crime, I said to him, Who are they? Let's
16 vet this. Let's see if there are people out here
17 stealing your DNA and framing you for attempted
18 armed robbery. And he couldn't tell them who the
19 DNA thieves were.

20 Now, I'm sure when Defense counsel gets up
21 here they are going to come up here and tell you
22 that that is not their defense, because they know
23 they can't go along with what he told Judy Castro
24 happened. They know they can't get up here and
25 argue with a straight face that DNA thieves set him

1 up for the attempted armed robbery at Chuck E.
2 Cheese.

3 They are going to tell you that you can't
4 convict him based upon the DNA match on that red
5 bandanna.

6 When Ms. Dyar opened this case, she said, This
7 case is kind of like a person who goes to a bank
8 and they open a magazine and they write something
9 on the magazine and they use that to rob the bank,
10 and then they leave the magazine behind.

11 The two simply are not analogous. Those two
12 things can't be compared. This isn't a situation
13 in which we got his DNA from something that was
14 left at Chuck E. Cheese. There are hundreds and
15 thousands of people who go into that Chuck E.
16 Cheese location at any given point in time. If we
17 got it from a fork that was left in Chuck E.
18 Cheese, then I would agree. Anybody at any given
19 time could have been in Chuck E. Cheese for a legal
20 reason, for a lawful reason, and left their DNA
21 there.

22 But in this case, the DNA was found on the red
23 bandanna that the witnesses identified that looked
24 like the bandanna that was worn on the attempted
25 armed robbery that occurred on January 3rd of 2013.

1 Before I get into more of the facts of this
2 case, I kind of want to talk to you a little bit
3 about the law that governs this case.

4 In this county this Defendant has been charged
5 with attempted armed robbery. A person who commits
6 attempted robbery while armed with a pistol -- in
7 this case, that was the gun that Kyrie Green was
8 able to describe to you being stuck in his back --
9 with a gun, with a pistol, dirk, slingshot, metal
10 knuckles, razor, or other deadly weapon -- in this
11 case it is a pistol -- or while alleging either by
12 actions or words he was armed while using or a
13 representation of a deadly weapon or any object
14 which a person present during the commission of a
15 robbery reasonably believed to be a deadly weapon
16 is guilty of armed robbery.

17 No one -- no one is going to argue to you with
18 a straight face that attempted robbery didn't occur
19 at Chuck E. Cheese that night. A man came in
20 wearing a bandanna that covered the lower portion
21 of his face and a wig over his face.

22 Kadeshia Green knew exactly what was happening
23 at that point. She turned around ran and said, We
24 are getting robbed.

25 And Kyrie Green, because he had his back to

1 the door, was grabbed, he was pulled in, and a gun
2 was stuck to his back, and he was told, Take me to
3 the money.

4 And the reason it is an attempted armed
5 robbery as opposed to an armed robbery is because
6 he didn't actually get the money that he was there
7 for that night. Once he went around the corner and
8 was in the kitchen and saw that there were other
9 people there and decided to run out of the front
10 door again, that makes it an attempted armed
11 robbery as opposed to an armed robbery.

12 And there are different types of evidence that
13 you are going to hear talked about in this case.
14 You are going to hear about direct evidence and
15 circumstantial evidence.

16 There are two types of evidence which are
17 generally present during a trial: Direct evidence
18 and circumstantial evidence. Direct evidence
19 directly proves the existence of a fact and does
20 not require a deduction. Circumstantial evidence
21 is proof of a chain of facts and circumstances
22 indicating the existence of a fact.

23 Crime may be proven by circumstantial
24 evidence. The law makes no distinction between the
25 weight or value to be given to either direct or

1 circumstantial evidence. However, to the extent
2 the State relies on circumstantial evidence, all of
3 the circumstances must be consistent with each
4 other and when taken together point conclusively
5 to the guilt of the accused beyond a reasonable
6 doubt. If these circumstances merely portray the
7 Defendant's behavior as suspicious, the proof has
8 failed. The State has the burden of proving the
9 Defendant guilty beyond a reasonable doubt and that
10 burden exists whether or not the State relies on
11 direct or circumstantial evidence.

12 The direct evidence in this case, direct
13 evidence that an armed robbery took place, is that
14 a man came in wearing a bandanna, a wig, and
15 demanded money.

16 Circumstantial evidence is that there was a
17 K-9 track that started at Chuck E. Cheese Pizza,
18 went around the parking lot, paused at the tree
19 line, and then went behind the El Toro where the
20 wig and bandanna were found. That bandanna had the
21 Defendant's DNA on it. I want to talk to you more
22 about the DNA in a minute.

23 More direct evidence. When he is confronted
24 with the evidence against him, once he knows that
25 he -- the items he left behind were found, he tells

1 the officer, not I wasn't there, not I didn't do
2 it, not I can tell you where I was at the point in
3 time in which this incident occurred, he tells
4 Investigator Rob Martin, I want to plead guilty.
5 Direct evidence of his guilt.

6 And the proof that is required in this case,
7 as with every criminal case in this country, every
8 person that has ever been convicted of any crime,
9 this is the burden that has been met. Proof beyond
10 a reasonable doubt.

11 Proof beyond a reasonable doubt is proof that
12 leaves you firmly convinced of the Defendant's
13 guilt. There are very few things in this world
14 that we know with absolute certainty. And in
15 criminal cases the law does not require proof that
16 overcomes every possible doubt. If based on your
17 consideration of the evidence you are firmly
18 convinced that the Defendant is guilty of the crime
19 charged, you must find him guilty. If, on the
20 other hand, you think there is a real possibility
21 that he is not guilty, you must give him the
22 benefit of the doubt and find him not guilty.

23 There are two possible outcomes in this case.
24 This Defendant, wearing a bandanna and a mask, went
25 into Chuck E. Cheese, put a gun in that young man's

1 back, marched him around that restaurant, got
2 scared when he saw there were other people in there
3 and fled, leaving a scent for a dog to track all
4 the way to the El Toro where he dropped off those
5 items that were later tested and came back with his
6 DNA on them. And once he was arrested told the
7 officer, I can't fight this, the DNA alone is
8 enough to convict me. I want to plead guilty. Or,
9 the DNA thieves set him up successfully.

10 Which one is more credible? Which one is more
11 reasonable? Which one are you firmly convinced
12 happened?

13 In order to prove this case, in order to prove
14 this Defendant's guilt beyond a reasonable doubt,
15 in order to leave you firmly convinced of his
16 guilt, what we did is we brought in different
17 witnesses who have some knowledge of what happened
18 that night.

19 You heard from Deputy Sullivan, the responding
20 deputy who was the first witness we put on the
21 stand. He said he was called out there that night.
22 He understood at that point in time that the place
23 was robbed, that the person had on a red bandanna,
24 that they were wearing a wig, had on dark clothing,
25 and that they took off. At that point he called

1 K-9.

2 He also testified that at that point in time
3 there was a young man that was standing across the
4 street. And one of the victims of the crime said,
5 That looks like that could be him. That he
6 detained that guy and talked to him, and once that
7 suspect told him, No, this is where I was, and he
8 was able to confirm that, that person was released.
9 They were exonerated. They had no involvement in
10 the crime.

11 John Barron, also testified that that person's
12 DNA wasn't on any of the items that were submitted
13 for DNA testing in this case. They questioned him.
14 He had a logical, reasonable, well-founded
15 explanation. It wasn't, The DNA thieves did it.
16 And he was released later that night. That is law
17 enforcement doing their job. That is the system
18 working.

19 You heard from Deputy Pearrow, the K-9 deputy,
20 that he had been training the same dog for four
21 years, that the dog was able to immediately pick up
22 a scent, that he led them -- and it makes sense if
23 you think about it that he led them away from Chuck
24 E. Cheese and around that tree-lined area, because
25 at that point you can't just walk through the

1 middle of the Exxon parking lot that is well lit
2 where there are people there -- he gets around the
3 tree-lined area so he isn't seen by anyone else.
4 Because at this point he has gone through great
5 lengths to hide his identity. And I'll get back to
6 that in a second.

7 He hugged that tree-lined area, gets behind El
8 Toro, and goes down to that little stairwell, kind
9 of secluded -- you can't really -- you can't really
10 see it, down in this area -- where he's got to
11 ditch the wig and the mask -- and the bandanna,
12 excuse me. Because he can't very likely just walk
13 up St. Andrews Road wearing a bandanna and a wig.
14 That is suspicious. So he has got to ditch those
15 things there.

16 Did he not know what touch DNA is and that
17 that exists? Does he think, Well, I didn't bleed
18 on it so there is no way they will be able to track
19 this bandanna and this wig to me?

20 And then the K-9 officer said he walked up to
21 another area of St. Andrews Road where the scent
22 was lost, that the dog looked for 20 more minutes,
23 he became frustrated, he couldn't pick up the scent
24 anymore, and that that is consistent with someone
25 getting in a car and driving off, having a getaway

1 car. A good plan for an armed robbery.

2 After those deputies, you heard from Kadeshia
3 Green and Kyrie Green. Kadeshia Green said she was
4 at the salad bar, that she was facing the door.
5 She saw a man come in -- and you can see this in
6 the video -- and start going into his pocket,
7 starts pulling something out, and at that point she
8 saw a gun and she knew it was time to get out of
9 there. That she didn't get a good look at him, she
10 knew that he had on a wig, he had a red bandanna,
11 that he had glasses. She thought they were
12 sunglasses.

13 But then you heard from Kyrie Green. Kyrie
14 stood right here with me yesterday, and I think we
15 were about an arm's length apart. And Kyrie said
16 that the man walked up to him and they stood and
17 they faced each other for a while. And he could
18 not pick out all of his facial features, that he
19 can't tell you exactly what this man looked like.

20 And remember he said it seemed like it took
21 five to ten minutes. That video is 28 seconds.
22 But imagine, 19 years old with a gun in your back.
23 Yes, it seemed like it took five to ten minutes for
24 this entire thing to happen.

25 And they come up here and they questioned

1 every witness. You can't identify him, can you?
2 You can't tell me what he looked like? That is the
3 point of the wig and the bandanna. This red
4 bandanna with Michael Brown's DNA on it. That is
5 the point of it. Still tied up. The point is so
6 that no one can be able to pick him out of a photo
7 line-up. Cover this part of your face. You don't
8 want to be seen, you don't want to be identified.
9 Said it was down around here. They could still see
10 the outline of his mask -- of his mustache, I'm
11 sorry.

12 And this wig? Put this on your head. You
13 don't want to be identified. It covers almost your
14 whole face. You can still see my eyes, though.
15 And remember that is the part that Kyrie said he
16 remembered, this part. Everything else was
17 covered. There are no more identifying marks left
18 on it.

19 Take me to the money. He has the mask, the
20 bandanna. He sees the wig and he sees those eyes.

21 Remember I showed him this picture with the
22 one part of his face that you can actually see?
23 This part covered. The wig is hanging over the top
24 of his face.

25 He remembered those glasses. These look like

1 the glasses I saw that night. He is not wearing
2 them today. Those glasses, those are the same
3 glasses.

4 Ronnie Kennedy Martin testified, I remember
5 seeing he had on glasses with those clear frames.

6 No, they can't pick him out of a photo
7 line-up. If we brought in people who picked a
8 masked man out of a photo line-up, question every
9 single piece of evidence we ever put before you
10 because that is made up. If people start wearing
11 masks and we can still pick them out of a photo
12 line-up, there is a problem with the evidence.

13 But when he was going through those great
14 lengths, when Michael Brown was going through those
15 great lengths to disguise his face, when he is
16 putting this over his face and having it close up
17 and rubbing his skin cells against it, he left
18 something so much more reliable than a photo
19 line-up identification. He left his DNA.

20 And the thing that floored me in this case is
21 that case after case after case after case in the
22 Richland County courthouse if all you have is a
23 photo line-up, there is no DNA, you can't convict.
24 All you have is a photo line-up, there is no DNA,
25 you can't convict. The witness identifies him from

1 the stand. Where is his DNA? You can't convict on
2 that. But in the case in which he says, here is
3 the DNA, now you can't convict on DNA?

4 The opening statement from Ms. Dyar is, You
5 can't be responsible for where your DNA is. I
6 guess that goes back to DNA thieves taking it. If
7 you can't be responsible for where your DNA is,
8 what can you be responsible for?

9 You heard from John Barron. He was the DNA
10 expert that came and testified this morning. And
11 he told you that he got a DNA -- he got two DNA
12 profiles that he could submit to that known
13 database, that DNA database of known samples.
14 Because once they do that, they get a letter back
15 from the FBI or SLED saying, Here is the person
16 whose DNA that is.

17 In this case, that letter from FBI or SLED
18 said, This is Michael Brown's DNA. He turned that
19 information over to Investigator Martin who went
20 and had warrants drawn up for that Defendant's
21 arrest. And he told you that there were multiple
22 factors that went into that decision, including the
23 DNA. But he said that there were multiple factors
24 that went into that decision.

25 And that once Michael Brown came into the

1 Richland County Sheriff's Department, was
2 Mirandized -- and you will have that form with
3 you -- was Mirandized, signed off waiving his
4 rights to remain silent, that he then talks to
5 them. He wanted to know what type of DNA it was.
6 That Michael Brown started asking the questions and
7 that at that point he needed to stop him from doing
8 that so he could start his interview.

9 And Michael Brown said, I want to plead
10 guilty. He didn't say, I wasn't there. He didn't
11 say, I didn't do it. He didn't tell him the story
12 about the DNA thieves who were setting him up, the
13 dangerous people that he had gotten involved with.
14 That is a story he saved for his fiancée, or
15 girlfriend.

16 I want to plead guilty. At that point in time
17 he wanted to take responsibility for his actions.

18 Investigator Martin told him, as well as he
19 told all of you, he is not in a position to offer a
20 plea deal. He can't come in here and have
21 somebody -- he can't negotiate a plea deal. That
22 is the Solicitor's Office's job.

23 Do those seem like the acts of an innocent
24 man? I want to plead guilty? I want to take
25 responsibility for his actions?

1 And the thing that makes it ring even more
2 true that as opposed to the DNA thieves having
3 planted his DNA on the bandanna is that when he is
4 in the safe confines of the Sheriff's Department,
5 when he is with someone who can help him fight off
6 these DNA thieves who were setting him up for the
7 attempted armed robbery of Chuck E. Cheese in
8 Richland County, he doesn't tell him who these
9 people are, these dangerous people that are out
10 here stealing people's DNA and setting him up.

11 He says to him, Who are they?

12 And he says he can't tell them a name.
13 Because they don't exist.

14 Michael Brown thought that he had concealed
15 his identity that night. He thought that he made
16 it. He was in and out quickly. He thought that he
17 made it so that no one could be able to identify
18 himself as the attempted armed robber.

19 But in concealing his identity on that red
20 bandanna, we don't need people to come in and
21 identify him from the witness stand, he identified
22 himself on this red bandanna.

23 The timeline of the way that DNA is processed
24 is important. The crime happens on January 3rd.
25 That night the bandanna and the wig are found.

1 As the DNA analyst told you, there are times
2 when you can find DNA on items, there are times
3 when you can't find DNA on items.

4 That wig that was sitting on top of his head
5 wasn't brushing up and down against his skin like
6 this bandanna was with the skin cells coming off of
7 it leaving his DNA on it.

8 John Barron said that he gets those items, he
9 submits them to the database, and in March he gets
10 the letter back telling him that the DNA profile on
11 that bandanna belongs to the Defendant.

12 The Defendant is arrested. Tells Rob Martin
13 he wants to plead guilty. And this year, here at
14 the Richland County Courthouse, Investigator Martin
15 gets a buccal swab from the Defendant that they are
16 going to use to confirm the results. And they
17 confirmed it. It was nine sextillion times. There
18 are only 7 billion people on the planet. There is
19 no doubt that the DNA on this bandanna belonged to
20 Michael Orlando Brown.

21 There is a minor contributor. He says that
22 sometimes if someone else handles something, if
23 someone passes something to someone, that they can
24 be a minor contributor on there. But the major
25 contributor who has ten times more DNA on that

1 bandanna than the unidentified minor contributor --
2 because that person's name wasn't sent back in the
3 letter from the FBI -- the person whose DNA is on
4 there ten times more than the minor contributor is
5 sitting at that table. He is sitting at that
6 table. And he said he wanted to plead guilty.

7 There are two things that can be done in this
8 case. If you are not convinced from the DNA, from
9 his statement that he wanted to plead guilty, from
10 the K-9 track, from the witnesses saying, It was a
11 black male, he was about that complexion, or he was
12 light complexion, black male, that he had these
13 glasses on, because that is the only part of his
14 face that I could see, that he had the same glasses
15 on that he was arrested with, and that his DNA came
16 back to the bandanna that was used in the attempted
17 armed robbery, if you are not firmly convinced of
18 this Defendant's guilt, then let him go.

19 If you believe that the DNA thieves came, they
20 put his DNA on there and set him up for an
21 attempted armed robbery, find him not guilty, give
22 his things back, let him go.

23 But if, on the other hand, you follow the
24 common sense of this case, the logic of this case,
25 the identifying markers of the sunglasses, the

1 complexion, his build, the K-9 track that led from
2 the scene to the bandanna and the wig, and the DNA
3 match that is ten times more DNA than the minor
4 contributor and impossible to be anyone else on
5 earth other than that Defendant, hold him
6 accountable for his actions. That's all we're
7 asking.

8 If you are firmly -- if those things leave you
9 firmly convinced of this Defendant's guilt, DNA,
10 eyeglasses, his statement that he wanted to plead
11 guilty, if those things leave you firmly convinced,
12 then hold Michael Orlando Brown accountable for his
13 actions and find him guilty of the attempted armed
14 robbery.

15 Thank you very much, ladies and gentlemen.

16 THE COURT: Ms. Walker?

17 MS. A. WALKER: Thank you, Your Honor.

18 CLOSING STATEMENT

19 MS. A. WALKER: DNA thieves. Ladies and
20 gentlemen, earlier in the trial this photo was
21 placed in evidence. Meghan came up to the stand,
22 asked Investigator Martin, Do you recognize this
23 photo? She held it. Investigator Martin held it.
24 Said he recognized it. Ms. Walker walked across
25 the courtroom, handed it to me, I looked at it,

1 said no objection, the court reporter touched this.
2 It has been all over this courtroom. Fingerprints,
3 DNA left on it. And I don't even know where it has
4 been prior to coming into this courtroom. And
5 there is probably different amounts of fingerprints
6 from the people that touched it and different
7 amounts of DNA.

8 Let's just say somebody gets a hold of this at
9 some point and writes a ransom note on the back of
10 it. The police get a hold of it, they do some
11 testing, find fingerprints, DNA. They find tons of
12 fingerprints and DNA on it.

13 I want to tell you right now that doesn't make
14 all of us kidnapers. It doesn't make us all
15 responsible for writing that ransom note.

16 Now, I know that that is an extreme example, I
17 do. But you see where I'm going. We don't want
18 the system to hold us accountable for where our DNA
19 is at. We want them to be held accountable for
20 their actions.

21 DNA is so easy to leave. Ms. Walker came up
22 here and when she was talking to Mr. Barron about
23 DNA, she was like, I could leave DNA just by doing
24 that. We want the system to hold us accountable
25 for what we did, not where our DNA is.

1 If someone borrowed my favorite sweater and
2 leaves their skin cells all over, I am going to
3 tell you right now I am not responsible for where
4 that sweater has been all day. I wasn't wearing
5 it. I wasn't in it. And the person that wore that
6 bandanna while robbing the Chuck E. Cheese is not
7 Michael Brown.

8 Now, let's talk a little bit about the
9 investigation in this case. We have Investigator
10 Sullivan, Deputy Sullivan at the time. He
11 collected as much information as he could. He
12 responded to the scene. He did everything he
13 could. Wrote down reports, turned that over to the
14 lead investigator. Then we had a K-9 officer,
15 Deputy Pearrow, who told you exactly that he had
16 been working with the dog for four years, he did
17 the track, he did what he was supposed to do, he
18 wrote down his report. He is done.

19 Now we have Investigator Martin. Let's talk
20 about that. Now, Investigator Martin gave you a
21 ton of information. But let me tell you what this
22 investigation comes down to.

23 He gets the case. He starts requesting the
24 video. He requested it multiple times before he
25 gets it 20 days later. He does the request for DNA

1 results. He requested those items be tested, gets
2 those results, and issues a warrant. And then he
3 waits for Michael to be arrested. Waits for the
4 person with those DNA results to be arrested. He
5 is arrested. Martin questions him. Case closed.

6 We have essentially the same amount of
7 information as we did when that warrant was issued.

8 Now, he told you he got some statements from
9 the witnesses, that they weren't really the kind of
10 statements that he would take in the way that he
11 does investigations, but those are the statements
12 he got. So why wouldn't we go talk to them again?
13 Why wouldn't we ask some more questions? He tried.
14 We couldn't find him. Couldn't find him. The same
15 people that are sitting in this courtroom today,
16 couldn't find them.

17 And we talked a lot about these glasses, these
18 shoes, and a ring. Glasses, shoes, ring. These
19 are distinct -- distinct items.

20 He is arrested two months later. Over 60 days
21 later. And when he is arrested he is wearing
22 glasses. Wearing glasses. Investigator Martin
23 told you himself they were kind of trendy glasses,
24 kind of 1950s style, and a ring, a distinctive --
25 distinctive ring. A silver band. Distinctive.

1 I am fairly confident that we were all
2 watching the same video in this case. And
3 Investigator Martin tells you can see that ring in
4 that video, that distinctive ring. I could barely
5 tell this person is wearing glasses.

6 And then let's talk about the shoes. He is
7 wearing white shoes. And this is important. This
8 is important, guys. He is wearing white shoes. In
9 the video you can tell he is wearing white shoes.
10 I can see a blurb of white. Okay. And when he is
11 arrested he was wearing white shoes. Nope. He was
12 wearing red shoes.

13 And not that that is even -- that is
14 dispositive. He is wearing glasses, a ring, and
15 shoes, staples of anybody's wardrobe at any time.

16 And then it turns out he is not even wearing
17 white shoes, but that is not written down anywhere,
18 so that is probably why he forgot.

19 Now, Investigator Martin told you that
20 reports -- you know, cases go on long after you are
21 gone. You have to leave notes, you have to take
22 notes, because if he is not there somebody else has
23 to take over. Memories fade. You work on more
24 than one case. He told you he has 150 cases a
25 year. But you need to be able to recall your case

1 to testify. He was having trouble remembering if
2 he called CSI out there or if they even responded.
3 That is not in his report because he doesn't
4 remember.

