

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APR 06 2020

Certiorari to Richland County

S.C. SUPREME COURT

Honorable Kristi F. Curtis, Circuit Court Judge

MICHAEL ORLANDO BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-001677

APPENDIX

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

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

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg., Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

INDEX

INDEX.....	I
TRIAL TRANSCRIPT DATED AUGUST 4-5, 2014.....	1
FINAL BRIEF OF APPELLANT	407
FINAL BRIEF OF RESPONDENT	459
<u>STATE V. BROWN</u> , 2016-UP-349 (S.C. Ct. App. Filed July 6, 2016)	504
REMITTITUR.....	506
APPLICATION FOR POST-CONVICTION RELIEF FILED AUGUST 3, 2016	508
RETURN	516
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 19, 2019 ..	522
STATE’S EXHIBIT NO. 1 (CONFIDENTIAL POLICE REPORT)	673
STATE’S EXHIBIT NO. 2 (STATEMENT)	675
STATE’S EXHIBIT NO. 3 (INCIDENT REPORT).....	676
STATE’S EXHIBIT NO. 4 (STATEMENT)	681
ORDER OF DISMISSAL.....	682
INDICTMENT	708
SENTENCE SHEET	710

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the conviction and sentence of the lower court be affirmed.

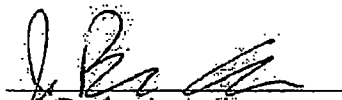
Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

BY:


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

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

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
November 30, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Appellate Case No. 2014-001715

THE STATE, ... RESPONDENT

v.

MICHAEL ORLANDO BROWN, ... APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule
21.1(b), SCACR.

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

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

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

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
November 30, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Appellate Case No. 2014-001715

THE STATE, ...RESPONDENT

v.

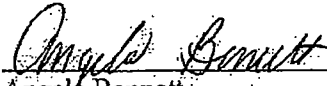
MICHAEL ORLANDO BROWN, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent* dated November 30, 2015, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Laura R. Baer, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served.
This 30th day of November, 2015.


Angela Bennett
Administrative Assistant

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

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Michael Orlando Brown, Appellant.

Appellate Case No. 2014-001715

Appeal From Richland County
James R. Barber, III, Circuit Court Judge

Unpublished Opinion No. 2016-UP-349
Submitted April 1, 2016 – Filed July 6, 2016

AFFIRMED

Appellate Defender Laura Ruth Baer, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Senior
Assistant Deputy Attorney General John Benjamin Aplin,
and Solicitor Daniel Edward Johnson, all of Columbia,
for Respondent.

PER CURIAM: Michael Orlando Brown appeals his conviction of attempted
armed robbery, arguing the trial court erred in (1) admitting Brown's alleged offer

to plead guilty when the probative value of the statement was outweighed by the undue prejudicial effect under Rule 403, SCRE, (2) admitting Brown's alleged statement that "DNA will convict me" and alleged offer to plead guilty when such statements were made after Brown had invoked his Fifth Amendment right against self-incrimination and right to counsel, and (3) denying Brown's motion for a directed verdict when there was no direct evidence of his guilt and the circumstantial evidence against him was not substantial. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to issues 1 and 2: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Griffin*, 339 S.C. 74, 77, 528 S.E.2d 668, 669 (2000) ("[A]n in limine ruling is not final and does not preserve the issue for appeal."); *State v. Schumpert*, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) ("Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review.").

2. As to issue 3: *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *id.* ("A defendant is entitled to a directed verdict when the [S]tate fails to produce evidence of the offense charged."); *id.* ("When reviewing a denial of a directed verdict, [the appellate court] views the evidence and all reasonable inferences in the light most favorable to the [S]tate."); *id.* at 292-93, 625 S.E.2d at 648 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate] [c]ourt must find the case was properly submitted to the jury.").