5 Do you know what else is missing from his
6 report? That he visited the scene. I had no idea
7 he ever went out to Chuck E. Cheese. That he tried
8 to locate the witnesses, which he was unable to do.
9 That he showed anyone a line-up? That is not in
10 his report. A line-up where they failed to pick
11 somebody out.

12 That line that he says that Michael said, DNA
13 will convict me. Not in his report. He writes
14 down all kinds of statements in there and doesn't
15 write that one down.

16 We want your report to be complete, accurate,
17 and thorough, because we have these days in court,
18 these important days for both the State and the
19 Defense.

20 And, you know, I asked him about doing various
21 things, you know, Did you take photos? Did you
22 interview witnesses?

23 And he said something like, I would have liked
24 to investigate more, just got to move to the next
25 one.

1 How about some investigation, ladies and
2 gentlemen? How about some?

3 Now, we talked a lot about ID in this case,
4 identification. They got two people ID'd the wrong
5 guy, first and foremost. That's him. I think
6 that's him. They stop him and it turns out, you
7 know, good, that they were able to determine it
8 wasn't him. But, nonetheless, they identified the
9 wrong guy.

10 Now, Kyrie told you the suspect was
11 dark-skinned. Kadeshia told you he was wearing
12 shades, he was wearing sunglasses. Ronnie told you
13 he was brown-skinned, average guy, with some clear
14 frames.

15 And then we have a line-up, a line-up that was
16 only shown to Ronnie Martin Kennedy. That's it.
17 We don't know if Kadeshia or Kyrie could have
18 picked him out of a line-up because they didn't
19 look at one. We have no idea. That line-up had
20 Michael's picture in it and Ronnie couldn't pick it
21 out.

22 Wouldn't you just show him and see?
23 Investigator Martin told you there is no reward if
24 they are able to pick somebody out or not able to
25 pick somebody out, so why wouldn't he give it a

1 shot?

2 You know another person that Kyrie and
3 Kadeshia couldn't identify? Investigator Martin,
4 because they had never seen him. The lead
5 investigator on an armed robbery at a Chuck E.
6 Cheese. An armed robbery, an attempted armed
7 robbery, with a weapon.

8 Lets get down to the bare bones of this case,
9 ladies and gentlemen. We have heard tons of
10 testimony. We heard all about this Chuck E.
11 Cheese, this horrible event. It is horrible.
12 These poor individuals are doing hard work. They
13 are doing a job that they get paid for. They want
14 to go to work. They want to come home. That's it.
15 They in no way should be subjected to having a
16 weapon being put on them or being scared in the
17 slightest.

18 But this case we have heard tons of facts.
19 Armed robbery. A gun in the back. I know, it is
20 terrible. I will not tell you for two seconds it
21 is not. I won't even try to tell you that, ever.

22 But what this case comes down to is DNA
23 statement. All right? DNA statement. All this
24 other information doesn't come down to Michael
25 Brown.

1 Let talk about these statements that he offers
2 to plead guilty. Help me out. Help me out.

3 Well, let's put this in context. He is
4 arrested two months after this event occurs. And
5 in the State's words he is confronted with the
6 ultimate identifier -- the ultimate identifier --
7 DNA.

8 And 60 days later Investigator Martin told you
9 he was picked up at work, Wendy's, I think. Picked
10 up at work and he was brought to headquarters.

11 We got your DNA. Your DNA was found at a
12 crime scene.

13 What kind of DNA?

14 Your DNA.

15 Does Investigator Martin tell him that there
16 is a mixture? That we all seem to be glossing over
17 in this courtroom. A mixture of DNA. Not just
18 Michael's DNA on there. A mixture of profiles.
19 That is not told to Michael.

20 Ladies and gentlemen, there are times when you
21 have a factual landscape and you adapt. And,
22 again, extreme example. The movie 127 Hours, James
23 Franco, there is a hiker. When he does some rock
24 climbing a boulder falls and crushes his arm. I'm
25 going to tell you, he didn't expect that to happen,

1 didn't want it to happen, it wasn't part of his
2 hiking trip. But as a result he had to adapt. The
3 facts are your arm is crushed under a boulder. If
4 I don't get out of here, I'm going to cut it off
5 with what I got. Again, extreme example.

6 Another one would be like objection in a
7 courtroom. When there is testimony lawyers will
8 stand up, Objection. And the judge will say,
9 Overruled or sustained. And depending on what that
10 ruling is, the lawyers have to work with what they
11 got. That is the ruling. Move on. Adapt.

12 Ladies and gentlemen, Michael Brown is told --
13 he is not shown anything, he is told -- without a
14 doubt -- that is the words written in the report --
15 without a doubt that is you in the video committing
16 this robbery. And Michael says, You know, help me
17 out.

18 You know why we don't know exactly what
19 happened? Because we don't have all the notes. We
20 don't have a recording. We don't have an accurate
21 report that contains everything.

22 He called on the phone and says to his friend,
23 Look, I didn't do this. But then when they start
24 talking about his DNA, that is certainly not what
25 I'm trying to tell you here today.

1 Why wasn't this conversation recorded? We all
2 have smart phones. Or, forget smart phones. I
3 think Investigator Martin made a joke that it is
4 smarter than he is. We still have digital
5 recorders a dime a dozen. You can still get
6 cassette tape players if that is how you want to
7 roll. But we can record anything. And that is how
8 we know exactly how the statements were given and
9 what they meant and why he said them. But since we
10 only have these notes where we don't have all of
11 them, that is all we know. We can't even be sure
12 that Michael even ever said, I didn't do this, I
13 didn't do this, I didn't rob the Chuck E. Cheese.
14 We don't know. It is not written in his report.
15 We don't know if that was said or not.

16 MS. M. WALKER: Objection, Your Honor.
17 Arguing facts not in evidence.

18 THE COURT: Stick to the record.

19 MS. A. WALKER: Yes, Your Honor.

20 And earlier when Ms. Dyar came up here we
21 asked you not to convict on DNA alone. And
22 Ms. Walker was right about that, that we are asking
23 you not to convict on DNA.

24 This is a mixture of DNA. The State's own
25 analyst says there are at least three profiles.

1 That means that is the minimum amount of profiles
2 on that bandanna.

3 The DNA expert told you they can't tell you
4 when the DNA was placed there. He can't tell you
5 how it got there. In fact, some people slough off
6 more DNA than others, we're shedding skin cells,
7 things of that nature.

8 And Ms. Walker showed the bandanna. Skin
9 cells being wiped off. That is how they could get
10 on the bandanna. And we have this wig. No DNA.
11 This wig with its netting inside of it on top of
12 somebody's head. No DNA.

13 We have evidence that there are other profiles
14 on that bandanna. We don't know who they are.
15 DNA, as Ms. Dyar told you, is kind of a scary tool.
16 There are some things that, you know, we see on TV
17 all the time and it exonerates people and it puts
18 people in jail. But it is a scary tool because it
19 is completely unique to every person. It is you
20 and yours alone. But it is so easily left and
21 transported that you don't know exactly where your
22 DNA is at any given time.

23 And let me talk about a little bit about what
24 we're missing in this case. The State brought you
25 three witnesses to tell you that somebody entered

1 the Chuck E. Cheese with a gun. Got it. I totally
2 agree with those witnesses. That a guy came in the
3 Chuck E. Cheese and scared the living daylights out
4 of them with a gun. That guy is not Michael Brown.

5 We also learned that there is another person
6 that was in the kitchen, this cook. I think Kyrie
7 said her name was Anna or Ahnna maybe. We don't
8 know what she saw. Nobody talked to her.

9 The State has brought you DNA. And at best
10 they brought you a mixture. And the State told you
11 that there is this bandanna mere feet -- mere feet
12 from the Chuck E. Cheese. Now, here is the Chuck
13 E. Cheese. The bandanna was found all the way over
14 there. The size of this board is mere feet. Where
15 the bandanna is found is not.

16 And they identified it, That is probably the
17 bandanna used, there was a guy wearing a red
18 bandanna. A red bandanna. But that has never been
19 seen anywhere else.

20 Let's talk about the video. We have a video,
21 a 30 second video, that shows the guy running in
22 and out of the Chuck E. Cheese. A guy that is on
23 camera for 10 seconds. It shows the entrance of
24 the Chuck E. Cheese. A Chuck E. Cheese that has 32
25 cameras. Thirty-two. Some of those are exterior

1 cameras on the outside of the building. You can
2 see people running around the building. You can
3 see the entire path while he is in the Chuck E.
4 Cheese. We don't have those. They didn't even
5 turn it over until 20 days later.

6 And we still can't figure out exactly why it
7 is not here. Nobody said that the cameras weren't
8 working. He said he couldn't pull it off the thing
9 maybe. But we still don't exactly know why we
10 haven't seen that. But there have been people that
11 have seen it, so we know the cameras were working.

12 Deputy Sullivan told you he saw that a suspect
13 ran out and that he ran around the Chuck E. Cheese.
14 He couldn't see that without a camera. He was able
15 to watch that. So why don't we have that in here?
16 Who knows what that could have told us. Who knows
17 what that video had on it. Who knows what we would
18 know from that video. But we don't. It is not
19 here.

20 Chuck E. Cheese. Where a kid can be a kid.
21 No one should be subjected to having a gun put on
22 them. No one should enter the Chuck E. Cheese with
23 a weapon. And a guy that goes into the Chuck E.
24 Cheese and brandishes a weapon and scares the
25 living daylights out of four employees should be

1 punished. But, ladies and gentlemen, that
2 person -- that person is not Michael Brown.
3 Michael Brown is not guilty. Michael Brown is an
4 innocent man.

5 Thank you all so much for your service in this
6 case.

7 THE COURT: All right. Before we begin,
8 Ms. Vandelay, where are you? Would you mind
9 serving as forelady of this jury?

10 THE JUROR: Okay.

11 THE COURT: Thank you. I'll tell you what you
12 have got to do in just a few minutes, okay?

13 JURY CHARGE

14 THE COURT: All right, ladies and gentlemen of
15 the jury, as I told you at the beginning of the
16 case, the Defendant, Mr. Michael Orlando Brown, is
17 charged with the offense of attempted armed
18 robbery.

19 And the indictment alleges that he did, in
20 Richland County, on or about January 3, 2013,
21 commit robbery by attempting to feloniously take
22 from the person or presence of Kyrie Green by means
23 of force or intimidation goods or monies of Kyrie
24 Green and/or Chuck E. Cheese and/or employees of
25 Chuck E. Cheese and did so with the intent to

1 deprive the owner permanently of such property
2 while armed with a pistol, dirk, slingshot, metal
3 knuckles, razor, or other deadly weapon, or while
4 alleging either by actions or words that he was
5 armed while using a representation of a deadly
6 weapon or any object which a person present during
7 the commission of the robbery reasonably believed
8 to be a deadly weapon.

9 Now, I remind you the fact that the Defendant
10 was arrested and charged and indicted in this case
11 is not evidence in the case and cannot be
12 considered by you as evidence, nor does the fact
13 that the Defendant was indicted create any
14 presumption or inference of guilt.

15 The indictment is simply the formal written
16 instrument which contains the charge made against
17 the Defendant. It is the formal document by which
18 this case is brought into this court.

19 Now, to this indictment the Defendant has
20 entered a plea of not guilty, which places upon the
21 State the burden of proving the Defendant guilty.

22 A person charged with committing a criminal
23 offense in South Carolina is never required to
24 prove himself innocent. I charge you that it is a
25 vital, important rule of the law of evidence that

1 the Defendant in a criminal trial, no matter how
2 great or serious may be the offense for which he is
3 charged, must always be presumed innocent until his
4 guilt has been proven beyond a reasonable doubt.

5 This presumption of innocence remains with the
6 Defendant at all times, from the moment of his
7 appearance in this court, throughout the trial, and
8 until the jury has, upon the testimony and the
9 evidence presented, reached a verdict of guilty
10 beyond a reasonable doubt. For it is the solemn
11 duty of the jury, if not clearly convinced of the
12 Defendant's guilt beyond a reasonable doubt, to
13 acquit the Defendant.

14 So the burden of proof is upon the State to
15 establish by evidence to your satisfaction the
16 guilt beyond a reasonable doubt of this Defendant
17 here on trial for the crime of attempted armed
18 robbery.

19 Now, what is a reasonable doubt? A reasonable
20 doubt is the kind of doubt that would cause a
21 reasonable person to hesitate to act. If you have
22 such a doubt as to the guilt of the Defendant, then
23 he would be entitled to a verdict of not guilty.
24 Proof beyond a reasonable doubt is proof that
25 leaves you firmly convinced of the Defendant's

1 guilt.

2 Now, reasonable doubt may arise from the
3 evidence which is in the case or from the absence
4 or lack of evidence in the case. To think that a
5 Defendant is probably guilty or the circumstances
6 are suspicious is not enough. You alone must make
7 the determination of whether or not reasonable
8 doubt exists as to the guilt of the Defendant.

9 Now, ladies and gentlemen of the jury, there
10 are two types of evidence which are generally
11 presented during a trial: Direct evidence and
12 circumstantial evidence.

13 Direct evidence proves the existence of a fact
14 and does not require deduction. Circumstantial
15 evidence is proof of a chain of facts and
16 circumstances indicating the existence of the fact.

17 Crimes may be proven by circumstantial
18 evidence. The law makes no distinction between the
19 weight or value to be given either direct or
20 circumstantial evidence. However, to the extent
21 the State relies on circumstantial evidence, all
22 the circumstances must be consistent with each
23 other and, when taken together, point conclusively
24 to the guilt of the accused beyond a reasonable
25 doubt.

1 If these circumstances merely portray the
2 Defendant's behavior as suspicious the proof has
3 failed. The State has the burden of proving the
4 Defendant guilty beyond a reasonable doubt. This
5 burden rests upon the State regardless of whether
6 the State relies on direct evidence, circumstantial
7 evidence, or some combination of the two.

8 Madam Forelady, and members of the jury, under
9 the constitution and code of laws of South Carolina
10 you are the finders of the facts in this case. I
11 do not have the right to pass upon the facts or
12 even to express any opinion I may have as to those
13 facts, nor may I intimate in any way what I may
14 think about the guilt or innocence of this
15 Defendant.

16 You are also the judges of the credibility,
17 and by that I mean the believability of the
18 witnesses who have testified in this case.

19 And in passing upon their credibility, you may
20 take into consideration many things, such as the
21 demeanor or the manner of the witnesses testifying;
22 whether a witness had a reason to be biased or
23 prejudiced; whether a witness's testimony was
24 contradicted on the one hand or supported and
25 corroborated on the other hand.

1 You do not determine the credibility or
2 believability by counting the number of witnesses
3 who may have testified for one side or another.
4 You may believe a small portion of a witness's
5 testimony and disregard the larger, or vice versa.
6 You may believe one witness or many witnesses.

7 Now, you have heard the testimony of a witness
8 who had special knowledge, skill, experience,
9 training, or education in a particular profession
10 or occupation who has given his opinion as an
11 expert as to the matters in which he is skilled.

12 In determining the weight to be given such
13 opinion, you should consider the qualification and
14 the credibility of the expert and the reasons given
15 for the opinion. You are not bound by such
16 opinion. Give it the weight, if any, to which you
17 deem it is entitled.

18 All of these things you will consider, bearing
19 in mind that you should give the Defendant the
20 benefit of a reasonable doubt.

21 Now, ladies and gentlemen, a statement alleged
22 to have been made by the Defendant has been
23 admitted into evidence in this case. While the
24 Court has determined that the statement is
25 admissible, I instruct you that you make the

1 ultimate decision of whether or not the Defendant
2 made the statement.

3 If the Defendant did make the statement, you
4 must determine whether the statement was made by
5 the Defendant voluntarily and of his own free will.
6 This means that the statement was not caused by
7 pressure, force, fear, threats, coercion, or
8 intimidation or by hope or promise of leniency or a
9 reward of any kind.

10 In determining whether the statement was
11 voluntary, you should consider both the
12 characteristics of the Defendant and the details of
13 the question.

14 Some of the factors that you may consider are:
15 The age of the Defendant; the Defendant's education
16 or lack of education; the Defendant's mental
17 ability or capacity; the Defendant's IQ or
18 intelligence; the Defendant's background and
19 environment; place and length of detention; the
20 nature of the questioning; and the advice or lack
21 thereof to the Defendant of his constitutional
22 rights, including but not limited to, the right to
23 remain silent, that any statement could be used
24 against him in a court of law, the right to have a
25 lawyer present, that if he could not afford a

1 lawyer a lawyer would be appointed to represent him
2 without any cost, and that he could stop making a
3 statement at any time.

4 You must carefully consider all of the
5 surrounding circumstances before you give any
6 weight to the alleged statement.

7 The State has the burden of proving beyond a
8 reasonable doubt that the alleged statement was
9 voluntary. If you determine that it was, you may
10 give the statement any further consideration that
11 you deem proper. You must decide what weight, if
12 any, that you should give to the alleged statement.

13 If you determine the alleged statement was not
14 free and voluntary on the part of the Defendant,
15 then you should not consider the statement at all.

16 Now, ladies and gentlemen, I instruct you and
17 emphasize that the fact that the Defendant did not
18 testify is not a factor to be considered by you in
19 any way in your deliberations and in your
20 consideration on the question of the guilt or the
21 innocence of the Defendant. It must not be
22 considered by you in any manner whatsoever. A
23 Defendant has a constitutional right to remain
24 silent, and the assertion of this right must not be
25 considered by you in your deliberations.

1 I repeat, under your oath you are not to draw
2 any conclusion whatsoever from the fact that the
3 Defendant in this case did not testify. The fact
4 that the Defendant did not testify should not even
5 be discussed by you in the jury room.

6 The burden of proof, as I stated to you, is on
7 the State. The Defendant is not required to prove
8 his innocence. The burden of proof remains on the
9 State to prove guilt beyond a reasonable doubt.

10 Now, the same constitution and laws which make
11 you the finders of the facts and the evidence make
12 me the sole and only instructor of the law. You
13 must accept as correct the law which I charge and
14 apply it to the evidence as you find it and reach
15 your verdict.

16 And finally I charge you in this regard that
17 neither you nor I should be concerned about what we
18 think the law should be or what we wish the law
19 were, but rather what I charge you the law to be.

20 Now, the Defendant has been charged with the
21 crime of attempted armed robbery. It is unlawful
22 for a person to attempt to commit a robbery while
23 armed with a pistol, dirk, slingshot, metal
24 knuckles, razor, or other deadly weapon, or while
25 alleging either by action or words that he was

1 armed while using a representation of a deadly
2 weapon or any object which a person present during
3 the commission of the robbery reasonably believed
4 to be a deadly weapon.

5 Now, a person is guilty of attempted armed
6 robbery if the person had a specific intent to
7 commit an armed robbery.

8 A robbery is defined as the felonious or
9 unlawful taking of money, goods, or other personal
10 property of any value from the person of another or
11 in his presence by violence or putting such person
12 in fear.

13 To prove attempt to commit an armed robbery
14 the State must prove the Defendant committed an
15 overt act. It is sufficient that the act go far
16 enough to the accomplishment of the crime to amount
17 to the commencement of its consumption.

18 Ladies and gentlemen, you have been selected
19 as fair and impartial jurors sworn to impartially
20 try and determine the facts of this case. And when
21 you comply with your oath to do so, then no one
22 will have a right to criticize your verdict and you
23 will have fully discharged your duty as jurors.

24 You are to decide this case according to the
25 testimony that you have heard from the lips of the

1 sworn witnesses, along with other evidence
2 introduced.

3 I charge you that as jurors you must decide
4 the issues in this case without any bias and
5 without any prejudice to any party. You cannot
6 allow yourself to be governed by sympathy, by
7 prejudice, by passion, by public opinion, or any
8 other arbitrary factor.

9 Both the State and the Defendant have a right
10 to expect that each of you will carefully and
11 impartially consider all of the evidence in this
12 case and that you will follow the law as I have
13 explained it to you.

14 Now, Madam Forelady, I have prepared a verdict
15 form here. And this verdict form has two possible
16 verdicts. Those possible verdicts are: We, the
17 jury, unanimously find the Defendant guilty, or,
18 We, the jury, unanimously find the Defendant not
19 guilty.

20 As this verdict form says, the verdict of the
21 jury must be the unanimous verdict of all 12
22 jurors. It cannot be 11 to 1 or 9 to 3, it has to
23 be the unanimous verdict of all 12 jurors.

24 Madam Forelady, what I'm going to ask you to
25 do, after you have completed your deliberations and

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1 reached your verdict, I'm going to ask you to
2 circle whatever that verdict is, and circle the
3 whole verdict, whether it is, We find the Defendant
4 guilty, or, We find the Defendant not guilty. And
5 I am then going to ask you to sign the verdict form
6 as foreperson of the jury and date the verdict
7 form.

8 When the jury has completed its deliberations
9 and the verdict form has been completed, I am going
10 to ask you or someone else to knock on the door of
11 the jury room. There will be a bailiff seated
12 outside that door. Advise the bailiff that you all
13 have reached your verdict. And we will bring you
14 back in for your verdict to be published.

15 Now, in just a moment I'm going to ask all the
16 jurors but the alternates to step back to the jury
17 room, but do not begin your deliberations when you
18 get back to the jury room. I have to review with
19 the attorneys the instructions that I have given
20 you here today. If they believe that I failed to
21 charge you in some way or I improperly charged you
22 and I concur with what they say, I will bring you
23 back and give you those additional instructions.
24 If not, I will have the bailiff bring to the jury
25 room this verdict form, along with all evidence

1 that has been introduced.

2 Now, I think we introduced a video. And if
3 you want to see that video, we'll have to figure
4 out how we are going to do that. I guess you have
5 got a computer or something that we can put a CD
6 in?

7 MS. M. WALKER: Yes, Your Honor, that computer
8 right there can be taken back to the jury room.

9 THE COURT: If you want to see the video we
10 will have a computer brought back and you can -- I
11 know somebody here works at CSC or something,
12 probably knows something about computers and can
13 run it, but you can watch that video if that is
14 what you want to do.

15 So I'm going to let you step back to the jury
16 room right now. Do not begin your deliberations.
17 We will be with you momentarily. If my alternates
18 would remain with me I would appreciate it.

19 Thank y'all.

20 (WHEREUPON, the jury retires to the jury
21 room at 12:26 p.m.)

22 THE COURT: All right, ladies, we anticipated
23 -- or I did -- that this case would go into
24 tomorrow at least, but they went a lot faster than
25 we thought, and that is why -- if I had known I

1 probably wouldn't have picked two alternates. But,
2 anyway, we are going to be able to turn you loose.
3 And I don't know how you feel about it. After
4 sitting through the trial you may want to be back
5 there so you can voice your opinion and vote. Or
6 you may be happy that you don't have to do that and
7 you can get on with your life and don't worry about
8 it.

9 I am going to ask you to go back downstairs to
10 the jury assembly room, but I think that you may be
11 able to be excused for the week, because I don't
12 think there is any other criminal cases. I think
13 the only civil cases, they have probably already
14 picked a jury on that, but I can't promise you.

15 Anyway, I do thank you very much for making
16 yourselves available. I hope it wasn't too bad of
17 an experience for you. And if you get the
18 opportunity to come back and serve again that you
19 will make yourselves available.

20 So if you'll go with our bailiff here, he'll
21 show you how to get out. Y'all have a nice day.
22 And I thank you again for your service.

23 (WHEREUPON, the alternates were excused.)

24 THE COURT: All right, anything from the State
25 with respect to the instructions? The charge?

1 MS. M. WALKER: No, Your Honor.

2 THE COURT: Anything from the Defendant?

3 MS. A. WALKER: No, Your Honor.

4 THE COURT: All right, if y'all will get with
5 our trusty court reporter and then we will see what
6 exhibits we have, I guess.

7 Oh, this note that I received, I am going to
8 mark that as Court Exhibit Number 1.

9 (WHEREUPON, Court's Exhibit No. 1 was
10 marked for identification only.)

11 (Pause.)

12 THE COURT: And if they want to see the video,
13 we will make arrangements. How are we going to do
14 that?

15 MS. M. WALKER: We are getting that ready.

16 THE COURT: Give it to Mr. Dye.

17 (WHEREUPON, the jury was instructed to
18 begin deliberations at 12:34 p.m.)

19 THE COURT: All right, folks, I got a note
20 from the jury forelady asking if we can get a copy
21 of the transcript of testimony of Investigator
22 Martin. And with the attorney's permission I went
23 in and told them we didn't have a transcript but we
24 could let them listen to the testimony, and they
25 want to do so.

1 What I intend to do is bring them in here and
2 start them on the testimony, and when their lunch
3 gets here I'm going to stop and let them eat lunch.
4 It is 2:30. And then we'll bring them back and
5 they can finish at that time. I will give them a
6 short period of time to eat lunch.

7 Anything from anybody? Anything from the
8 State or the Defendant about what we are going to
9 do?

10 MS. M. WALKER: Nothing from the State.

11 MS. A. WALKER: No, Your Honor.

12 THE COURT: Bring the jury in, if you would,
13 Mr. Talbert.

14 (WHEREUPON, the jury came into open
15 court at 2:33 p.m.)

16 THE BAILIFF: The jury is seated.

17 THE COURT: Madam Forelady, I received your
18 note. You asked about getting a transcript of the
19 testimony. And as you recall, I came into your
20 jury room and informed you that we didn't have a
21 transcript but we could play the testimony.

22 So Ms. McCurdy has found on her machine where
23 it is, this testimony is. I am going to tell you
24 this. We called the deputy and he -- when he comes
25 back we're going to break. I am going to stop and

1 let you go back and eat lunch, then come back and
2 finish whatever it is that you have not heard. If
3 in fact we get to the point in the testimony that
4 you feel like you have heard everything you want to
5 hear, if you will let me know we can stop at that
6 point in time. If you need to go all the way
7 through -- I think it was about 45 minutes
8 yesterday afternoon, and I'm not sure how long it
9 was this morning -- so y'all just let me know.

10 (WHEREUPON, testimony was replayed for
11 the jury.)

12 THE COURT: Madam Forelady, your lunch is
13 here, so we are going to take a break for a few
14 minutes.. Step back and have your lunch. You can
15 talk about the case if you want to talk about the
16 case, but when you finish your lunch and you want
17 to come back in and listen to the rest of the
18 audio, just knock on the door, let the bailiff
19 know, and we'll bring you back in.

20 (WHEREUPON, the jury retires to the jury
21 room at 2:44 p.m.)

22 THE COURT: All right, we'll take a little bit
23 of a break. And don't go too far. I'll make this
24 a Court Exhibit, this note. And we'll resume where
25 we left off.

1 (WHEREUPON, Court's Exhibit No. 2 was
2 marked for identification only.)

3 (WHEREUPON, a lunch break was taken.)

4 THE COURT: Tell them to bring them on in.

5 (WHEREUPON, the jury came into open
6 court at 3:19 p.m.)

7 THE BAILIFF: The jury is seated, Your Honor.

8 THE COURT: I hope you enjoyed your lunch.
9 I'm sorry to rush you. We'll now turn it over to
10 Ms. McCurdy again.

11 (WHEREUPON, testimony continued to be
12 replayed for the jury.)

13 THE FORELADY: I believe we have heard enough.
14 I just want to ask if there is anybody else who
15 wants anymore. Can I ask that question?

16 THE COURT: Sure.

17 (Pause.)

18 JURORS: I think we're good.

19 THE FORELADY: Okay.

20 THE COURT: Step back to the jury room. You
21 can resume your deliberations.

22 (WHEREUPON, the jury retires to the jury
23 room at 3:29 p.m. to resume
24 deliberations.)

25 THE COURT: Anything from the State with

1 respect to what we have done in response to their
2 note?

3 MS. M. WALKER: Nothing, Your Honor.

4 THE COURT: Anything from the Defense?

5 MS. A. WALKER: No, Your Honor.

6 THE COURT: All right, we'll allow them to
7 continue to deliberate and see what happens.

8 (WHEREUPON, a break was taken.)

9 THE COURT: All right, folks, it has been
10 reported the jury has reached a verdict. Is the
11 State ready to receive the verdict?

12 MS. M. WALKER: The State is ready, Your
13 Honor.

14 THE COURT: Is the Defendant ready to receive
15 the verdict?

16 MS. A. WALKER: Yes, Your Honor.

17 THE COURT: All right, Mr. Talbert, if you
18 will bring in the jury, please, sir.

19 (WHEREUPON, the jury came into open
20 court at 4:45 p.m..)

21 VERDICT

22 THE BAILIFF: The jury is seated, Your Honor.

23 THE COURT: All right, thank you, Mr. Talbert.

24 Madam Forelady, it has been reported that the
25 jury has reached a verdict.

1 THE FORELADY: Yes, we have.

2 THE COURT: Is this the unanimous verdict of
3 all 12 jurors?

4 THE FORELADY: Yes.

5 THE COURT: If you would hand the verdict form
6 to Mr. Talbert next to you, please, ma'am.

7 (Complies.)

8 (Court views verdict form.)

9 THE CLERK: Indictment Number 2014-GS-40-2050,
10 State of South Carolina, County of Richland, The
11 State v. Michael Orlando Brown. It is an
12 indictment for attempted armed robbery.

13 We, the jury unanimously find the Defendant
14 guilty.

15 This is signed, Foreperson, Juror Number 271.
16 August 5th, 2014.

17 Madam Foreperson, is this your verdict and the
18 verdict of the entire jury?

19 THE FORELADY: Yes, it is.

20 THE COURT: All right. Anything from the
21 State with respect to the jury?

22 MS. M. WALKER: Nothing from the State, Your
23 Honor.

24 THE COURT: Anything from the Defendant?

25 MS. A. WALKER: Your Honor, I request to poll

1 the jury.

2 THE COURT: Madam Clerk.

3 THE CLERK: Ladies and gentlemen of the jury,
4 I am going to ask you two questions regarding your
5 verdict. If you will answer yes or no to both
6 questions.

7 Juror Number 271, was this your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Juror Number 7, was your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror Number 73, was this your
16 verdict?

17 THE JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Juror Number 31, was this your
21 verdict?

22 THE JUROR: Yes.

23 THE CLERK: Is still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Juror Number 305, was this your

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1 verdict?

2 THE JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Juror Number 78, was this your
6 verdict?

7 THE JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Juror Number 9, was this your
11 verdict?

12 THE JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror Number 138, was this your
16 verdict?

17 THE JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Juror Number 146, was this your
21 verdict?

22 THE JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Juror Number 181, was this your

1 verdict?

2 THE JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Juror Number 167, was this your
6 verdict?

7 THE JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Juror Number 95, was this your
11 verdict?

12 THE JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: The jury has been polled, Your
16 Honor.

17 THE COURT: All right. Madam Forelady, and
18 ladies and gentlemen of the jury, I thank you very
19 much for your service on this case.

20 Jackie, can we turn them loose?

21 THE CLERK: Yes. And I have work excuses for
22 them.

23 THE COURT: All right. We will be able to
24 excuse you from any further jury service this week.
25 I certainly appreciate your attentiveness during

1 this trial. These are not easy. They are
2 difficult cases that y'all worked hard, and I
3 appreciate that.

4 If you will step back to the jury room, Ms.
5 Pendergrass will come in and she will have -- if
6 you need a work excuse, she will be able to give
7 you one. You will get a small token of
8 appreciation from Richland County for your services
9 in the not too distant future, but I promise you it
10 will not make for a big night on the town.

11 But, as you can see, you are critical to the
12 process, and I hope you understand how important
13 you are both to our court system both on the
14 criminal and the civil side. It is the same thing
15 on the civil side in deciding the automobile
16 accidents and breach of contract cases, the judges
17 of the facts are the jury.

18 So with that said, I will let you step back to
19 the jury room. As I told you at the beginning of
20 this trial, you certainly are free to discuss the
21 case with anybody you wish to discuss it with. You
22 do not have to discuss it with anyone. If somebody
23 contacts you and you don't want to talk about the
24 case with them, please tell them you do not wish to
25 discuss it. If they continue to do so, if you get

1 their names and let me know, I promise you I will
2 deal with them.

3 So y'all step back to the jury room. And as a
4 matter of fact I will be back in there in just a
5 minute to talk to you a second. So if you will go
6 with Ms. Sutton, she'll take you back there and
7 Ms. Pendergrass will be right behind you.

8 (WHEREUPON, the jury retires to the jury
9 room.)

10 THE COURT: All right, anything from the
11 Defendant?

12 MS. A. WALKER: Your Honor, at this time I
13 would renew all objections and motions previously
14 overruled.

15 THE COURT: Or denied.

16 MS. A. WALKER: Or denied. I apologize, Your
17 Honor. And I would move for a new trial. It was
18 an unusually short deliberation time. We would
19 just ask Your Honor to consider that.

20 THE COURT: All right. Anything y'all want to
21 say in response to the Defendant's motion?

22 MS. M. WALKER: No, Your Honor.

23 THE COURT: All right. I will deny your
24 motion. I don't know what an appropriate time is.
25 They got the case at 12:30. It is ten to until

1 5:00. I don't know how long it takes them to
2 decide. But, you know, as I said earlier in the
3 directed verdict motion, that I think there is some
4 evidence to allow it to get to the jury, and it
5 came down to what the jury was going to believe.
6 And apparently they believed your client was guilty
7 of the attempted armed robbery and so convicted
8 him.

9 So if y'all will prepare the sentence sheet.
10 And if you get me the statute again, I can't
11 remember what the statute is on the life without
12 parole.

13 MS. M. WALKER: Yes, Your Honor. Ms. Campbell
14 is getting all of that.

15 THE COURT: I am going to go back and speak to
16 the jury, turn them loose, and I will be back in
17 just a few minutes.

18 MS. M. WALKER: Okay. Thank you, Your Honor.
19 (Pause.)

20 THE COURT: Are you ready?

21 MS. CAMPBELL: Ms. Walker had to go upstairs
22 to get the actual file. I apologize, Your Honor,
23 it is right here.

24 THE COURT: Anything y'all want to say?

25 MS. M. WALKER: Nothing. Nothing, Your Honor.

1 The victims are still present. They don't wish to
2 speak, though.

3 The only thing I will say is that I will
4 contact the prosecutor in Lexington County. The
5 Defendant has a number of charges over there as
6 well. I will contact him this afternoon and let
7 him know the resolution of this case.

8 THE COURT: All right. Ms. Walker?

9 MS. A. WALKER: Thank you, Your Honor. May it
10 please the Court? I'll be very brief, Judge.

11 I just would like Your Honor to know that
12 Michael has been -- I know you probably hear this
13 often -- he's been a pleasure to represent.
14 Michael has never been disrespectful. He has never
15 given me a hard time. He has always been
16 inquisitive about his case. He is a bright young
17 man. I understand your hands are tied in this
18 case, and I would normally ask for mercy. But it
19 has been a pleasure to represent Michael in this
20 case.

21 THE COURT: Anything you want to say,
22 Ms. Dyar?

23 MS. DYAR: No, Your Honor.

24 THE COURT: Mr. Brown, anything you want to
25 say?

1 MR. BROWN: No, sir.

2 THE COURT: All right. Well, you are right
3 then. Mr. Brown made the decision prior to the
4 trial. And we had a colloquy about what would
5 happen if he was convicted, that he takes all
6 discretion away from the Court in this matter, and
7 regardless of how I may feel about sentence, there
8 is really nothing I can do about it.

9 How old are you, Mr. Brown? How old are you?

10 THE DEFENDANT: Thirty-two.

11 SENTENCE

12 THE COURT: All right. The sentence of the
13 Court is that you be committed to the State
14 Department of Corrections for a term of life
15 without parole pursuant to 17-25-45 of the Code of
16 Laws of South Carolina as applicable.

17 Good luck to you.

18 MS. DYAR: Thank you, Your Honor.

19 THE COURT: Okay. Thank y'all.

20 MS. M. WALKER: Thank you, Judge.

21 (WHEREUPON, the proceedings were concluded.)
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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 4th and 5th days of August, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 7, 2014

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL ORLANDO BROWN,

APPELLANT

APPELLATE CASE NO. 2014-001715

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in admitting Appellant's alleged offer to plead guilty where the probative value of the statement was outweighed by the undue prejudicial effect under Rule 403, SCRE?
- II. Whether the trial court erred in admitting Appellant's alleged statement that "DNA will convict me" and alleged offer to plead guilty where such statements were made after Appellant had invoked his Fifth Amendment right against self-incrimination and right to counsel?
- III. Whether the trial court erred in denying Appellant's motion for directed verdict where there was no direct evidence of his guilt and the circumstantial evidence against him was not substantial?

STATEMENT OF THE CASE

On April 9, 2014, Appellant Michael Orlando Brown was indicted by the Richland County grand jury for the offense of attempted armed robbery. R. 349 (Indictment).

On August 4-5, 2014, Brown proceeded to trial before the Honorable James R. Barber and a jury. Brown was represented by Anastasia Walker and Alicia Dyar Goode. The State was represented by Luck Campbell, Meghan Walker, and Sandra Moser. R. 1.

The jury found Brown guilty as charged. R. 340, ll. 9-19. He was sentenced to the mandatory sentence of life in prison without the possibility of parole based on his prior convictions. R. 348, ll. 12-16.

This appeal follows.

STATEMENT OF FACTS

Background

The allegation against Brown is that he attempted to rob a Chuck E. Cheese restaurant in Columbia on January 3, 2013. R. 349 (Indictment). Surveillance footage shows an African-American enter the establishment at 9:38:29 p.m. and exit at 9:38:56 p.m. The individual was wearing a wig, a red bandana around their neck, dark clothes, and white tennis shoes. While not clearly visible, the individual appears to be wearing glasses and a ring on their left ring finger. State's Ex. 9 (DVD of Surveillance Video).¹ There were no patrons in the restaurant at the time of the offense, but there were four employees inside – Kadeshia Green, Kyrie Green, Ronnie Kennedy-Martin, and a kitchen worker named Anna.² R. 143, ll. 11-12. A police dog allegedly tracked a scent from the Chuck E. Cheese entrance to an area behind the nearby El Toro restaurant, where a wig and bandana were located. R. 113, l. 6 – 116, l. 16. The wig and bandana were both tested for DNA. Though no DNA was found on the wig, Brown's DNA was allegedly found as the major contributor on the bandana. R. 253, l. 18 -254, l. 12; R. 258, l. 17 – 259, l. 18.

Despite the presence of two other individuals' DNA on the bandana, Brown was arrested on March 14, 2013. R. 257, l. 13 – 258, l. 7; R. 217, ll. 22-23. Brown executed an Advice of Rights form and was questioned by Investigator Robert Martin. State's Ex. 1 (Written Waiver of Rights Form). Pre-trial, Brown moved to suppress a portion of the statement allegedly made by him to Investigator Martin. Specifically, Brown sought to

¹ This Exhibit is on file with the Court.

² Kadeshia Green and Kyrie Green are not related. R. 143, ll. 15-18. For ease of reference, they are referred to by their first names in Appellant's brief.

exclude his alleged statements offering to plead guilty and his alleged statement “DNA will convict me.” R. 41, l. 23 – 47, l. 23; R. 49, l. 7 – 50, l. 16; R. 51, l. 17 – 58, l. 11.

Suppression Hearing and Trial Court’s Rulings

Investigator Martin was the investigator assigned to the Chuck E. Cheese incident. R. 27, ll. 12-22. As part of his investigation he interviewed Brown after his arrest. R. 27, l. 23 – 28, l. 4. Martin said that he went over written Miranda³ warnings with Brown and then began to ask him questions about the incident. R. 28, ll. 4-24. After asking Brown some “background” questions regarding his education and physical condition, Martin read each Miranda right to Brown and Brown signed an acknowledgment of rights. R. 29, l. 3 – 31, l. 18. Martin then read the waiver of rights, which Brown signed. R. 31, ll. 19 – 32, l. 24. Notably, despite there being two lines for witnesses to execute, only Martin witnessed the advisement and waiver. See State’s Ex. 1 (Written Waiver of Rights Form).

On direct examination, Martin testified that he discussed with Brown “what he was charged with and how he came to that charge, because his DNA was left behind at the scene.” R. 33, ll. 11-15. When asked if he had ever been to the Chuck E. Cheese, Brown said he attended a party there in 2011 or 2012 for a relative of his girlfriend, Judy Castro, and that he had not been in that area since then. R. 33, ll. 16-20; R. 34, ll. 1-5. He denied having ever worn a wig and told Martin that he could not explain why his DNA would have been found at the scene.⁴ R. 33, ll. 21-25. Martin said that Brown refused to provide a DNA sample and said “it [DNA] would convict [me].” R. 34, ll. 6-14. According to

³ Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966).

⁴ Significantly, Brown’s DNA was not found at the scene. Rather, it was found on a portable object – a red bandana – that was allegedly used in the attempted robbery.

Martin, Brown “didn’t really deny the evidence.” R. 34, ll. 19. Rather, Brown allegedly said that he would not challenge the DNA and that “he knew DNA would be enough to convict him.” R. 34, ll. 19-22. Martin also alleged that Brown asked if he could be charged with a less serious charge because he “knew that this carried the possibility of life.”⁵ R. 34, l. 23 – 35, l. 1. Martin testified that Brown eventually indicated that he did not want to talk about his case anymore. He was then allowed to use Martin’s office phone to call Castro. R. 35, l. 18 – 36, l. 1.

The only recordation of the interview was in the form of Martin’s sparse interview notes. R. 36, l. 22 – 38, l. 8. He was not sure how long the interview with Brown lasted. R. 36, ll. 13-21; R. 38, l. 20. He was also unable to recall when in the interview that he made the request for a DNA sample, but said it was “either during or at the end.” R. 37, ll. 10-15. When asked about it again, he repeated that he “[did not] remember if it was during or at the end or before he made the phone call.” R. 40, l. 25 – 41, l. 4.

Martin testified that in conjunction with his request to be charged with something less serious, Brown “said he wanted a plea in this case.” R. 40, ll. 3-5. That was the only reference that Martin made discussion of a “plea” during his testimony at the suppression hearing. He admitted that his notes indicate that when he asked Brown for a DNA sample, “he declined until he had spoken to an attorney.” R. 37, ll. 16-22. He further admitted that

⁵ Brown was indicted for attempted armed robbery, which carries a potential penalty of zero to twenty years rather than the ten to thirty years carried for robbery. R. 349 (Indictment); S.C. Code Ann. § 16-11-330. However, both offenses qualify as “most serious offenses” for the purposes of the sentencing enhancement statute. S.C. Code Ann. § 17-25-45. It is that discretionary provision, combined with Appellant’s prior convictions that made him *eligible* for life without the possibility of parole. The written notice of intention to seek a life sentence under the enhancement statute was filed in Appellant’s case on or about June 25, 2014.

his notes do not mention Brown's alleged statement that he would not give his DNA because it would convict him. R. 37, ll. 23-25. The telephone call to Castro was made "on a recorded line," but Martin did not know whether it was "actually captured or recorded." R. 38, ll. 11-15. However, he was sitting with Brown when the call was made, so he heard his side of the conversation, where he told Castro that he did not commit the crime and was being framed. R. 38, ll. 16-17; R. 40, ll. 6-21. Afterward, he "attempted to explore that avenue" by asking Brown who would frame him, but Brown did not give him any information. R. 40, ll. 13-19.

Trial counsel argued that Martin was unable to confirm how long the interview was or when in the interview Brown declined to give his DNA. This was important because the refusal to give DNA was coupled with a statement that he wanted to speak with an attorney first. Thus, any further questioning of Brown was in violation of his right to counsel. R. 41, l. 23 – 42, l. 17. The solicitor argued that investigator Martin testified that he stopped the interrogation once Brown stated that he was not going to give DNA until he talked to an attorney. R. 42, l. 18-24.

The trial judge found that there is no question that Brown made a statement. The disagreement is over the content of the statement. R. 42, l. 25 – 43, l. 5. He found that the statement was made voluntarily after Brown was advised of his rights and made a knowing waiver of those rights. R. 43, ll. 6-16. However, the trial judge said that he had some concerns. R. 43, l. 17. He noted that Martin testified that Brown made a statement "I'm not going to give a DNA sample, because it would convict me." He found that Martin further testified that when the defendant chose to exercise his right to remain silent, the interview stopped. The trial judge said that he would take that to mean that Brown first made the

statement that he was not going to give DNA because it would convict him and then at some point later said I need to talk to an attorney, which is when the questioning stopped. The judge asked the solicitor if they State was intending to elicit testimony that Brown was facing life in prison, which was connected to some of the reasons for the alleged statements. They responded that they were not, and the judge responded that he was “not having any of that,” i.e. that the jury could not be made aware of the potential life sentence that Brown faced if convicted. R. 43, l. 17 – R. 44, l. 10. Additionally, the trial judge ruled that the State was not allowed to reference Brown’s refusal to provide a DNA sample. R. 44, l. 10 – 45, l. 19. However, he was “sort of inclined to maybe” admit the portion of Brown’s alleged statement where he said that DNA would convict him, even though it was said in combination with his refusal to provide a DNA sample. R. 45, l. 22 – 47, l. 23.

Defense counsel also argued for exclusion of Brown’s alleged offer to plead guilty. The judge initially instructed the State that it was not allowed to elicit the fact that Brown offered to plead guilty. R. 49, ll. 7-14. The solicitor responded that the statement was not a part of any formal plea negotiation between his attorney and the solicitor’s office or in response to any prompting by the investigator. R. 49, l. 15 – 50, l. 1. After the judge indicated that he would “think about it,” defense counsel responded that in addition to inadmissibility as a part of plea negotiations, the statement was more prejudicial than probative and did not amount to a confession. R. 50, ll. 2-16.

After discussing some other matters, the trial judge took a brief recess to allow both attorneys to conduct further research in support of their positions. R. 51, l. 17 – 52, l. 25. After the break, the solicitor referred the trial judge to Rule 410(4), SCRE, which prohibits the use of a statement made to a prosecuting attorney during plea negotiations. R. 53, l. 17 –

55, l. 12. When asked what “exactly” Brown allegedly said, the solicitor said that she understood his statement to be “Can you help me with a plea, I want to plead guilty.” R. 55, ll. 15-19. She said that “gist” of the conversation was “I don’t want to plead guilty to this charge because this charge carries life but if there is something else that doesn’t carry life, I can plead guilty.” R. 55, l. 20 – 56, l. 7. The judge noted that if that were case, then the defendant would be pleading now.⁶ R. 56, ll. 8-9. Defense counsel clarified that Martin’s notes actually indicate: “Brown said he was not going to fight the DNA. Brown wanted to know if he could be charged with something less serious. He said he planned on trying to plead to this charge.” R. 56, l. 24 – 57, l. 4. The notes do not contain a direct quotation from the Brown, but rather Martin’s interpretation of what was said. Defense counsel argued that even if Brown was mistaken in speaking about a plea with law enforcement rather than the solicitor, the alleged statement should still be excluded. R. 57, ll. 5-9. The trial judge ruled that defendant’s statement that he planned to plead guilty to the charge was admissible. R. 57, ll. 10-14. He also ruled that the statement “DNA will convict me” was admissible, but could not be related to the fact that Brown refused to submit himself for a DNA test. R. 58, ll. 5-11.

Testimony at Trial

Attempted Robbery and Initial Officer Response

At trial, the Chuck E. Cheese employees testified consistently that while Kadeshia and Kyrie were cleaning the salad bar, a man entered the Chuck E. Cheese. R. 128, l. 1-18; R. 143, ll. 7-23; R. 145, ll. 10-20; R. 233, ll. 13-25; R. 235, ll. 12-17. As shown on the

⁶ The trial judge was alluding to the State’s plea offer of a recommended fifteen year sentence in this case, conditioned on Brown’s entry of a guilty plea to a case in Lexington, with a recommendation of fifteen to thirty years there. See R. 6, l. 3 – 9, l. 15.

surveillance video, the suspect was an African-American man wearing dark clothing including a hoodie, white shoes, a red bandana, a dark wig, black glasses, and a mustache. R. 129, l. 16 – 130, l. 4; R. 144, l. 1 – 145, l. 9; R. 234, ll. 1-23; R. 235, ll. 1-2; R. 237, ll. 22-25. Kyrie testified that the man told him to “come here” and then to turn around. R. 147, l. 9 – 148, l. 1. He complied and put his hands up, after which he could feel the gun directly in the center of his back. R. 148, ll. 2-13. The suspect told him to walk to the back, but when they entered the kitchen and saw the manager, the suspect pushed Kyrie into the wall and ran out the front door. R. 149, l. 20 – 150, l. 17; R. 151, ll. 11-13. Toward the end of his direct examination, when asked if the suspect said anything, Kyrie testified that he said “take me to the money.” R. 154, ll. 14-18. However, he later admitted that he did not mention that in his written statement. R. 160, ll. 7-10. He also admitted that his written statement indicated that the bandana was tied around the suspect’s neck. R. 159, ll. 14-15. Kadeshia did not hear the suspect say anything, but did see him place a gun against Kyrie’s back before she ran into the kitchen and alerted the manager, Kennedy-Martin, of the intruder. R. 128, ll. 16-18; R. 129, ll. 9-10; R. 130, l. 21 – 131, l. 24; R. 132, ll. 20-21.

Kennedy-Martin testified that though Investigator Martin contacted Kennedy-Martin regarding obtaining surveillance videos a few days after the incident, he did not ask Kennedy-Martin any questions about the incident itself. R. 239, l. 19 – 241, l. 13. Kennedy-Martin also said that “enough” of the suspect’s face was showing, but he was unable to identify Brown in a photographic lineup a few months after the incident. R. 237, 9-17; R. 241, l. 14 – 242, l. 5. Kadeshia testified that she did not “get a good look” at the suspect, while Kyrie had the most interaction with the suspect and saw him face-to-face. R.

135, ll. 10-11; R. 148, l. 18-19; R. 154, l. 24 – 155, l. 6. Neither of them was shown any line-up and neither identified Brown through an in-court identification.

Deputy John Sullivan was the first officer to arrive on the scene. He testified that after meeting with Kennedy-Martin, Kyrie and Kadeshia, he was shown surveillance footage from an external camera at the establishment showing the suspect run from the front door of the establishment toward the El Toro club.⁷ R. 80, l. 10 – 81, l. 9; R. 82, ll. 16-25; R. 104, ll. 10-20. He could see on the video that the suspect was wearing a brown female wig, possibly a fake mustache, a red bandana around the neck, eyeglasses, white shoes, dark jeans with a hole, a dark-colored jacket, and a dark sweater underneath. R. 97, l. 10 – 98, l. 12. Sullivan requested assistance of a K-9 officer, who responded to the scene and located a wig and red bandana on the side of the El Toro club.⁸ R. 83, l. 15 – 84, l. 3; R. 112, l. 21 – 113, l. 7; R. 115, l. 1 – 116, l. 12. Though the K-9 unit continued to follow the scent, it was eventually lost in a parking area. R. 116, l. 13 – 117, l. 7.

A suspect was temporarily detained by officers on the night of the incident near the adjacent gas station. He was wearing dark clothing and waving down a passerby. R. 89, ll. 3-7. Sullivan testified that the manager, Kennedy-Martin, initially said that he “might be the guy.” R. 89, ll. 8-9; R. 94, l. 3-12. Kennedy-Martin said that it was Kyrie who “pointed out” the man at the gas station as a possible suspect, not him. However, Kennedy-Martin implied that he also thought “that guy did look” like the suspect. R. 239, ll. 1-14.

⁷ There are 32 different camera angles, including interior and exterior cameras. R. 122, l. 25 – 123, l. 4; R. 125, ll. 3-13. However, the footage from the external camera was not available for later retrieval by law enforcement. R. 123, ll. 5-18.

⁸ Sullivan responded to the area where the items were located and took photographs of the area and the items. R. 84, l. 4 – 85, l. 20; State’s Ex. 3-5 (Photographs). He also collected and packaged the items for future testing. R. 86, l. 20 – 88, l. 5; R. 102, l. 22 – 103, l. 19.

According to Sullivan, Kyrie viewed the detainee also and said “that is the guy” but later recanted the identification. R. 94, ll. 13-16; R. 95, l. 5. Kyrie testified that he did not affirmatively say that he was “the guy.” Rather, he said that the glasses that the man was wearing were the same type worn by the suspect. R. 157, ll. 9-18. Sullivan confirmed the detainee’s alibi and let him go that night. R. 89, ll. 9-24; R. 94, ll. 20-25.

DNA Evidence

The bandana and wig were both sent for DNA testing, along with buccal swabs of Michael Roscoe⁹ and Appellant Brown. R. 252, ll. 9-16. The State’s DNA expert, John Barron, testified that he found no human DNA on the wig. R. 253, l. 18 – 254, l. 1. On the bandana, however, he found one major contributor, one minor contributor, and one place with 5 alleles indicating a third contributor. R. 254, l. 2 -258, l. 16. He testified that only the major contributor was enough to be compared to the database. R. 258, l. 17 – 259, l. 4. A DNA match came back to Brown, which he also confirmed with the buccal swab obtained from Brown. R. 259, ll. 5-18. He also tested Michael Roscoe’s buccal swab and excluded him as a match to both the major and minor contributor DNA collected from the bandana. R. 264, ll. 17-23. On cross-examination, Barron conceded that his analysis does not tell you when the DNA was left on the article of evidence and admitted that different individuals “slough off” skin cells at different rates. R. 266, ll. 23-25; R. 268, ll. 4-19.

⁹ It is not clear from the testimony at the trial whether Michael Roscoe was the same man detained at the nearby gas station on the night of the incident or an entirely different suspect.

Martin's Initial Investigation and Review of Surveillance Footage

At trial, Martin testified that upon being assigned to investigate the incident at Chuck E. Cheese, he reviewed the notes of the responding officers and witness statements, attempted to retrieve video from the store surveillance cameras, reviewed the evidence collected, and submitted evidence for DNA testing. R. 164, ll. 3-20.

When asked about what witnesses Martin interviewed as a part of his investigation, he indicated that he spoke with Kennedy-Martin, who "didn't have anything else to add" and who was unable to identify Brown in a photo line-up. R. 207, ll. 9-18; R. 212, ll. 10-19. Martin admitted that he did not meet with Kadeshia or Kyrie himself. Regarding Kadeshia, he claimed that she was difficult to get in touch with since she quit her job at Chuck E. Cheese and they did not have a good phone number for her. Martin acknowledged that "if [he] had dedicated more time in this case [he] would have" spoken to them, but he was "just moving on to the next [case]." R. 207, l. 19 – 208, l. 3; R. 211, l. 23 – 212, l. 6. Instead, he relied on the written reports that the witnesses prepared for their employer, even though he would not "usually" do that, since the police questioning would "probably" be more in depth. R. 208, ll. 4-23.

Martin finally obtained the surveillance footage from one of the Chuck E. Cheese cameras on January 22, 2013, and reviewed it, looking for anything distinctive about the individual. R. 165, l. 19 – 166, l. 6; R. 199, l. 23 – 202, l. 9. He said that you could see the suspect reaching for and pulling out his gun and a large, bulky band on his ring finger. R. 166, ll. 9-13. The surveillance video was played for the jury while Martin pointed out the suspect's white flat shoes, a reflective area on the ring finger indicative of a bulky piece of jewelry, "trendy" plastic 1950s era glasses, a mustache, a red bandana around the neck, and

a bulky jacket. He noted that the images were “a little bit blurry” on the display used the courtroom, but alleged that the images were clearer and sharper on a computer screen. R. 166, l. 14 – 168, l. 20; State’s Ex. 9 (DVD of Surveillance Video).

Martin later testified that the white shoes, “clunky” ring, black eye glasses, and hoodie worn by Brown upon his arrest were like those shown in the surveillance video. He further testified that Brown had “a little bit of a mustache” and that the “size of his hands” struck him “as being consistent with what was depicted on the video.” R. 177, l. 13 – R. 179, l. 4; State’s Ex. 6-8 (Photographs). However, the surveillance footage is far too blurry to say that the ring, glasses, or hoodie worn by Brown on the date of the interview are even similar. Compare State’s Ex. 6-8 (Photographs) with State’s Ex. 9 (DVD of Surveillance Video). Additionally, the photo of Brown’s ring shows that it is not a bulky ring at all, but rather a classic band worn by many men. R. 219, ll. 13-20; State’s Ex. 6 (Photograph of Brown’s left hand). Further, on cross-examination, Martin admitted that Brown was not wearing white shoes on the day of his arrest, but rather red shoes. R. 218, l. 20 – 219, l. 12.

Martin testified that the DNA testing came back with a “match” to Brown, though he later admitted Brown was only a contributor to the DNA mixture on the bandana and that no DNA was found on the wig. R. 164, ll. 21-25; R. 213, l. 15 – 214, l. 9; R. 217, ll. 15-19. Nonetheless, after reviewing the video and the DNA report, they arrested Brown and brought him to Martin’s office. R. 158, l. 23 – 169, l. 2.

Martin’s Interrogation of Brown

Martin met with Brown in his cubicle and advised him of his Miranda rights and testified that he did not use any threats, pressure, or promises to induce the waiver of rights.

R. 169, l. 6 – 174, l. 11. He stated that Brown signed the wavier of rights and they began to talk. R. 174, ll. 12-17.

Martin originally testified that when his interview of Brown began, Brown wanted to know more about the facts of the case and the DNA evidence. He said that the questions that Brown was asking seemed to stem from someone having read him the warrant. R. 174, l. 15– 175, l. 7. Martin said that “he was pretty much trying to interview me at that point,” so he had to “shut that down.” R. 175, ll. 6-10. He described this as “common tactic” from suspects who want to know “how bad” they are caught and what the police “have one [them],” so that they can develop an alibi or determine how to “spin” the evidence. R. 175, ll. 11-16. That is why Martin “just told him it was his DNA” without further detail and told Brown that he knew he was one who committed the attempted robbery. R. 174, ll. 17-20; R. 175, ll. 17-22.

However, later in Martin’s testimony he said that the interview began with Martin asking Brown when he was last at the Chuck E. Cheese or that area, to which Brown responded that he was last there for a birthday party in 2011 or 2012. R. 179, ll. 9-22. Martin also asked him if he had ever worn a wig or owned a handgun, both of which Brown denied. R. 179, l. 23 – 180, l. 1. Martin alleged that Brown subsequently said:

That he wasn’t going to challenge the DNA. He was looking to – he wanted to be charged with something lesser if he could. He knew that DNA would convict him. He knew that – he stated that he knew that – he wanted a less severe charge, and he wanted to discuss a plea.

R. 175, l. 25 – 176, l. 5. Martin responded by telling him that any offer would be between his attorney and the solicitor. R. 176, ll. 6-9. He said that Brown did not deny

involvement,¹⁰ and repeated that Brown was instead interested in whether he could be charged with something less severe than armed robbery,¹¹ would not challenge the DNA, and knew DNA would convict him. R. 176, l. 19 – 177, l. 5. Martin testified that “at some point the interview was terminated and he wanted to make a phone call to his girlfriend.” R. 177, ll. 6-8. While on the phone with Castro, Martin overheard Brown tell her “they found DNA on something” and that someone was trying to frame him by planting his DNA. R. 180, l. 10 – 181, l. 9. Martin testified that Brown did not make any such averment about being framed to him. R. 181, ll. 4-9.

Despite the interview having been terminated prior to the phone call, Martin asked Brown about who would be trying to frame him but Brown allegedly “didn’t have any answers for [him] at that point.” R. 181, ll. 10-19. However, after looking at his notes, Martin said that when asked who would frame him, Brown responded that he did not want to tell “because the people were significant.” He then alleged that Brown again wanted to talk about plea negotiations, and the interview ended when Martin explained that he would not help him with a plea. R. 183, l. 23 – 184, l. 17.

On cross-examination, Martin testified that his interview began by telling Brown that his DNA was located at the crime scene. R. 221, ll. 11-14. Brown asked him “what type of DNA was recovered at the crime scene,” to which Martin responded that it was Brown’s DNA. R. 221, ll. 15-24. He never informed Brown that the DNA was a mixture. R. 223, ll. 1-5. Martin then asked Brown when he was last at the Chuck E. Cheese. Brown said 2010 or 2011. Martin testified that though it was not written in his notes, Brown said

¹⁰ Brown told Martin that he had not been to the Chuck E. Cheese or that area since 2011 or 2012. R. 179, ll. 9-22.

¹¹ As discussed supra in footnote 7, Brown was indicted for attempted armed robbery.

that his last visit was for a birthday party for a relative of his girlfriend, Castro, and that he had not been to the St. Andrews area since then. R. 221, l. 25 – 222, l. 12. He then asked Brown if he had ever worn a wig, which he denied. R. 222, l. 13-15. Martin confirmed that his notes next indicate that “Investigating Officer told Brown there was no doubt it was he who was wearing the wig in committing the robbery.” R. 222, ll. 16-20. Defense counsel asked Martin if he told Brown that there was no doubt that he was the one in the video, to which Martin responded “[t]here is no doubt.” R. 222, ll. 21-23. Martin’s notes next indicate that Brown told him “I’m not going to fight the DNA” and wanted to know if he could be charged with something “not as serious.” Martin alleged that Brown knew that robbery carried a severe penalty, though that was not contained in his notes. R. 223, ll. 6-21.

Brown then made a phone call to his girlfriend, Castro, and said “that it wasn’t him, that he was being framed, someone was setting him up.” R. 224, ll. 4-15. After the call ended, Martin gave Brown an “opportunity” to tell him who would frame him. Brown was allegedly unable to “find any details” to substantiate that claim. R. 224, ll. 16-21. On re-direct, Martin alleged that after the telephone conversation, Brown “again” told him that he wanted to plead guilty. R. 227, ll. 17-22.

When asked where the alleged statement by Brown that “DNA will convict me” is listed in his report, Martin said “That is not in my report. It is part of my testimony.” R. 224, l. 22 – 225, l. 4. Martin continually downplayed the importance of taking complete and accurate notes, saying that “you leave what you feel [is] important” and that it is not an exact science. R. 189, l. 20 – 191, l. 7.

Motion for Directed Verdict and Trial Court's Ruling

At the close of the State's case, defense counsel made a motion for directed verdict. R. 272, ll. 23-24. Defense counsel argued that the circumstantial evidence against Brown was not substantial such that the case should not be given to the jury. R. 272, l. 24 – 275, l. 20. Counsel cited to a recent directed verdict case, State v. Pearson, 410 S.C. 392, 764 S.E.2d 706 (Ct. App. 2014), *cert. granted* (Mar. 4, 2015). She noted that the Pearson opinion cites to several other cases where the circumstantial evidence was insufficient for the case to go to the jury and briefly discussed its facts. R. 274, ll. 4-6; R. 274, l. 20 – 330, l. 3.

She argued that in the present case no one was able to identify Brown as the perpetrator and there was no physical evidence that places Brown directly at the crime scene. The DNA on the bandana, that was found two buildings away, shows only that Brown possessed it at some point in his life, not at any time to close to the incident. The State's own expert agreed that his analysis cannot determine *when* DNA was placed on an item. Further, the bandana had DNA of *at least* three people. Thus, she argued that the evidence raised only a mere suspicion of guilt and did not constitute circumstantial evidence substantial enough to submit the case to the jury. R. 274, ll. 11-19; R. 275, ll. 7-20.

The solicitor responded that taking the evidence in the light most favorable to the State, there was both direct and substantial circumstantial evidence in this case. R. 275, ll. 21-24. She argued that the State presented evidence of a suspect entering a business in Richland County with a gun and demanding money, who was identified "directly" by three witnesses as wearing a bandana, a wig, distinctive eyewear, clothing, a dark hoodie,

white shoes, and a ring. R. 275, l. 25 – 276, l. 6. The bandana was found “just feet”¹² from the incident location, having been tracked from the incident location by the K-9 officer’s dog. This was the same bandana identified by several witnesses and there was a “[DNA] match to the Defendant.” R. 276, ll. 6-12. The State also pointed out Brown’s alleged attempt “to work out a deal.” R. 276, ll. 14-18. The State opined that Brown’s statements and the “clear substantial circumstantial evidence” were sufficient for the case to go to the jury. R. 276, ll. 12-13 and 19-21.

Defense counsel responded that the solicitor misstated the evidence and reminded the court that none of the witnesses identified Brown as the suspect. R. 276, l. 25 – 277, l. 10. Before defense counsel could finish her response, Judge Barber issued his ruling. He began by stating that the standard for a directed verdict motion is whether there is a scintilla of direct evidence or there is substantial circumstantial evidence. R. 277, ll. 11-15. Explaining his reasoning for denial of the motion for directed verdict, the judge said:

The evidence in this case is somebody went into Chuck E. Cheese with a bandana, a wig, glasses, dark clothing, and attempted to rob the place but was unsuccessful. They ran out the front door. They ran out the building and went around to the back of the building. At some point in time a dog picked up the scent from the location and followed it exactly to where the bandana and the wig was found.

When the wig and bandana were found, they ultimately were analyzed, and DNA appeared on the bandana belonging to your Defendant. Nothing appeared on the wig. Your client was ultimately – which is all circumstantial, but to me that is substantial circumstantial evidence to identify one, the individual that committed the robbery. The scent was picked up and went to the location of where this was found.

In addition, there is direct evidence when your client was arrested he made a statement which indicated that he did not believe that he could contest

¹² This is a clear mischaracterization of the evidence, as the back of the El Toro is well beyond “just feet” from the Chuck E. Cheese.

the DNA, that he wanted to go ahead and enter a plea to something, as to some charge. I'm a little confused as to whether he wanted to enter a plea to the attempted armed robbery or something else, but he indicated, according to the officer's testimony, that he wanted to enter a plea to some – which would be direct evidence, in my opinion, a scintilla of direct evidence at least, that he is admitting that he committed this offense in the course of his confession.

R. 277, l. 16 – 278, l. 21. He said that whether that evidence is actually sufficient to convict Brown will depend on how the jury determines the facts, and denied the directed verdict motion. R. 278, l. 22 – 279, l. 1. The defense did not present any evidence. R. 285, ll. 18-20.

In her closing statement, the solicitor repeatedly referenced Brown's alleged statement "I want to plead guilty" and argued that it was direct evidence of Brown's guilt. R. 295, ll. 3-5; see also R. 296, ll. 6-8; R. 303, ll. 9-10; R. 305, ll. 12-13; R. 306, l. 6. She further argued that his statement reflected that "[a]t that point in time he wanted to take responsibility for his actions" and that an innocent man would not make such a statement. R. 303, ll. 16-25. The solicitor also argued that Brown's alleged statement that "the DNA alone is enough to convict me" was direct evidence of his guilt. R. 296, ll. 6-8.

After the jury verdict, defense counsel renewed "all objections and motions previously overruled... or denied." R. 345, ll. 12-22. The court denied the motion for new trial and did not indicate any change to his prior rulings. R. 345, l. 23 – 346, l. 8.

ARGUMENT

I. The trial court erred in admitting Appellant's alleged offer to plead guilty where the probative value of the statement was outweighed by the undue prejudicial effect under Rule 403, SCRE.

Plea negotiations occur in almost every criminal case. They benefit both the defendant and the State. However, as occurred in Brown's case, there are occasions where a defendant chooses to invoke his constitutional right to a jury trial and require the State to prove its case against him. Generally, those prior plea negotiations are not admissible at the defendant's trial pursuant to Rule 410(4), SCRE, which prohibits the admission against an accused of "any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn." However, even informal plea discussions that do not fall under the purview of Rule 410, SCRE, may still be excluded as unduly prejudicial pursuant to Rule 403, SCRE. In the present case, Detective Martin testified at the suppression hearing that Brown wanted to know if he could be charged with something less serious and wanted to enter a guilty plea. R. 34, l. 23 – 35, l. 1; R. 40, ll. 3-5. Defense counsel argued that the statements regarding a plea were more prejudicial than probative and that it does not amount to confession. R. 50, ll. 14-16. She also noted that the alleged "offers" to plead guilty were made in response to Martin's mischaracterizations of the evidence against Brown. R. 50, ll. 2-13. Nonetheless, the trial judge ruled that the statements were admissible. R. 57, ll. 13-14.

At trial, the State introduced testimony from Martin that Brown said "he wanted to discuss a plea," R. 176, ll. 3-5, R. 181, l. 24 – 182, l. 1; "he wanted to plead guilty," R. 176, ll. 10-12, R. 185, 19-21; "wanted to see if he could negotiate some kind of plea or get a plea

negotiated on his behalf” R. 176, l. 25 – 177, l. 2; and “went back into trying to negotiate a plea and if I could offer him a plea or help him with a plea.” R. 184, ll. 10-12. Their admission punishes Brown for even mentioning a plea offer when facing interrogation by officers who are mischaracterizing the weight of the evidence against them and emphasizing the long potential sentence ahead. A policy of allowing such indefinite statements or inquiries to be used against a defendant offends the presumption of innocence and requirement that the State bear the burden of proving its case beyond a reasonable doubt.

Brown’s alleged offer to plead guilty did not amount to a confession. There are many strategic reasons that a defendant considers in determining whether to enter a plea or go to trial. “The defendant who opts to go to trial rather than negotiating a plea runs the risk of a harsher sentence than he would have received by pleading guilty.” State v. Brouwer, 346 S.C. 375, 391, 550 S.E.2d 915, 924 (Ct. App. 2001) (quoting United States v. Quejada-Zurique, 708 F.2d 857 (1st Cir.1983)).

In Brady v. United States, the United States Supreme Court stated:

The issue we deal with is inherent in the criminal law and its administration because guilty pleas are not constitutionally forbidden, because the criminal law characteristically extends to judge or jury a range of choice in setting the sentence in individual cases, and because both the State and the defendant often find it advantageous to preclude the possibility of the maximum penalty authorized by law. *For a defendant who sees slight possibility of acquittal, the advantages of pleading guilty and limiting the probable penalty are obvious-his exposure is reduced, the correctional processes can begin immediately, and the practical burdens of a trial are eliminated.* For the State there are also advantages-the more promptly imposed punishment after an admission of guilt may more effectively attain the objectives of punishment; and with the avoidance of trial, scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant’s guilt or in which there is substantial doubt that the State can sustain its burden of proof. It is this mutuality of advantage which perhaps explains the fact that at present well over three-fourths of the criminal convictions in this country rest on pleas of guilty, a great many of them no

doubt motivated at least in part by the hope or assurance of a lesser penalty than might be imposed if there were a guilty verdict after a trial to judge or jury.

Of course, that the prevalence of guilty pleas is explainable does not necessarily validate those pleas nor the system which produces them. But we cannot hold that it is unconstitutional for the State to extend a benefit to a defendant who in turn extends a substantial benefit to the State and who demonstrates by his plea that he is ready and willing to admit his crime and to enter the correctional system in a frame of mind which affords hope for success in rehabilitation over a shorter period of time than might otherwise be necessary.

397 U.S. 742, 751-52, 90 S.Ct. 1463, 1471 (1970) (emphasis added). The Brady court recognized that a contrary holding would forbid guilty pleas, require no discretion in sentencing, or require sentencing proceedings occur before a separate authority with no knowledge of the manner in which the conviction in each case was obtained. Id.

In United States v. Robertson, 582 F.2d 1356, 1365 (5th Cir. 1978) (en banc), the Fifth Circuit Court of Appeals noted that “not every discussion between an accused and agents for the government is a plea negotiation.” However, the purpose of Fed. R. Evid. 410, after which the South Carolina rule is modeled, is “to serve both as an incentive and as a prophylactic; the rule both encourages and protects a free plea dialogue between the accused and the government.” Id. at 1366. The Robertson court held that in determining admissibility of statements purportedly made during plea negotiations, a court must determine “first, whether the accused exhibited an actual subjective expectation to negotiate a plea at the time of the discussion, and, second, whether the accused’s expectation was reasonable given the totality of the objective circumstances.” Id. (citations omitted).

Providing guidance as to how to employ this two-tiered inquiry, the Robertson court wrote:

The initial inquiry into the accused's subjective state of mind must be made with care to distinguish between those discussions in which the accused was merely making an admission and those discussions in which the accused was seeking to negotiate a plea agreement. The trial court must appreciate the tenor of the conversation. *In those situations in which the accused's subjective intent is clear and the objective circumstances show that a plea bargain expectation was reasonable, the inquiry may end. For example, if the accused unilaterally offers to "plead guilty," or to "take the blame," in exchange for a government concession, then the policy underlying Fed.R.Crim.P. 11(e)(6) and Fed.R.Evid. 410 is served only if the discussions are held inadmissible.* That is not to say that we require a preamble explicitly demarcating the beginning of plea discussions. Yet, when such a preamble is delivered, it cannot be ignored. Indeed, even when such nascent overtures are completely ignored by the government, such express unilateral offers ought to be held inadmissible, if the context is consistent.

Id. at 1367 (internal citations and quotations omitted) (emphasis added).¹³

Distinguishing between a defendant's offer of cooperation and an offer to plead guilty, the Second Circuit Court of Appeals wrote in United States v. Levy, 578 F.2d 896,

¹³ At the time of the Robertson decision, Fed. R. Evid. 410 provided, in relevant part:

Except as otherwise provided in this rule, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

582 F.2d 1356, 1364 n. 18. The Rule was subsequently amended in 1980 to read as it does today. Courts are divided on the threshold issue of what standard should be applied to determine whether a statement has been made "in the course of plea discussions," with some continuing to apply to the two-tiered Robertson test, and others applying a "totality of the circumstances" test, having found the Robertson was superseded by the 1980 amendments to the rules. United States v. Stein, No. CR. 04-269-9, 2005 WL 1377851 *8 (E.D. Pa. 2005) (citing United States v. Leon Guerrero, 847 F.2d 1363, 1367-68 (9th Cir. 1988) (adopting Robertson test); United States v. O'Brien, 618 F.2d 1234, 1240-41 (7th Cir. 1980) (same); United States v. Fronk, 173 F.R.D. 59, 67 (W.D.N.Y. 1997) (same); United States v. Penta, 898 F.2d 815, 818 (1st Cir. 1990) (holding the amended rule "embraces neither Robertson's two-tiered test" nor a multi-factored approach, and instead the "plain language" of the rule should be applied); United States v. Lloyd, 43 F.3d 1183, 1186 (8th Cir. 1994) (applying a totality of the circumstances test)).

901 (2nd Cir. 1978), that “an offer by the defendant must, in some way, express the hope that a concession to reduce the punishment will come to pass. A silent hope, if uncommunicated, gives the officer or prosecutor no chance to reject a confession he did not seek.” However, that must be balanced against the purpose of the inadmissibility of plea negotiations, which is “to encourage plea bargaining, a system thought by many, though others disagree, to be desirable.” *Id.* Thus, the Levy court held that an “accused is required, at least, to make manifest his intention to seek a plea bargain before he takes the route of self-incrimination.”

Notably, the statements admitted here were not incriminating statements made in a vain effort to obtain a favorable plea agreement. Because the interview with Brown was not recorded by audio or visual equipment, the content of Brown’s alleged statements was evidenced from Martin’s scant notes and his varying recollection. In essence, Martin testified that Brown made the statements “I want to discuss a plea” and “I want to plead guilty” and asked the questions “can I negotiate a plea” or “can someone negotiate a plea on behalf.” R. 176, l. 3 – 177, l. 2; R. 181, l. 24 – 182, l. 1; R. 184, ll. 10-12; R. 185, 19-21. Rule 403, SCRE, provides: “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Further, in the present case, the policy considerations in favor of plea agreements and common sense weigh in favor of exclusion under Rule 403, SCRE.

One of the few respects in which Martin’s testimony was consistent, was that Brown’s statements regarding pleading guilty were coupled with his request to plead to

something less serious because he understood that he faced a potential life sentence. Thus, Brown made clear that it was his desire to enter into plea negotiations. Martin testified that he then informed Brown that he could not help him with any kind of plea and that would instead be between Brown's attorney and the solicitor. The idea that any statement regarding interest in a plea offer can be used against a defendant, even where no plea offer results and no accompanying incriminating information is provided, is absurd and contrary to the policy in favor of plea negotiations.

Here, Brown made no admission that he had been anywhere near the Chuck E. Cheese since attending a birthday party there in 2011 or 2012. R. 33, ll. 16-20; R. 34, ll. 1-5. He did not admit to having ever worn a wig either. R. 33, ll. 21-25. Though Brown inquired about what type of DNA evidence Martin was referring to, Martin never told him that was from skin cells on a red bandana found behind another establishment or that there were other DNA contributors on the bandana. R. 174, ll. 17-20; R. 175, ll. 17-22. Based on the information that he was given – that there was definitive DNA evidence against him and that he was facing life imprisonment without parole – it is not difficult to understand why Brown would have inquired about the possibility of a plea or stated that he intended to plead guilty at the time of his interrogation despite being innocent of the attempted robbery. This cannot amount to a confession, as it is not evidence of a consciousness of guilt.

As is evident from the record, Brown did not ultimately accept a plea offer in this case and instead invoked his right to trial. Nonetheless, the State wanted to use Brown's inquiry regarding a plea offer and statement that he planned or wanted to plead guilty against him at the trial where he pled not guilty. Unquestionably, had the prosecutor

been present during the interview or formal negotiations occurred between defense counsel and the solicitor, any discussion of a plea would have been inadmissible pursuant to Rule 410(4), SCRE. However, even if Brown's statements are not inadmissible under the express provisions of Rule 410, the Court must still engage in a Rule 403 analysis. R. 50, ll. 14-16.

Instructive in the analysis of probative value versus undue prejudicial is the purpose behind the provisions to Rule 410. In State v. Mathis, 287 S.C. 589, 592-93, 340 S.E.2d 538, 540-41 (1986), our Supreme Court held that **"the highly prejudicial potential of" of a withdrawn guilty plea "mandates its exclusion for all purposes."** See Rule 410(1), SCRE; see also Kercheval v. United States, 274 U.S. 220, 47 S.Ct. 582 (1927); United States v. Mitchell, 633 F.3d 997, 1003 (10th Cir. 2011). The Mathis court noted the reasons for exclusion of withdrawn guilty pleas articulated in other jurisdictions, which included:

(1) It is unfair to use the plea against the accused after he has been allowed to retract it. (2) Evidentiary use of a withdrawn plea denies the defendant the benefit of the presumption of innocence. (3) The public interest of encouraging settlement of criminal cases without necessity of trial favors permitting an accused to plead guilty to the offense charged without prejudicing his position if it is later withdrawn. (4) The privilege of withdrawal is illusory if evidence of the plea is allowed. (5) The highly prejudicial nature of a prior guilty plea may induce the jury to become reckless in its consideration of the other evidence, regardless of cautionary instructions.

287 S.C. at 591-92; 340 S.E.2d at 540 (internal citations omitted).

Similar reasoning counsels in favor of exclusion of the highly prejudicial statements inquiring about a plea offer or mentioning an intention to work out a guilty plea during an interrogation. A defendant has a constitutional right to trial by an impartial jury and is entitled to the presumption of innocence. U.S. Const. 6th Amdt; S.C.

Const. Art. I, sect. 14; Coffin v. United States, 156 U.S. 432, 15 S.Ct. 394 (1895). In adopting the rule of exclusion of withdrawn guilty pleas, the Louisiana Supreme Court stated in State v. Joyner, 84 So.2d 462, 463 (La. 1955):

We think the majority view is sound and more consonant with our concept of the constitutional rights of an accused. Where the plea of guilty is withdrawn, the defendant stands for trial upon a plea of not guilty, and is entitled to all the safeguards and presumptions of innocence which the humanity of the law extends to an individual whose life or liberty is at stake. One such right is that he is presumed to be innocent until proved guilty beyond a reasonable doubt, and the state has the burden of proving that guilt.

Allowing statements that Brown allegedly intended to plead guilty or inquired about plea negotiations during his interrogation risks the same recklessness by the jury in its consideration of the other evidence. To the extent that such statements are less prejudicial than the actual entry of a guilty plea, the distinction is marginal. The solicitor certainly emphasized the alleged statements in her closing argument to the jury. Additionally, the public interest in encouraging settlement of criminal cases without necessity of trial similarly favors permitting an accused to discuss the possibility of pleading guilty to the offense charged without prejudicing his position if he instead chooses to go to trial.

Therefore, the trial court erred in admitting Brown's alleged statements and inquiries regarding a plea offer because they were unduly prejudicial and admission of such statements is contrary to the overwhelming policy considerations that favor confidentiality of plea negotiations. Accordingly, Brown's conviction should be vacated and his case remanded for a new trial.

II. The trial court erred in admitting Appellant's alleged statement that "DNA will convict me" and alleged offer to plead guilty where such statements were made after Appellant had invoked his Fifth Amendment right against self-incrimination and right to counsel.

Brown was advised of his Miranda rights at the outset of the interview and signed a written waiver of rights. R. 28, ll. 4-7; R. 351 (State's Ex. 1, Advice and Waiver of Rights Form). However, at some point during the interview, he declined to give a DNA sample until he spoke with an attorney and said that he no longer wished to talk about his case. These assertions of Brown's Fifth Amendment right against self-incrimination and right to counsel necessitated the immediate stop of his interrogation. Any statements made after that were inadmissible. Because Investigator Martin was unable to provide a precise timeline of the interview, and in fact, testified to questioning he engaged in after the interview had unquestionably been terminated by Brown, the trial court erred in admitting Brown's alleged statement that "DNA will convict me." The testimony did not support the trial judge's finding that Brown said "I'm not going to give DNA because it will convict me" prior to the assertion of his constitutional rights. R. 43, l. 22 – 44, l. 2.

Additionally, Martin testified that Brown made statements and/or inquiries regarding a plea offer at two different times during the interview. His notes reflected that: "Brown said he was not going to fight the DNA. Brown wanted to know if he could be charged with something less serious. He said he planned on trying to plead to this charge." R. 56, l. 24 – 57, l. 4. Martin later testified, referring to his notes, that after hearing Brown on the telephone with Ms. Castro, he asked him who would want to frame him. He said that Brown told him that the people were significant and "then went back into trying to negotiate a plea and if I could offer him a plea or help him with a plea." He said that he explained

again that he could not negotiate a plea and that would occur down the road. The interview was then terminated. R. 184, ll. 1-17.

Both Brown's alleged statement that "DNA will convict me" and his offers to plead guilty were ruled admissible by the trial judge. R. 57, ll. 10-14; R. 58, ll. 5-11. The record indicates that these rulings were intended to be final, especially when viewed in light of the tentativeness of the court's initial inclinations in ruling and his recessing for the attorneys to conduct additional research before reaching his final decisions. R. 45, l. 22 – 46, l. 8; R. 50, ll. 2; R. 51, l. 17 – 52, l. 25. Though Investigator Martin was not the first witness called by the State after the pre-trial motions hearing, none of the intervening witnesses or evidence presented was relevant to the suppression of the statements. As such, there was no new basis for suppression elicited and no basis for the trial judge to change his ruling. Thus, no further objection by defense counsel was necessary and would have been futile. See State v. Kromah, 401 S.C. 340, 353, 737 S.E.2d 490, 496-97 (2013) ("Generally, a motion *in limine* is not a final determination; a contemporaneous objection must be made when the evidence is introduced. There is an exception to this general rule when a ruling on the motion *in limine* is made immediately prior to the introduction of the evidence in question. This exception is based on the fact that when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection." (internal citations and quotations omitted)); see also State v. Wiles, 383 S.C. 151, 156-57, 679 S.E.2d 172, 175 (2009) (finding that despite the fact that the evidence was not immediately introduced after the motion *in limine*, the trial judge indicated, by his actions, that his ruling was a final, rather than preliminary); State v. Mueller, 319 S.C. 266, 268-69, 460 S.E.2d 409, 410-11 (Ct. App. 1995) (noting where there is no evidence

between the motion and the testimony, there is no basis for the trial court to change its ruling, so the decision is a final one).

“A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights under Miranda, . . .” State v. Aleksey, 343 S.C. 20, 30, 538 S.E.2d 248, 253 (2000). In Miranda v. Arizona, 384 U.S. 436, 479, 86 S.Ct. 1602, 1630 (1966), the Court determined that the Fifth and Fourteenth Amendments’ prohibition against compelled self-incrimination required that custodial interrogation be preceded by advice to the putative defendant that he has the right to remain silent and also the right to the presence of an attorney.

The Fifth Amendment guarantees the right to speak with counsel upon request in a custodial setting. U.S. CONST. AMEND. V; Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880 (1981). If a suspect invokes his right to counsel, police interrogation *must* cease unless the suspect himself initiates further communication with police. Id. Similarly, though not a permanent bar to police reinitiating contact with the suspect, when a suspect invokes his right to remain silent, law enforcement officers *must* scrupulously honor it. Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321 (1975). While not an exclusive list, Courts interpreting Mosley have set forth five factors to analyze to ascertain whether the defendant’s right to cut off questioning was “scrupulously honored”: (1) whether the suspect was given Miranda warnings at the first interrogation; (2) whether police immediately ceased the interrogation when the suspect indicated he did not want to answer questions; (3) whether police resumed questioning the suspect only after the passage of a significant period of time; (4) whether police provided a fresh set of Miranda warnings before the second interrogation; and (5) whether the second

interrogation was restricted to a crime that had not been a subject of the earlier interrogation. State v. Benjamin, 345 S.C. 470, 476-77, 549 S.E.2d 258, 261 (2001).

Though the solicitor argued that investigator Martin testified that he stopped the interrogation once Brown stated that he was not going to give DNA until he talked to an attorney, as discussed supra, the testimony was not so precise. R. 42, l. 18-24. Brown's interview with Investigator Martin was not recorded by audio or video equipment. R. 221, ll. 3-6. Rather, Martin took notes regarding what he felt was "important" in the interview. R. 189, l. 20 – 190, l. 18; R. 221, ll. 7-10. Martin admitted that his notes do not mention Brown's alleged statement that he would not give his DNA because it would convict him. R. 37, ll. 23-25. He was also unable to recall when during the interview the alleged incriminating statement was made. He said that it was "either during or at the end" and later that he "[did not] remember if it was during or at the end or before he made the phone call." R. 37, ll. 10-15; R. 40, l. 25 – 41, l. 4.

Martin admitted that his notes indicate that when he asked Brown for a DNA sample, "he declined until he had spoken to an attorney." R. 37, ll. 16-22. However, he testified that he stopped the interview when Brown indicated "he didn't want to talk about his case anymore." Brown was then allowed to use Martin's office phone to call his girlfriend, Castro. R. 35, l. 18 – 36, l. 1. He was sitting with Brown during the call and overheard him tell her that he did not commit the crime and was being framed. R. 38, ll. 16-17; R. 40, ll. 6-21. Despite Brown's prior indication that he did not wish to discuss his case further, Martin asked Brown follow up questions regarding who would want to frame him. R. 40, ll. 13-19. It was after that line of questioning that Brown allegedly made a second

inquiry regarding a plea offer and the interview was then actually terminated. R. 184, ll. 1-17.

In making his initial ruling on the admissibility of the “DNA will convict me” statement, the trial judge said:

He [Martin] testified that the Defendant made a statement, I’m not going to give a DNA sample because it would convict me. And then he further testified that when the Defendant exercised his rights, he stopped.

So that I take means that the Defendant made: I’m not going to give DNA because it will convict me. And then at some point in time – the inference is that at some point in time he further went on and said, I need to talk to an attorney. And that is when they stopped.

R. 43, l. 17 – 44, l. 2. He gave the attorneys additional time to research the issue, but said that he was inclined to allow the statement “DNA will convict me” but not the fact that, contemporaneously therewith, he was asked to provide a DNA sample and refused. R. 45, l. 22 – 46, l. 8. After hearing further argument for counsel, the trial judge ruled that the statement “DNA will convict me” was admissible, but could not be related to the fact that Brown refused to submit himself for a DNA test. R. 58, ll. 5-11. The trial judge also allowed testimony regarding Brown’s alleged statements related to a potential guilty plea. R. 57, ll. 13-14.

The trial court’s finding and ruling are not supported by the evidence. During Brown’s interrogation he invoked both his Fifth Amendment right to counsel and his Fifth Amendment right to remain silent. He invoked his right to counsel when he asked to speak to an attorney after being asked to submit a DNA sample. R. 37, ll. 16-22. At that point, the interview should have stopped completely. Brown also invoked his Fifth Amendment right against self-incrimination when he sought to end the interview. R. 35, ll. 18-24. At that point Brown’s right to remain silent should have been “scrupulously honored.” However,

there is no indication that interrogation immediately ceased when Brown was questioned further after his phone call to Castro and allegedly made a second inquiry regarding plea negotiations. No significant period of time passed, no second set of Miranda warnings was given, and the continued questioning had to do with the same alleged crime.

Martin's testimony regarding when Brown's statements were made was speculative, as he repeatedly stated that he did not remember and it could have been during the interview, at the end of the interview, or before he made the phone call. R. 37, ll. 10-15; R. 40, l. 25 - 41, l. 4. Thus, the trial judge's "inference" of the order in which the statements and invocation occurred is unfounded where the testimony was that Martin could not recall whether the request for DNA and alleged statement "DNA will convict me" were made during or at the end of the interview. If they were made at the end of the interview, then they consequently would have been made after Brown indicated that he no longer wished to continue discussing the case and requested an attorney. Further, Martin was clear that the second offer to plead guilty occurred just prior to the actual termination of the interview, after the phone call to Castro, at which point Brown had unquestionably invoked his right against self-incrimination by stating that he no longer wished to discuss the case. R. 35, l. 18 - 36, l. 1; R. 183, l. 23 - 184, l. 17. This undeniable violation lends even more suspicion to the order of the statements and invocation of rights.

Because the testimony of the officer was not clear that the incriminating statement "DNA will convict me" was made prior to Brown's assertion of his right to counsel and right against self-incrimination, the trial court erred in allowing admission of the statement at trial. Furthermore, at a minimum, Brown's second inquiry regarding a plea offer was unquestionably made after he asserted his right to end the interview and Martin failed to

scrupulously honor that request. Therefore, the trial judge erred in admitting Brown's alleged incriminating statements. Accordingly, Brown's conviction should be reversed and his case remanded for a new trial.

III. The trial court erred in denying Appellant's motion for directed verdict where there was no direct evidence of his guilt and the circumstantial evidence against him was not substantial.

The only physical evidence potentially linking Brown to the crime was his DNA found on a red bandanna, which was tracked by a K-9 unit from the door of Chuck E. Cheese to the back of El Toro restaurant, located across the parking lot. The DNA of at least two other unknown persons was also found on the bandana. Despite this, the trial judge denied the motion for directed verdict, finding that the circumstantial evidence was substantial, stating:

[S]omebody went into Chuck E. Cheese with a bandana, a wig, glasses, dark clothing, and attempted to rob the place but was unsuccessful. They ran out the front door. They ran out the building and went around to the back of the building. At some point in time a dog picked up the scent from the location and followed it exactly to where the bandana and the wig was found.

When the wig and bandana were found, they ultimately were analyzed, and DNA appeared on the bandana belonging to your Defendant. Nothing appeared on the wig The scent was picked up and went to the location of where this was found.

R. 277, l. 16 – 278, l. 8. The trial judge further pointed to statements Brown allegedly made “that he did not believe that he could contest the DNA, that he wanted to go ahead and enter a plea to something, as to some charge” which he characterized as “direct evidence” that Brown was “admitting that he committed this offense in the course of his confession.” R. 278, ll. 9-21. As discussed supra in Parts I and II of this brief, the alleged incriminating statements made by Brown were admitted in error. Even so, the statements do not constitute direct evidence or substantial circumstantial evidence. Therefore, the trial court erred in its denial of Brown's motion for directed verdict.

“A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged.” State v. Lane, 406 S.C. 118, 121, 749 S.E.2d 165, 167 (Ct.App. 2013) (quoting State v. Brannon, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010)). “The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes.” Id.; see also State v. Schrock, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984) (noting the State has the burden of proving “the accused was at the scene of the crime when it happened and that he committed the criminal act”). If there is substantial circumstantial evidence reasonably tending to prove the defendant’s guilt, an appellate court must find the trial court properly submitted the case to the jury. Lane, 406 S.C. at 121, 749 S.E.2d at 167 (citing Odems, 395 S.C. at 586, 720 S.E.2d at 50). “Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.” State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011). “The lower court should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty.” State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). “‘Suspicion’ implies a belief or opinion as to guilt based upon facts or circumstances [that] do not amount to proof.” State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404–05 (2001).

In State v. Bostick, 392 S.C. 134, 139–41, 708 S.E.2d 774, 777–78 (2011), our Supreme Court began its analysis with a review of “three seminal cases from our jurisprudence analyzing the proof necessary in cases with circumstantial evidence,” which included State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984), State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), and State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Each of those cases resulted in reversal and remand for entry of judgment of

acquittal because the State failed to produce substantial evidence to overcome the motion for directed verdict. 392 S.C. at 139-41, 708 S.E.2d at 777-78. The court likewise determined that the evidence presented in Bostick “raised only a suspicion of guilt.” Id. at 141, 708 S.E.2d at 778. Bostick was convicted of the murder of his neighbor, Polite, who died from carbon monoxide resulting from the arson of her home after she evidently suffered blunt force trauma to her head. Id. at 136-37, 708 S.E.2d at 775. The court found that there was no direct evidence against Bostick and the circumstantial evidence consisted of “(1) Polite’s car keys, calculator, and other items from her home were found in the Bostick family’s burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick’s mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on Bostick’s jeans excluded about ninety-nine percent of the population, the blood could not be matched to Polite’s DNA.” Id. at 141-42, 708 S.E.2d at 778. The court noted that the State did not introduce the weapon used to beat Polite in the head or any evidence concerning Bostick’s knowledge that Polite may have had money in the briefcase. Id. at 142, 708 S.E.2d at 778. The court found that, at most, this evidence raised only mere suspicion that Bostick committed the murder. Id. It accordingly found that the trial court erred in failing to direct a verdict in Bostick’s favor. Id.

Shortly after Bostick, the Supreme Court noted in State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011), that it has “repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict.” The court held that the

circumstantial evidence presented in Odems' case did not reasonably tend to prove his guilt, and thus failed the "*well-settled directive* that circumstantial evidence that is not substantial is insufficient to go to a jury." 395 S.C. at 592, 720 S.E.2d at 53 (emphasis added). The primary pieces of circumstantial evidence against Odems were: "(1) the fact that less than ninety minutes after the burglary, police located Petitioner in the getaway car with the burglars and the stolen goods; (2) Petitioner fled from law enforcement; and (3) Petitioner asked an uninvolved person to lie for him." *Id.* at 588, 720 S.E.2d at 51. The court found that even though Odems' overall actions may have appeared suspicious, mere suspicion is insufficient to support a guilty verdict. *Id.* at 590, 720 S.E.2d at 52. The evidence in Bostick and Odems was certainly yielded a greater suspicion of guilt than the marginal evidence presented in Brown's case.

"Touch" DNA is similar in characteristic to fingerprints, which our Supreme Court has found, even combined with other suspicious factors, insufficient for submission to the jury when the State fails to place the defendant at the scene of the crime, State v. Arnold, 361 S.C. 386, 389, 605 S.E.2d 529, 530-31 (2004), or fails to connect the placement of the fingerprint to the time the crime was committed, State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000); see also State v. Gilliam, 245 S.C. 311, 140 S.E.2d 480 (1965); State v. Bennett, 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014), *cert. granted* (Nov. 19, 2014); State v. Pearson, 410 S.C. 392, 764 S.E.2d 706 (2014), *cert. granted* (Mar. 4, 2015). Courts in other jurisdictions have held that fingerprints found on movable items or items open to the public are insufficient to sustain the conviction without evidence that the fingerprints were placed at the time of the crime. See C.E. v. State, 665 So.2d 1097, 1098 (Fla. Dist. Ct. App. 1996) ("Where fingerprint evidence found on the shattered glass of a

vehicle is relied upon to establish identity, the evidence must be such that the print could have been made only when the crime was committed.”); Lee v. State, 640 So.2d 126, 127 (Fla. Dist. Ct. App. 1994) (holding fingerprints on broken window pane at burglarized church were insufficient to sustain a conviction); State v. Bass, 278 S.E.2d 209, 212 (N.C. 1981) (“[W]hen the State relies on fingerprints found at the scene of the crime, in order to withstand motion for nonsuit, there must be substantial evidence of circumstances from which the jury can find that the fingerprints could have been impressed only at the time the crime was committed.”).

In United States v. Strayhorn, 743 F.3d 917, 923 (4th Cir. 2014), *cert. denied*, 134 S.Ct. 2689 (2014), the Fourth Circuit Court of Appeals held that evidence of a fingerprint on a movable object, in the absence of evidence regarding when the fingerprints were made, is insufficient to support a conviction unless the government produces sufficient additional incriminating evidence so as to allow a rational juror to find guilt beyond a reasonable doubt. In fashioning that framework for analysis, the court reviewed its prior decisions involving the sufficiency of fingerprint evidence. 743 F.3d at 922-23.

The Strayhorn court first recalled its statement in United States v. Corso, 439 F.2d 956 (4th Cir. 1971) (per curiam), that “the probative value of an accused’s fingerprints upon a readily movable object is highly questionable, unless it can be shown that such prints could have been impressed *only* during the commission of the crime.” Id. at 922 (citing Corso, 439 F.2d at 957) (emphasis in original). In Corso, the Fourth Circuit found that defendant’s fingerprint on a matchbook cover used to keep a door from locking was insufficient to support a burglary conviction. Id. The Strayhorn court noted that the remainder of the government’s evidence in Corso was either “without probative value” or

“constituted an accumulation of purely circumstantial evidence that was insufficient to permit the jury to find the defendant guilty beyond a reasonable doubt.” Id.

The court also discussed its decision in United States v. Van Fossen, 460 F.2d 38 (4th Cir. 1972), in which it held that the defendant’s fingerprints on two photographic negatives and one engraving plate could not sustain a conviction for counterfeiting because it was not supported by other evidence indicating that the fingerprints were imprinted at the time of a crime. Id. There, the court focused on the fact that “the trier of fact must be able to reasonably infer from the circumstances that the fingerprints were impressed at the time the crime was committed.” Id. Because the government failed to show when the defendant’s fingerprints were imprinted on moveable objects, “the prosecution rested on conjecture and suspicion and the jury could only have guessed that the imprinting occurred during the commission of the crime.” Id. at 922-23.

The Fourth Circuit then distinguished its decisions in United States v. Harris, 530 F.2d 576 (4th Cir. 1976) (per curiam) and United States v. Burgos, 94 F.3d 849 (4th Cir. 1996). 743 F.3d at 923. In Harris, the defendant’s fingerprints were on a note that read “this is a holdup” that was handed to a teller during a bank robbery. Id. In upholding the conviction, the court found it significant that the government presented additional incriminating evidence, namely, the defendant’s detailed confession, even though the defendant repudiated the confession before the trial. Id.; see also United States v. Anderson, 611 F.2d 504, 508–09 (4th Cir. 1979). In Burgos, the defendant’s fingerprints were found on a plastic bag containing cocaine base. 743 F.3d at 923. The Strayhorn court said “[c]rucially, we noted that the fingerprint ‘was not the only incriminating evidence establishing Burgos’s guilt; rather, there was an abundance of evidence

establishing that Burgos was guilt.” Id. (quoting Burgos, 94 F.3d at 874–75). That included “conclusive” incriminating testimony that the defendant “knew” that his co-conspirators had crack cocaine on them and that the plan was “to sell the dope” at a North Carolina university. Id. The Strayhorn court then wrote:

Viewing these cases holistically, they reveal that in challenges to convictions involving fingerprints on movable objects, in the absence of evidence regarding when the fingerprints were made, ***the government must marshal sufficient additional incriminating evidence so as to allow a rational juror to find guilt beyond a reasonable doubt.*** Although the government may meet this burden with circumstantial evidence, that evidence must be sufficiently incriminating to support the conviction.

Id. (emphasis added).

Turning then to the facts of Strayhorn’s case, where the fingerprint evidence consisted of one partial print on the duct tape used in the robbery, the court found that “[t]he duct tape is, without question, an easily movable object.” Id. The government’s expert conceded that he had no way to determine when the fingerprint was imprinted on the tape and that it could have been impressed even a year earlier. Id. It therefore found the probative value of the fingerprint evidence “highly questionable.” Id. The most significant additional piece of evidence the government offered was Strayhorn’s “possession” of the Colt Peacemaker gun taken during the robbery and found in the Cadillac that he was driving when he was stopped by the police two months later. Id. at 923-24. The court found that the gun was not “recently stolen” so as to permit an inference of theft and that Strayhorn’s possession of it was explained. Id. at 924. The court rejected the government’s argument that “Strayhorn’s conspiring with his brother to commit the second robbery is probative of his guilt on the first robbery,” calling it “little more than an impermissible propensity argument.” Id. It did not find that any of the

other evidence pointed to by the government was “helpful” in determining Strayhorn’s involvement in the robbery either. Id. Thus, the court found that the government failed to adduce “additional incriminating evidence which would allow a rational juror to find guilt beyond a reasonable doubt” and accordingly reversed Strayhorn’s convictions for Hobbs Act robbery and brandishing a firearm in relation to that robbery. Id.

In the present case, the video surveillance shows that the suspect who entered the Chuck E. Cheese was wearing a red bandana and wig. State’s Ex. 9 (DVD of Surveillance Video). The K-9 team that responded to the scene tracked a scent from the Check E. Cheese to a tree line across the parking lot, along the tree-line, and then along the side and back of the El Toro club. It was behind El Toro that the dog located a wig and bandana. R. 115, l. 5 – 116, l. 12. The only contributor identified was Brown. R. 259, ll. 5-18. However, this portable object could have been easily accessed by multiple individuals prior to the attempted robbery. In fact, DNA testing revealed that the bandana was handled or worn by at least two unidentified individuals other than Brown. R. 253, l. 18 – 258, l. 16. Similar to Strayhorn, the State’s own expert admitted that he could not determine when Brown’s DNA was actually transferred to the bandanna. R. 266, ll. 23-25. He also admitted that he was working with a “minute” amount of DNA and that different individuals “slough off” skin cells at different rates. R. 265, ll. 3-13; 268, ll. 4-19. Thus, this evidence only proves that Brown’s skin was in contact with the bandana at some point in time, but not that he is the suspect seen wearing the bandana in the surveillance video. Like Van Fossen, the jury could have only guessed that Brown’s DNA was actually left on the bandana during the commission of a crime.

With the only evidence against Brown being his DNA on a movable object and no evidence of when that DNA was left on the object, the State was required to “marshal sufficient additional incriminating evidence so as to allow a rational juror to find guilt beyond a reasonable doubt.” Strayhorn, 743 F.3d at 923. As discussed more fully supra in Parts I and II, the trial court erred in admitting Brown’s alleged statements to Martin that “DNA will convict me” and “I want to plead guilty.” However, even assuming *arguendo* that the statements were properly admitted, unlike Harris and Burgos, the remaining evidence of Brown’s alleged statements that “DNA will convict me” and “I want to pled guilty” are not “sufficiently incriminating to support the conviction.” Notably, contrary to the solicitor’s argument and trial court’s ruling, Brown’s alleged statements were not direct evidence, but rather circumstantial evidence. “Unlike direct evidence, evaluation of circumstantial evidence requires jurors to find that the proponent of the evidence has connected collateral facts in order to prove the proposition propounded—a process not required when evaluating direct evidence.” State v. Logan, 405 S.C. 83, 97, 747 S.E.2d 444, 451 (2013). “Analysis of circumstantial evidence is plainly a more intellectual process.” Id. at 97-98, 747 S.E.2d at 451.

Our Supreme Court has observed that this analysis requires two steps: “After concluding that a particular fact is true, the individual juror is called upon to ask: First, can I infer guilt from that fact? Second, if so, is there any reasonable explanation other than guilt?” Id. (citations omitted). Similarly here, if the jurors believed Martin’s testimony regarding Brown’s statements, they then had to engage in the two-step analysis of whether they could infer guilt from those statements, and if so, if there was any reasonable explanation other than guilt. See Logan, 405 S.C. at 97-98, 747 S.E.2d at 451.

When considered in context, the statement regarding DNA is not reflective of guilt, but rather the defendant's perception of the weight of the evidence as characterized by the police. Recognition of the potential weight that DNA evidence would have with a jury is common sense, not inculpatory. This is especially true where the officer neglected to tell Brown that the DNA of at least two other individuals was found on the item, which was not actually found at the Chuck E. Cheese. As discussed supra in Part I, the statement "I want to plead guilty" does not amount to a statement of guilt either. There are many reasons a defendant may be interested in pleading guilty despite being innocent of the crime. In this case, those include the evidence against him as "conveniently" portrayed by his interrogator and the harsh potential penalty he was facing. Thus, even Brown's alleged statements were only circumstantial evidence and were not sufficiently incriminating to allow a rational juror to find guilt beyond a reasonable doubt.

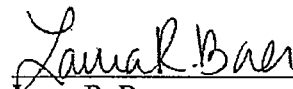
"The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict and a corresponding duty is imposed on this Court." State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). Here, it was the duty of the trial judge to grant the motion for directed verdict because, even viewing the circumstantial evidence in the light most favorable to the State, the evidence presented does not reasonably tend to prove Brown's guilt and fails the South Carolina Supreme Court's well settled directive that circumstantial evidence that is not substantial is insufficient to go to a jury. The State's evidence against Brown was entirely circumstantial – the location of his DNA on a movable object, i.e. the red bandanna, and the alleged incriminating statements he made. At best, this evidence raises

a suspicion of guilt. As discussed above, a mere suspicion is not sufficient evidence for submission to the jury. Accordingly, Brown's conviction should be reversed.

CONCLUSION

For the foregoing reasons, Appellant Michael Orlando Brown respectfully requests that this Court reverse his convictions and grant him a new trial (Issues I or II) or enter a directed verdict of acquittal (Issue III).

Respectfully submitted,



Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of December, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

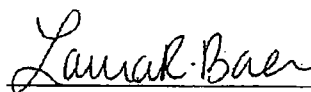
V.

MICHAEL ORLANDO BROWN,

APPELLANT

CERTIFICATE OF SERVICE

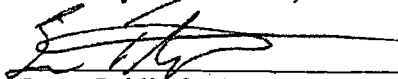
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of December, 2015.



Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of December, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

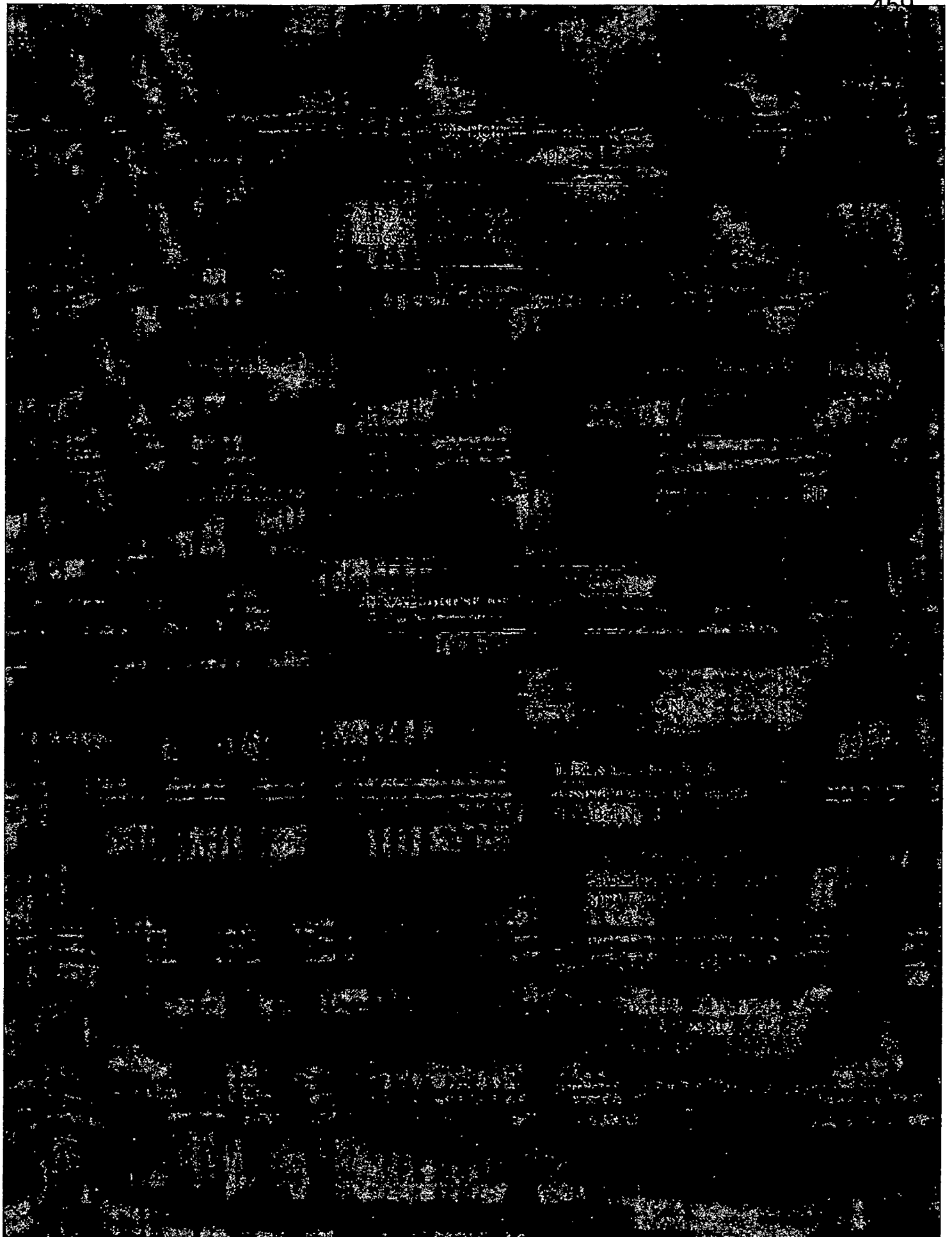


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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether Appellant's claim that the trial court erred in denying his pretrial motion to suppress his statement offering to plead guilty is preserved for appellate review where: (1) the Rule 403, SCRE, grounds argued in this appeal were never specifically raised to the trial court, and (2) Appellant failed to renew his motion at trial when testimony about the statement was introduced. Additionally, to the extent this Court determines this issue is preserved, whether the trial court properly admitted Appellant's offer to plead guilty where the probative value significantly outweighed any allegedly improper prejudicial effect.
2. Whether Appellant's claim that the trial court erred in denying his pretrial motion to suppress his incriminating statements to the police on grounds they were obtained in violation of his Fifth Amendment rights to remain silent and to counsel is preserved for appellate review where: (1) the grounds argued in this appeal were never specifically raised to the trial court, and (2) Appellant failed to renew his motion at trial when testimony about the statements was introduced. Additionally, to the extent this Court determines this issue is preserved, whether the trial court properly admitted Appellant's statements where they were made before he unambiguously invoked his Fifth Amendment rights?
3. Whether the trial court properly denied Appellant's motion for a directed verdict and submitted the case to the jury where the State presented direct evidence and substantial circumstantial evidence from which the jury could fairly and logically find that Appellant was guilty of attempted armed robbery.

STATEMENT OF THE CASE

Michael Orlando Brown (Appellant) was indicted at the April 2014 term of the grand jury for Richland County for attempted armed robbery (2014-GS-40-2050). He was represented by assistant public defenders Anastasia L. Walker and Alicia Dye of the Fifth Circuit Public Defender's Office. Respondent (the State) was represented by assistant solicitors K. Luck Campbell, Meghan L. Walker, and Sandra V. Moser of the Fifth Circuit Solicitor's Office. On August 4-5, 2014, Appellant proceeded to trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable James R. Barber to life imprisonment without the possibility of parole pursuant to Section 17-25-45 of the South Carolina Code. Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On the night of January 3, 2013, while a small group of employees was cleaning up the Chuck E. Cheese restaurant in Columbia prior to closing, an armed gunman wearing a bandana over his face and a wig entered the restaurant, grabbed an employee, put a gun to his back, and demanded money before fleeing on foot. Portions of the attempted armed robbery were captured on surveillance video. Shortly thereafter, the police responded to the scene and a K-9 officer was able to track the man's trail away from the building. The dog led the police to a neighboring property where they found a red bandana and a wig matching the description of those used in the attempted armed robbery. These items were tested for DNA and the bandana was connected to Appellant, leading to his arrest. (R.p.66, line 16-p.72, line 14).

Pretrial Motion to Suppress Appellant's Statement: DNA

After voir dire and jury selection, the jury was excused while the trial court addressed several pretrial matters, including holding a Jackson v. Denno¹ hearing to assess the voluntariness of an oral statement Appellant made to the police following his arrest. (R.p.10, line 6-p.26, line 5). Appellant initially said he was challenging the portion of his statement where, when he was asked to provide a sample of his DNA, he allegedly said: "No, I'm not giving it, [because] that will convict me." (R.p.25, lines 11-14).

The State called Richland County Sheriff's Department Investigator Robert Martin to the stand.² He testified he interviewed Appellant in his office on March 14,

¹ Jackson v. Denno, 378 U.S. 368 (1964).

² The senior manager who was in charge of operating the Chuck E. Cheese on the night of the attempted armed robbery was Ronnie Lee Kennedy Martin, Jr. (R.p.230, lines 1-25). To avoid confusion, the State

2013, after Appellant was arrested. Martin described an “advice of rights” form he used to advise Appellant of his Miranda³ rights both orally and in writing. He explained the form listed the standard rights and included individual boxes he could check after covering each of those right with Appellant including: (1) the right to remain silent with the understanding that anything he said could be used against him in court, (2) the right to talk to a lawyer prior to being questioned, (3) the right to have a lawyer present during questioning, (4) the right to an appointed lawyer if he could not afford an attorney, and (5) the right to stop answering questions at any time. Martin testified the form was signed by Appellant and witnessed by Martin and included a section titled “waiver of rights” wherein Appellant acknowledged he read and understood his rights and was willing to talk to the police and answer questions. Martin testified Appellant seemed to understand what he was saying, indicated he was able to read and write, and said he understood the rights he was given. He testified that Appellant was not denied food, water, or use of a bathroom, and understood that at any point he could stop talking. (R.p.24, line 10-p.33, line 10).

Martin next described the questions he asked and the answers Appellant gave after waiving his rights. Martin asked why Appellant’s DNA would be left at the scene of the crime and Appellant could not give a valid reason. He testified that at some point during the conversation they began talking about the possibility of Appellant giving a DNA sample but Appellant said no, that it would convict him. Martin explained that Appellant never denied the validity of the DNA evidence and said he was not going to

will refer to Investigator Robert Martin as “Martin” or Investigator Martin, and senior manager Ronnie Martin as “Ronnie.”

³ Miranda v. Arizona, 384 U.S. 436 (1966).

challenge the DNA because he knew it would be enough to convict him. Martin also testified Appellant asked about possibly of being charged with a lesser charge because the attempted armed robbery carried the possibility of a life sentence; however, Martin explained he could not make deals and any negotiations would be between his attorney and the solicitor. The solicitor asked Martin if he would have stopped the conversation if Appellant told him he wanted to stop talking. Martin testified he did in fact stop the interview when Appellant indicated he did not want to talk about the case anymore. (R.p.33, line 11-p.36, line 8). On cross-examination Martin testified that when he asked Appellant for DNA, Appellant declined until he had spoken to an attorney; however, Martin could not remember exactly when he asked Appellant for the DNA. He testified it was either during or at the end of the conversation. (R.p.36, line 12-p.41, line 15).

The State did not put up any additional witnesses and Appellant did not testify on his own behalf. Instead, Appellant's counsel argued that since Martin was unable to recall exactly when Appellant made the statement about DNA being able to convict him, it may have been made after Appellant invoked his Sixth Amendment right to counsel, and therefore should be excluded. The solicitor responded that Martin unequivocally testified he stopped the conversation as soon as Appellant said he wanted to talk to an attorney. Based on the testimony, the trial judge made a factual finding that Appellant first stated he was not going to give a DNA sample because it would convict him and at some point later said he needed to talk to an attorney, which is when Martin stopped the conversation. The judge expressed concern about admitting testimony about Appellant facing life in prison but the solicitor assured the judge the State would not elicit such testimony. In regard to the DNA, the trial judge held he would not allow any testimony

that Appellant refused to give a DNA sample, but was inclined to allow testimony about the portion of the statement where he said: "I know DNA will convict me." Appellant continued to argue the DNA statement should not come in because Martin's notes are confusing as to when it was made; however, the trial judge ruled that was "a matter of believability" which Appellant could explore on cross-examination. The trial judge reserved making a final ruling until the parties had an opportunity to do additional research over lunch. (R.p.41, line 23-p.47, line 23).

Following the lunch recess, the trial judge asked if the parties had any additional authority or arguments. Appellant's counsel advised she was concerned about admitting only a portion of Appellant's statement about the DNA evidence because in may be confusing to the jury when it is taken out of context. The trial judge ultimately ruled in accord with his previous inclination, that Martin would be allowed to testify Appellant said "DNA will convict me," but would not be allowed to say that Appellant refused to submit himself to a DNA test. (R.p.57, line 17-p.58, line 11).

Pretrial Motion to Suppress Appellant's Statement: Offer to Plead

After Martin's pretrial testimony, Appellant made an additional motion to suppress any testimony about the portion of his statement where he made an "offer to plead guilty" to a lesser charge. Initially, the trial judge found the State should not go into the fact Appellant offered to plead; however, the solicitor argued the statement should not be suppressed because it was not made during a plea negotiation with her office and instead was an admission of guilt. Appellant responded: "I would still argue it is prejudicial and probative value. I don't think that is a confession, Your Honor." (R.p.49, line 7-p.50, line 23). Following the lunch recess, the trial judge asked if the

parties had any additional authority or arguments. The solicitor noted Appellant was seeking to exclude the statement pursuant to Rule 410(4), SCRE, and argued the rule was not applicable because the statement was not made to a prosecuting attorney and was therefore not a part of a plea negotiation. Appellant's counsel responded that since Appellant was talking to law enforcement and was asking to plead to a lesser charge, the statement was clearly made in an attempt to negotiate a plea and should be suppressed under Rule 410. Appellant made no mention or reference to Rule 403, SCRE, or any other rule of evidence, instead conceding Rule 410 only mentions statements made in the course of discussions with a prosecuting attorney. The trial judge ruled Appellant's statement offering to plead guilty to a lesser charge would be admitted. (R.p.53, line 13-p.57, line 16).

Trial

After the jury was sworn, the trial judge gave preliminary instructions and invited the parties to make opening statements. (R.p.59p.66). The solicitor briefly described the State's theory of the case and outlined the witnesses and other evidence the State expected to present during trial. She did not mention Appellant's statements to Martin. (R.p.66-p.75). Appellant responded by arguing that someone else committed the attempted armed robbery. He did not dispute his DNA was on the bandana found near the scene but argued that, since there were no witnesses able to make a positive identification, the presence of DNA was not sufficient for the State to meet its burden of proof. Appellant explained the jury would hear about statements he made to Investigator Martin, but he asked them to consider those statements in the context in which they were made and to find him not guilty. (R.p.72-p.79).

The State first called Investigator John Robert Sullivan, Jr., of the Richland County Sheriff's Department called to the stand. Sullivan testified he was working patrol duty on the night of January 3, 2013, and responded to a call about a robbery in progress at the Chuck E. Cheese on Burning Tree Road in Richland County. When he arrived at the scene, Sullivan spoke to several employees and learned a black male suspect had entered the restaurant brandishing a handgun. The suspect was described as wearing a wig, a red bandana, and dark clothing. Sullivan testified he was able to watch a security video recording of the incident which showed the suspect running behind the Chuck E. Cheese towards El Toro, another restaurant which was several feet away. He explained the wig, red bandana, dark clothing, and white shoes were visible in the video. Sullivan testified he called a K-9 unit to see if they could track the suspect and that after arriving, the K-9 officer found a wig and a red bandana on the back side of El Toro. The red bandana, the wig, and several photographs of the scene were admitted into evidence without objection. Sullivan testified that the police temporarily detained a man wearing dark colored clothing who was walking by the scene based on the manager's indication that he might be the intruder; however, after further investigation, that man was let go later that night. (R.p.79-p.90).

Next the State called Richland County K-9 officer Stephen Pearrow to the stand. He described being dispatched to the Chuck E. Cheese on January 3, 2013, and the efforts he made to track the scent of the person who tried to commit the robbery. Pearrow testified his dog was able to immediately pick up a scent which led out the door of the Chuck E. Cheese and directly to El Toro, where he discovered a wig and a bandana. The dog continued trying to track the scent but lost it in a small parking lot next to El Toro.

Pearrow said this is likely because this is where the suspect got into a car. He testified he and the dog continued searching the area for a weapon but never found one. (R.p.105-p.119).

The State then called the general manager of the Chuck E. Cheese, Ronald Stewart Jones, Jr., to the stand. He was not present at the time of the crime, but was called out to the restaurant shortly afterwards to take statements from his employees and to play the security camera video recording for the officers. (R.p.121-p.124). Next, Kadeshia Green testified for the State. She was a cashier at Chuck E. Cheese on January 3, 2013, and was working with Kyrie Green to take down the salad bar at the time of the incident.⁴ Kadeshia testified that sometime between 9 and 10 that night she saw a man wearing dark clothing, a red bandana, a wig, black shades, and a mustache come into the store and start reaching into his pocket. Because the man did not look familiar, her first instinct was to run. As Kadeshia and Kyrie ran towards the back of the store, she saw the man holding a gun to Kyrie's back. She alerted Ronnie, the on-duty manager, that the man had a gun and as they ran towards the back bathroom of the store she saw the man leave through the front door. (R.p.126-p.134).

Kyrie Green then took the stand to describe the attempted armed robbery from his perspective. He worked as a game room attendant at Chuck E. Cheese and on the night of January 3, 2013, he was helping to clean-up and close down the restaurant. Kyrie explained that although the store did not close until 10 p.m., the customers cleared out pretty early so they were cleaning up around 9:15 or 9:20 p.m. He said there were three other employees in the restaurant besides himself: Kadeshia, Ronnie, and a cook named Anna. Kyrie testified he was at the salad bar when a black man came in wearing a dark

⁴ Kadeshia Green and Kyrie Green are not related. (R.p.1436, lines 15-18).

brown wig, a red bandana around his neck, dark clothing, white shoes, and glasses. He said Kadeshia saw the man first, said he had a gun, and ran. When Kyrie turned to look, the man already had the gun out and was coming towards him. Kyrie testified the man got very close, ordered him to turn around, and told him to walk towards the back. He could feel the gun directly in the center of his back. When they encountered Ronnie coming out of the office, the man pushed Kyrie towards the wall and went towards Ronnie. Kyrie testified that the man stopped, looked at him, Kadeshia, and Ronnie and then ran out the front door. He then repeated portions of his testimony while the video recording was played, pointing out particular events as they occurred. Kyrie testified the entire event felt like it took five minutes even though the video showed it took only 25 seconds. He testified that when the man pointed the gun at him, he said "take me to the money." (R.p.140-p.155). On cross-examination Kyrie admitted he initially pointed out another man who was later walking near the scene as the possible robber because he was wearing similar glasses, but he then realized that man was not the person who tried to rob the store. (R.p.155-p.157).

Investigator Martin: Appellant's Statements

Next, the State called lead investigator Robert Martin to the stand. Martin testified the case was assigned to him for follow up investigation after the initial documentation from the crime was complete. He reviewed notes from the reporting officers and statements from the witnesses, made attempts to retrieve video recordings from the store surveillance cameras, and requested that the evidence that had been collected be submitted for DNA testing. When the test results came back with a match to Appellant, he became the focus of the investigation. Martin testified he had Appellant

arrested and brought to the station to talk. Martin described an "advice of rights" form he used to advise Appellant of his Miranda rights both orally and in writing. He first asked some basic background questions to make sure Appellant had graduated high school, was not under the influence of any alcohol or drugs, and was not suffering from lack of food or sleep. Martin explained the form listed the standard rights and included individual boxes he could check after covering each of those right with Appellant including: (1) the right to remain silent with the understanding that anything he said could be used against him in court, (2) the right to talk to a lawyer prior to being questioned, (3) the right to have a lawyer present during questioning, (4) the right to an appointed lawyer if he could not afford an attorney, and (5) the right to stop answering questions at any time until he talked to a lawyer. Martin testified the form was signed by Appellant and witnessed by Martin and included a section titled "waiver of rights" wherein Appellant acknowledged he read and understood his rights, was willing to talk to the police and answer questions, had not been promised anything, and had not been pressured or coerced to talk. Martin testified Appellant seemed to understand what he was saying, indicated he was able to read and write, and said he understood the rights he was given. He testified he did not threaten or pressure Appellant to talk and did not make him any promises. (R.p.162, line 6-p.174, line 14).

Martin next described the conversation he had with Appellant after Appellant waived his rights. He said Appellant wanted to know more about the facts of the case because he was only vaguely familiar with those facts from being read the language in the arrest warrant. Martin testified they discussed DNA and Appellant wanted to know what kind of DNA was found. He testified he just told Appellant it was Appellant's

DNA. Martin testified that at that point, Appellant said he was not going to challenge the DNA and that he wanted to be charged with something lesser if he could. Martin testified Appellant said he knew the DNA would convict him, he wanted a less severe charge, and he wanted to discuss a plea. He testified Appellant clearly stated he wanted to plead guilty. Martin told appellant he was not at liberty to make plea offers and that anything of that nature would be between his attorney and the solicitor. Eventually, Martin terminated the interview after Appellant wanted to make a phone call to his girlfriend. Appellant did not object to Martin's testimony about his statements, either in regard to the comment that DNA would convict him, or his offer to plead guilty to a lesser charge. He did not attempt to renew his pretrial motion to suppress in any fashion, and he failed to advise the trial judge that Martin's trial testimony was subject to his previous objections. (R.p.174, line 15-p.177, line 12).

Martin testified that before the interview ended he questioned Appellant about certain physical characteristics of the robber and the timeline. Appellant told Martin he had been to that Chuck E. Cheese in 2011 or 2012 for a birthday party but denied being there since, and denied being there on the day of the robbery. Martin testified Appellant also denied owning a gun and denied ever wearing a wig, and suggested someone may have been trying to frame him by planting his DNA on something from the scene. Martin clarified that Appellant's call to his girlfriend came during their conversation, before the interview terminated. (R.p.177-p.186). For the remainder of the first day of trial and the beginning of the second day, Appellant cross-examined Martin in regard to particular pieces of evidence and particular aspects of his investigation. (R.p.186-p.229).

Remainder of Evidence

The State next called the manager from Chuck E. Cheese, Ronnie Lee Kennedy Martin, Jr., to the stand. Ronnie was operating the restaurant on January 3, 2013, when the attempted robbery took place. He testified he noticed a suspicious person across the street in the Motel 6 parking lot prior to the incident, but did not think anything of it. He went into his office to do paperwork when Kadeshia suddenly came running in to say they were getting robbed. Ronnie testified they ran out of the kitchen/office area when he got a glimpse of a light skinned black man with an average build holding a black gun. He testified the man was wearing a red bandana, glasses, a dark Hollister fleece, and a wig. As he and Kadeshia headed towards the back bathroom, the man turned and ran out the front door. Ronnie then called the police. (R.p.229-p.238).

Finally, the State called DNA analyst John Barron of the Richland County Sheriff's Department to the stand. After hearing about Barron's education and training the trial court qualified him as an expert in DNA analysis without objection. Barron explained the basic science behind DNA including how it is deposited on objects, and how it is collected, tested and identified. He testified the lab received a wig, a bandana, and buccal swabs from both Appellant and an individual named Michael Roscoe for testing. Barron testified there was no human DNA on the wig but there was DNA on the bandana from which he could develop a DNA profile. He testified there was a mixture of DNA on the bandana and described the difference between a major contributor and a minor contributor when there is such a mixture. Barron testified the major contributor of DNA on the bandana was "easily discernible" and contributed nine to ten times as much DNA as the minor contributor. The DNA from the minor contributor was in sufficient

quantity to develop a profile that could be compared to a known sample but not to the entire DNA database. The bandana also contained DNA from a third contributor but it was such a small amount it was insufficient to develop a profile for any kind of comparison. Barron testified the major contributor was a match to Appellant. He explained that the population of the world is approximately 7 billion (7,000,000,000) and that, based on a statistical analysis, the major contributor's DNA was 9 sextillion (9,000,000,000,000,000,000) times more likely to be the DNA of Appellant versus a random individual. Barron opined that within all reasonable scientific certainty, the DNA on the bandana belonged to Appellant. He testified the major contributor in this case would have come in very strong contact with the bandana and noted that Michael Roscoe was excluded as either the major or minor contributor. (R.p.246-p.265). On redirect, Barron testified that in his scientific opinion, Appellant's DNA was on the bandana. (R.p.269-p.271).

Motion for Directed Verdict

At the close of Barron's testimony, the jury exited the courtroom and the solicitor advised the trial court the State had no further witnesses. Appellant then told the trial court he would not be putting up any evidence in defense. Because the jury was already out, the trial court allowed Appellant to move for a directed verdict and argue his motion before the State rested on the record. Appellant argued that even when taken in the light most favorable to the State, the State failed to provide a basis for the jury to find him guilty beyond a reasonable doubt. He contended the circumstantial evidence presented did not rise to the level of substantial circumstantial evidence required to submit the case to the jury, and that since there was no physical evidence placing him

directly at the scene and no eyewitness identification, the evidence only raised a mere suspicion of guilt. (R.p.272, line 22-p.275, line 20). The solicitor responded that the State had presented direct and substantial circumstantial evidence which warranted sending the case to the jury. (R.p.275, line 21-p.276, line 21).

The trial judge denied Appellant's motion after finding the State had presented both substantial circumstantial evidence and direct evidence of Appellant's guilt. The trial court found the presence of Appellant's DNA on the bandana which was discovered when the K-9 unit tracked a scent directly from the scene of the crime to the adjoining property constituted substantial circumstantial evidence of guilt. The trial court also found Appellant's statements to Investigator Martin constituted direct evidence of guilt in the form of a confession. (R.p.277, line 12-p.279, line 1). Appellant was then sworn and questioned in regard to his decision not to testify, and when the jury returned, both the State and the defense rested. (R.p.279-p.287).

Closing Arguments, Jury Charge, & Verdict

In the State's closing argument, the solicitor went through all of the evidence that had been presented but primarily focused on the presence of Appellant's DNA on the red bandana located by the tracking dog. She described Appellant's offer to plead guilty as direct evidence of guilt and mentioned it several times during her close. The solicitor also referenced Appellant's statement that the DNA was enough to convict him. (R.p.287-p.307). Appellant's closing argument focused on his theory of defense: that the person who wore a wig and bandana while robbing the Chuck E. Cheese was someone other than Appellant. He argued the inadequacy of the police investigation, the lack of

eyewitness identification, and the omissions in Investigator Martin's report all should lead the jury to conclude that he was an innocent man. (R.p.307-p.321).

The trial judge charged the jury on the presumption of innocence, the State's burden of proof, reasonable doubt, and direct and circumstantial evidence. He also charged the jurors on their roles as the finders of fact and as the sole judges of the credibility of witnesses, including expert witnesses. The judge charged the jury in regard to its ultimate duty to determine whether Appellant made the statement he allegedly made to the police and whether that statement was made voluntarily. He charged the jury that Appellant's decision not to testify could not be considered in any way and explained their duty to accept and apply the law as charged. Finally, the trial judge charged the elements of the crime and described the verdict form. Neither party took exception to the jury charge. (R.p.321, line 4-p.335). After deliberating for approximately two hours, the jury asked to rehear portions of the testimony. Upon hearing the requested testimony and further deliberations, the jury found Appellant guilty of attempted armed robbery. (R.p.335-p.340). Appellant renewed all objections and motions previously overruled or denied and moved for new trial on grounds that it was an unusually short deliberation time. The trial court denied all motions and sentenced Appellant to life imprisonment without the possibility of parole pursuant to Section 17-25-45 of the South Carolina Code. (R.p.345-p.348).

ARGUMENT

I.

Appellant's claim that the trial court erred in denying his pretrial motion to suppress his statement offering to plead guilty is not preserved for appellate review because: (1) the Rule 403, SCRE, grounds argued in this appeal were never specifically raised to the trial court, and (2) Appellant failed to renew his motion at trial when testimony about the statement was introduced. Additionally, to the extent this Court determines this issue is preserved, the trial court properly admitted Appellant's offer to plead guilty where the probative value significantly outweighed any allegedly improper prejudicial effect.

Appellant argues the trial court erred in admitting his statement to the police offering to plead guilty to a lesser offense because the probative value of the statement was outweighed by the unduly prejudicial effect under Rule 403, SCRE.⁵ He acknowledges the statement did not constitute an inadmissible prior plea negotiation pursuant to Rule 410, SCRE; however, he maintains it nevertheless constituted an "informal plea discussion" and therefore should still have been excluded under Rule 403. Appellant contends that "a policy of allowing such indefinite statements or inquiries to be used against a defendant offends the presumption of innocence and requirement that the State bear the burden of proving its case beyond a reasonable doubt." (Brief of Appellant, p.20-p.21). He argues "the policy considerations in favor of plea agreements and common sense weigh in favor of exclusion under Rule 403." (Brief of Appellant, p.24). The State disagrees and submits Appellant's argument should be denied and dismissed on several grounds.

⁵ Rule 403 gives the trial court discretion to exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice" Rule 403, SCRE (emphasis added). The threshold articulated by Appellant in this appeal does not appear in the Rules.

First, the argument is not preserved for appellate review. By failing to specifically challenge admission of the offer to plead guilty under Rule 403, Appellant failed to preserve his Rule 403 argument for appeal. Similarly, by failing to raise a contemporaneous objection when the statement was actually introduced into evidence at trial, Appellant waived his right to pursue this argument on appeal. In any event, the trial court properly admitted Appellant's statement offering to plead guilty because the probative value significantly outweighed any allegedly improper prejudicial effect. For all of these reasons, Appellant's Rule 403 argument should be denied and dismissed with prejudice, and Appellant's conviction should be affirmed.

Issue Preservation

Appellant's Rule 403 argument is not preserved for appellate review for two reasons. First, it is not preserved because it was not specifically raised to and ruled upon by the trial court. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003).

The South Carolina Rules of Evidence provide that:

Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . [i]n case the ruling is one admitting evidence, a **timely objection or motion to strike appears of record, stating the specific ground of objection**, if the specific ground was not apparent from the context.

Rule 103, SCRE (emphasis added). This rule is generally in accord with prior South Carolina law which requires a contemporaneous objection with specific grounds to preserve an error for review. State v. Byers, 392 S.C. 438, 446, 710 S.E.2d 55, 59 (2011) ("An objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error."); State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994) (finding that a contemporaneous objection is required to preserve an issue for

appellate review); State v. Bailey, 253 S.C. 304, 170 S.E.2d 376 (1969) (holding that specific grounds are required and that a general objection preserves nothing).

Here, the only objection Appellant initially raised in regard to his statement offering to plead guilty was that it should be inadmissible because it was made as part of a plea negotiation. Although Appellant's counsel made the confusing comment that: "I would still argue it is prejudicial and probative value," she never specifically moved to exclude the testimony pursuant to Rule 403, SCRE, and she never claimed the probative value was "substantially outweighed by the danger of unfair prejudice" as set forth in the Rule. Appellant certainly never made a policy argument that admission of the statement would offend the presumption of innocence, the State's burden of proof, or common sense. As a result, the trial court was not given an opportunity to make a ruling on the main thrust of the argument Appellant is now presenting on appeal. Because the claims now being argued in this appeal were neither raised to nor ruled upon by the trial court with sufficient specificity, they are not preserved for review. Rule 103, SCRE; Byers, supra; Hoffman, supra.

Second, Appellant's Rule 403 argument is not preserved because Appellant failed to renew his pretrial objection when the State actually elicited testimony about that statement during trial. Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be

made at the time the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993).

“However, where a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection.” State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (emphasis added); see State v. Wiles, 383 S.C. 151, 156-57, 679 S.E.2d 172, 175 (2009) (“This exception is based on the fact that when the trial court’s ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection.”).

Here, five witnesses testified on behalf of the State between the trial court’s ruling and the time Investigator Martin was called to the stand. (R.p.79-p.157). The State proceeded to elicit detailed trial testimony from Martin regarding Appellant’s statement, including his offer to plead guilty. Martin described Appellant’s arrest, the administration of Miranda rights, Appellant’s knowing and voluntary waiver of those rights, and his statement offering to plead guilty. Appellant did not object to any of this testimony during the trial and did not ask the court to note or otherwise address his pretrial objections. (R.p.174-p.177). Although Appellant later attempted to renew all objections and motions after the verdict was rendered (R.p.345-p.348), this objection was too late to sufficiently preserve his pretrial challenge to admissibility of his statement for appellate review. Schumpert, *supra*. Thus, for both of these reasons Appellant failed to preserve his Rule 403 argument for appeal, and his conviction should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Manning, 400 S.C. 257, 264, 734 S.E.2d 314, 317 (Ct. App. 2012). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id. The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant. State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006); State v. Rice, 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct. App. 2007). An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support. State v. Irick, 344 S.C. 460, 463, 545 S.E.2d 282, 284 (2001); State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003). To the extent this Court finds Appellant's Rule 403 argument was sufficiently preserved, it is nevertheless without merit.

Law / Analysis

Appellant's offer to plead guilty was clearly relevant to prove his identity, particularly in light of his defense that someone else committed the attempted armed robbery. Indeed, as found by the trial judge, the statement constituted direct evidence of guilt in the form of a confession. As direct evidence, the statement's probative value significantly outweighed any danger of unfair prejudice. In fact, the only prejudice to Appellant came from the legitimate probative force of that evidence. It was the same

prejudice suffered by any defendant who freely, voluntarily and knowingly confesses to a crime. Thus, the trial court properly refused to exclude it under Rule 403, SCRE.

Relevance

As a general rule, all relevant evidence is admissible. State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000); Rule 402, SCRE. Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. In the Matter of Care and Treatment of Corley, 353 S.C. 451, 577 S.E.2d 451 (2003); State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002); Rule 401, SCRE (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”). Here, the identity of the individual who committed the attempted armed robbery was of consequence to the jury’s determination of guilt or innocence at trial, particularly where Appellant presented a defense that he did not commit the crime. (R.p.72-p.79; p.307-p.321). Appellant’s offer to plead guilty to a lesser offense had a tendency to make the determination of the identity of the attempted armed robber more probable than it would be without the testimony; therefore Appellant’s statement was relevant. Rule 401, SCRE.

Rule 403, SCRE: Probative Value

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE; State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000). “To show prejudice, there must be a reasonable probability that

the jury's verdict was influenced by the challenged evidence." State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). Further, Rule 403, SCRE, requires "unfair prejudice" before the evidence will be excluded. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." Id. at 529, 732 S.E.2d at 229. A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). The appellate courts review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. Id. at 358, 543 S.E.2d at 593. See Aleksey, 343 S.C. at 35, 538 S.E.2d at 256 (finding the trial judge is given broad discretion in ruling on questions concerning relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Here, the undue prejudice Appellant appears to posit is that his unsolicited offer to plead guilty might make the jurors believe he was guilty. Indeed it might. In fact, this is precisely why the statement is probative. Appellant relies on a host of policy considerations which support the inadmissibility of statements made in true plea negotiations with a prosecuting attorney; however, all of those considerations are currently incorporated into Rule 410, SCRE, which only excludes statements "made in

the course of plea discussions with an attorney for the prosecuting authority.” Appellant argues these “policy considerations in favor of plea agreements and common sense weigh in favor of exclusion under Rule 403, SCRE.” (Brief of Appellant, p.24). The State submits just the opposite is true. Limiting the rule to discussions made with prosecuting attorneys demonstrates a clear legislative policy NOT to exclude confessions made to law enforcement officers or others who are not prosecuting attorneys, even when the defendant claims to be trying to negotiate a plea when he confesses. To the extent our Legislature wishes to expand the underlying policy considerations so that they cover any and all offers to plead guilty, including those to law enforcement officers, it can do so through legislative action. Otherwise, our current rules of evidence do not support suppression of this highly relevant evidence in Appellant’s case. As a result, the unfair prejudice claimed by Appellant simply does not exist. Instead, the probative value of the offer to plead guilty supports the trial court allowing it into evidence.

Appellant states: “it is not difficult to understand why Brown would have inquired about the possibility of a plea or stated that he intended to plead guilty at the time of his interrogation despite being innocent of the attempted armed robbery.” He goes on to argue: “This cannot amount to a confession, as it is not evidence of consciousness of guilt.” (Brief of Appellant, p.25). While these may be perfectly legitimate arguments to make to the jury regarding the weight of the evidence, they do not justify exclusion of relevant evidence from the jury’s consideration. Appellant has shown no abuse of discretion and no exceptional circumstances to warrant reversing the trial court’s discretionary ruling to admit his offer to plead guilty into evidence. Douglas, supra; Irick, supra. Appellant’s conviction should be affirmed.

II.

Appellant's claim that the trial court erred in denying his pretrial motion to suppress his incriminating statements to the police on grounds they were obtained in violation of his Fifth Amendment rights to remain silent and to counsel is not preserved for appellate review because: (1) the grounds argued in this appeal were never specifically raised to the trial court, and (2) Appellant failed to renew his motion at trial when testimony about the statements was introduced. Additionally, to the extent this Court determines this issue is preserved, the trial court properly admitted Appellant's statements where they were made before he unambiguously invoked his Fifth Amendment rights.

Appellant argues the trial court erred in admitting his statements to the police that "DNA will convict me" and that he wanted to plead guilty, because those statements were made after he had invoked his Fifth Amendment rights against self-incrimination and to counsel. He argues that because Investigator Martin was unable to provide a precise timeline of the interview, his testimony did not support the trial judge's finding that Appellant made the incriminating statements prior to the assertion of his constitutional rights. (Brief of Appellant, p.28). The State disagrees and submits Appellant's argument should be denied and dismissed on several grounds.

Issue Preservation

Appellant's Fifth Amendment argument it is not preserved for appellate review because it was not specifically raised to and ruled upon by the trial court. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). At the suppression hearing, Appellant's counsel argued that since Martin was unable to recall exactly when Appellant made the statement about DNA being able to convict him, it may have been made after Appellant "essentially invoked his Sixth Amendment Right to Counsel," and therefore should be excluded. Counsel said she was concerned the statement was made "outside

the parameters of Miranda,” but she never specifically mentioned the Fifth Amendment, Appellant’s privilege against self-incrimination, or Appellant’s right to remain silent. (R.p.41, line 23-p.47, line 23). Even after being given additional time to conduct research Appellant’s counsel did not say anything to the trial court about the Fifth Amendment. (R.p.57, line 17-p.58, line 11). As a result, the trial court was not given an opportunity to make a ruling on the main thrust of the argument Appellant is now presenting on appeal. Because the claims now being argued in this appeal were neither raised to nor ruled upon by the trial court with sufficient specificity, they are not preserved for review. Rule 103, SCRE; Byers, supra; Hoffman, supra.

Appellant’s Fifth Amendment argument is also not preserved because he failed to renew his pretrial objection during trial. As noted above, five witnesses testified on behalf of the State between the trial court’s ruling on Appellant’s pretrial motion to suppress and the time Investigator Martin was called to the stand. (R.p.79-p.157). The State then elicited trial testimony from Martin regarding Appellant’s statement that DNA would convict him and his offer to plead guilty. Appellant did not object to any of this testimony during the trial and did not ask the court to note or otherwise address his pretrial objections. (R.p.174-p.177). Thus, as with Issue I above, this argument is not preserved.

In an attempt to excuse his failure to preserve this issue for appeal, Appellant argues that the intervening witnesses were not relevant to the suppression of the statements and therefore they presented no new basis for seeking suppression or for the trial court changing its ruling. He contends this means no further objection was necessary and would have been futile, thereby qualifying him for the narrow exception to

our rules of error preservation described above. The State disagrees. The intervening witnesses set the stage for Appellant making his incriminating statements to Investigator Martin because they explained exactly how the police discovered the red bandana which contained Appellant's DNA. From the victims' descriptions of the perpetrator, to the dog tracking a scent away from the scene, to the discovery of the red bandana nearby, these witnesses provided the trial judge with extensive background information and context regarding Appellant making the incriminating statements. Indeed, it was the DNA match on the red bandana which led to Appellant's arrest and which colored his entire post-arrest interview with Martin. Thus, contrary to Appellant's assertion, a contemporaneous objection was crucial to preserve his motion to suppress under the circumstances of this case. The analysis proposed by Appellant would result in the exception swallowing the rule, thereby eliminating the long established requirement for renewing an objection at trial once the trial court had made an adverse pretrial evidentiary ruling. Where five fact witnesses have testified for the State, the trial court's ruling was not made "immediately prior to the introduction of the evidence in question." Appellant's argument is not preserved for appellate review. Schumpert, supra.

Law / Analysis

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Manning, 400 S.C. 257, 264, 734 S.E.2d 314, 317 (Ct. App. 2012). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.

The Fifth Amendment to the United States Constitution provides: "No person shall be compelled in any criminal case to be a witness against himself" U.S. Const.

amemd. V. The Fifth Amendment's right against self-incrimination was made applicable to the individual states through the Fourteenth Amendment. U.S. Const. amend. XIV; Malloy v. Hogan, 378 U.S. 1, 6 (1964). In interpreting the Fifth Amendment, the United States Supreme Court has held that the prosecution may not use statements stemming from the custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards. Miranda, 384 U.S. at 444. These safeguards are intended to prevent government officials from using the coercive nature of confinement to extract confessions that would not otherwise be given. Arizona v. Mauro, 481 U.S. 520, 529-30 (1987). "The main purpose of Miranda is to ensure that an accused is advised of and understands the right to remain silent and the right to counsel." Berghuis v. Thompkins, 560 U.S. 370, 383 (2010). Both of these rights protect the privilege against compulsory self-incrimination by requiring an interrogation to cease when either right is invoked. Id. at 381. To invoke either the right to counsel or the right to remain silent a suspect must do so "unambiguously." Id. at 381-82; State v. Moses, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010).

Here, Martin testified he stopped the interview with Appellant as soon as Appellant indicated he did not want to talk about the case anymore. (R.p.33, line 11-p.36, line 8). Although Martin's testimony regarding the timing of: (1) Appellant saying the DNA from the scene would convict him, (2) Appellant asking to plead guilty to a lesser offense, (3) Martin requesting a DNA sample, and (4) Appellant declining that request until he had spoken to an attorney was not precise, Martin never wavered from his testimony that he terminated the interview when Appellant unambiguously invoked his right to remain silent by saying he did not want to talk anymore. Appellant did not

offer any evidence to the contrary. Based on the testimony, the trial judge made a factual finding that Appellant first stated he was not going to give a DNA sample because it would convict him and at some point later said he needed to talk to an attorney, which is when Martin stopped the conversation. (R.p.41, line 23-p.47, line 23). This factual finding by the trial court was not clearly erroneous based on the testimony; therefore, it is binding on this Court. Baccus, supra. Pursuant to this factual finding, Appellant made the two incriminating statements first and then invoked his right to end the questioning, at which point Martin immediately stopped the custodial interrogation. Therefore, Appellant's privilege against self-incrimination was fully protected and the trial court properly denied Appellant's motion to suppress.

Even if this Court finds the trial court's factual finding about the particular sequence of events was erroneous, and that Appellant made the two incriminating statements only AFTER he refused to provide a DNA sample, the trial court's decision to deny the motion to suppress was nevertheless proper. Appellant's refusal to provide a DNA sample was not an "unambiguous" invocation of his right to counsel in regard to anything other than whether he would provide the DNA sample. Indeed, Appellant did not say he wanted to cut off all questioning until he had spoken to an attorney. Instead, Appellant self-limited the invocation of his right to counsel by merely saying he would not provide a DNA sample until he had spoken to an attorney, but continued to make verbal statements to Martin. Martin unequivocally and undisputedly stopped the interview when Appellant finally indicated he did not want to talk about the case anymore. (R.p.33, line 11-p.36, line 8). The trial court found, and Appellant does not contest, that Appellant knowingly and voluntarily waived his Miranda rights before

Martin initiated the custodial interrogation. Thus, unless and until Appellant unambiguously invoked his Fifth Amendment rights, his statements were admissible. Appellant's refusal to provide a DNA sample until he had spoken with an attorney was not an unambiguous and all-encompassing invocation of these rights, particularly where Appellant continued to participate in the conversation with Martin. Furthermore, the knowing and voluntary nature of the continued conversation is evident given Appellant's subsequent decision to unambiguously invoke his right to remain silent when he told Martin he wanted to stop talking. Even as he made the incriminating statements Appellant knew he had the right to end the interrogation, yet he chose to keep talking. The trial court properly ruled Martin would be allowed to testify Appellant said "DNA will convict me," but would not be allowed to say that Appellant refused to submit himself to a DNA test, because this was the only portion of Appellant's "statement" that was placed off limits by Appellant's self-limited invocation of his rights. (R.p.57, line 17-p.58, line 11). Appellant's conviction should be affirmed.

III.

The trial court properly denied Appellant's motion for a directed verdict and submitted the case to the jury where the State presented direct evidence and substantial circumstantial evidence from which the jury could fairly and logically find that Appellant was guilty of attempted armed robbery.

Appellant argues the trial court erred in denying his motion for a directed verdict because there was no direct evidence of his guilt and the circumstantial evidence against him was not substantial. He notes the only physical evidence linking him to the crime was his DNA on the bandana found across the parking lot from the scene, but further notes the DNA from at least two other unknown persons was also found on that bandana. Appellant argues the incriminating statements he made to the police do not constitute direct evidence because the jurors "had to engage in a two-step analysis of whether they could infer guilt from those statements." The State submits Appellant's arguments are entirely without merit. As found by the trial judge, the evidence presented at trial constituted a combination of direct and circumstantial evidence from which the jury could find Appellant committed attempted armed robbery; therefore, the motion for a directed verdict was properly denied.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Liverman, 398 S.C. 130, 137, 727 S.E.2d 422, 425 (2012); State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct

evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648; State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 477-78 (2004); State v. Condrey, 49 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. Butler, 407 S.C. at 381, 755 S.E.2d at 460 (2014); Gaster, 349 S.C. at 555, 564 S.E.2d at 92.

Discussion / Analysis

The trial court found the State presented both substantial circumstantial evidence and direct evidence of Appellant's guilt. First, the trial court found the presence of Appellant's DNA on the bandana which was discovered when the K-9 unit tracked a scent directly from the scene of the crime to the adjoining property constituted substantial circumstantial evidence of guilt. The trial court also found Appellant's statements to Investigator Martin constituted direct evidence of guilt in the form of a confession. (R.p.277, line 12-p.279, line 1). These findings and the trial court's resulting decision to deny the motion for a directed verdict were entirely appropriate. Based on the trial testimony and evidence, a finder of fact could reasonably conclude Appellant was the person who committed the attempted armed robbery of the Chuck E. Cheese on January 3, 2013, and was therefore guilty of the convicted offense. This case did not present a

complete failure of evidence requiring the grant of a directed verdict motion. State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (“[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge’s ruling upon a motion for a directed verdict must stand absent an error of law.”).

Appellant’s arguments to the contrary merely go to the weight of the evidence against him rather than its sufficiency to submit the charge to the jury. Based on the existence of substantial evidence establishing the identity element of the convicted offenses, the trial court properly denied the directed verdict motion and the issue of Appellant’s guilt was properly left to the jury. Therefore, Appellant’s convictions and sentences should be affirmed.

A person is guilty of attempted armed robbery if the person has a specific intent to commit armed robbery. State v. Thompson, 374 S.C. 257, 262, 647 S.E.2d 702, 705 (Ct. App. 2007). Armed robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear. State v. Frazier, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010); S.C. Code Ann. § 16-11-330(A) (2003). Robbery is the crime of larceny accomplished with force, and armed robbery occurs when a person commits robbery while armed with a deadly weapon. Id. at 532, 689 S.E.2d at 613-14.

Appellant initially focuses on the lack of physical evidence linking him to the crime by equating the discovery of his DNA on the bandana to a series of cases concerning fingerprint evidence. He argues that in both instances, the evidence was insufficient to prove identity because there was a failure to connect the placement of the fingerprint to the time the crime was committed. Appellant contends the DNA evidence

in his case only proves his skin was in contact with the bandana at some point in time, but not that he was the person seen wearing the bandana in the surveillance video. He claims the jury could have only guessed his DNA was actually left on the bandana during the commission of a crime. (Brief of Appellant, p.35-p.42). However, Appellant fails to appreciate the qualitative difference between the fingerprint evidence in the cases cited and the DNA evidence here. DNA expert John Barron testified that within all reasonable scientific certainty Appellant was the major contributor of DNA on the bandana. The DNA was “easily discernible” and Appellant contributed nine to ten times as much DNA as the minor contributor, which means he had been in “very strong contact” with the bandana. (R.p.243-p.265). The bandana was discovered by the tracking dog immediately after the commission of the crime; therefore, the temporal weakness posited by Appellant simply does not exist. The DNA evidence standing alone provided strong circumstantial evidence of guilt and was sufficient to survive the motion for a directed verdict.

But the DNA evidence did not stand alone. Appellant also admitted his guilt to Investigator Martin, saying that he was not going to challenge the DNA evidence, that the DNA evidence would convict him, and that he wanted to plead guilty. (R.p.175-p.176; p.224, lines 22-25). The State submits these incriminating statements, which were properly admitted by the trial judge, constitute direct evidence of guilt when considered together. Appellant disagrees and argues the statements constitute only circumstantial evidence because evaluation of those statements “requires jurors to find that the proponent of the evidence has connected collateral facts in order to prove the proposition propounded.” He argues that even if the jurors believed Martin’s testimony regarding

Appellant's statements, "they then had to engage in the two-step analysis of whether they could infer guilt from those statements, and if so, if there was any reasonable explanation other than guilt." Appellant contends that when considered in context, there were reasonable explanations for Appellant's statements other than that he was guilty, and therefore they merely constitute circumstantial evidence of guilt. (Brief of Appellant, p.43).

The State submits Appellant has unnecessarily complicated the analysis. Under his theory, even a direct confession of: "I am guilty because I committed the crime" would not constitute direct evidence because there might be a reasonable alternative explanation for why a person would make such a direct confession. This is not an entirely accurate statement of the law in South Carolina.

As explained recently by this Court:

Direct evidence "is based on personal knowledge or observation and ..., if true, proves a fact without inference or presumption." Black's Law Dictionary 636 (9th ed.2009) (emphasis added). The presentation of direct evidence "immediately establishes the main fact to be proved." State v. Salisbury, 343 S.C. 520, 524 n. 1, 541 S.E.2d 247, 249 n. 1 (2001). Circumstantial evidence, on the other hand, is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred. State v. Cherry, 361 S.C. 588, 596, 606 S.E.2d 475, 479 (2004). Circumstantial evidence is "based on inference and not on personal knowledge or observation," Black's Law Dictionary 636 (9th ed.2009), and establishes "collateral facts from which the main fact may be inferred." Salisbury, 343 S.C. at 524 n. 1, 541 S.E.2d at 249 n. 1."

State v. Rogers, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013). Here, Martin's specific trial testimony was as follows: [Appellant] said that he wasn't going to challenge the DNA. He was looking to -- he wanted to be charged with something lesser if he could. He knew the DNA would convict him. He knew that -- he stated that he knew that -- he wanted a less severe charge, and he wanted to discuss a plea." (R.p.175,

line 25-p.176, line 5). The solicitor followed-up to clarify what Appellant actually said and Martin testified: "He did say he wanted to plead guilty." (R.p.176, lines 10-12). The State submits that for the jury to conclude from these statements that Appellant committed the attempted armed robbery, it must only have found Martin's testimony credible, with no further inference. While not as strong as a direct confession of guilt, Appellant's statements taken as a whole, if true, can prove his guilt without presumption or inference. Thus, those statements are direct evidence and support the denial of the motion for a directed verdict. Furthermore, to the extent this Court finds Appellant's statements constitute only circumstantial evidence they nevertheless constitute substantial circumstantial evidence, particularly when considered in light of the DNA match and other circumstantial evidence presented at trial.

When viewed in a light most favorable to the State, there was ample evidence for the jury to reasonably conclude Appellant committed attempted armed robbery. Therefore, the evidence was sufficient, as a matter of law, to submit the case to the jury. See State v. Brown, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) ("Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury."). The trial judge committed no error in denying Appellant's motion for a directed verdict and Appellant's conviction should be affirmed.