AFFIRMED.¹

HUFF, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 01, 2016

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: The State v. Michael O. Brown
Lower Court Case No. 2014GS4002050
Appellate Case No. 2014-001715

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

The following exhibits were filed in this case:

State's Exhibits #3-#8 (Photographs), State's Exhibit #9 (DVD of Surveillance Video), and State's Exhibit #13 (Diagram- Platt)

Part of these exhibits contain an oversized posterboard that cannot be mailed. It will be necessary for the Attorney General's Office or their designee to pick up these exhibits from the Clerk's office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

RECEIVED

AUG 1 2016

Enclosure

cc: Alan McCrory Wilson, Esquire
Laura Ruth Baer, Esquire
John Benjamin Aplin, Esquire
Daniel Edward Johnson, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

County of Richland)Michael Orlando Brown #295408)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016 CP4004677

APPLICATION FOR

POST-CONVICTION RELIEF

JENNIFER M. BROWN
CLERK, C.C.P.

2016 AUG -3 AM 11:32

RICHLAND COUNTY
FILED**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee County 990 Wisacky Hwy
Bishopville, SC 29010
2. Name and location of Court which imposed sentence Court of General
Sessions Richland County Columbia, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-40-02050
 - (b) N/A

- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 5, 2014 Life w/o Parole
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 6, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial Counsel was ineffective for failing to preserve for appeal whether
- (b) Trial Counsel was ineffective in failing to preserve for appeal
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? yes
- (d) any other petitions, motions or applications in this or any other Court? yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. the error of admitting alleged oral statements
- ii. the denial of directed verdict
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. The State of South Carolina Court of Appeals
- ii. The State of South Carolina Court of Appeals
- iii. _____
- iv. _____

Cont...

11.

(a) the trial court erred in admitting my alleged offer to plead guilty.

(b) whether the trial court erred in admitting my alleged statement that "DNA will convict me."

(c) the disposition thereof:

- i. Not preserved for appeal
- ii. Affirmed
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. July 6, 2016
- ii. July 6, 2016
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

~~no~~ ~~yes~~ NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Issues were for direct appeal first.
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Anastasia L. Walker Richland County Public Defender
 ii. Alicia Dyer Goode Richland County Public Defender
 iii. Laura R. Baer Appellate Defender
1330 Lady St, Suite 401 Columbia, SC 29201
 (b) the proceedings at which each such attorney represented you:
 i. Trial
 ii. Trial
 iii. Direct Appeal

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Richland County)

VERIFICATION

I, Michael O. Brown, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

M. O. B.

SWORN to and subscribed before me this 25
day of July, 2014.

Debra Eastridge (L.S.)
Notary Public

My Commission Expires: 3/3/2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Michael O. Brown, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

25 day of July, 2016.



Notary Public

My Commission Expires: 3/3/2020

NICOLAUS COUNTY
 FILED
 2016 AUG -3 AM 11:32
 JEANETTE W. MOORE
 C.C.P. & C.S.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Michael Orlando Brown, #295408,	)	2016-CP-40-04677
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on August 3, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. Applicant was indicted by the April 2014 term of the Richland County Grand Jury for armed robbery (2014-GS-40-02050). Anastasia L. Walker, Esquire and Alicia Dyar Goode, Esquire, represented him. On August 4-5, 2014, Applicant proceeded to trial before The Honorable James R. Barber and a jury. Applicant was found guilty as indicted. Judge Barber sentenced Applicant to life in prison without the possibility of parole pursuant to S.C. Code of Laws § 17-25-45.

Applicant filed a timely notice of appeal. An appeal was perfected by Laura Baer, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Brown, Op. No. 2016-UP-349 (S.C. Ct. App. filed July 6, 2016). The Remittitur was returned on August 1, 2016.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel was ineffective for failing to preserve for appeal whether the trial court erred in admitting my alleged offer to plead guilty"
 - b. "Trial counsel was ineffective for failing to preserve for appeal whether the trial court erred in admitting my alleged statement that 'DNA will convict me.'"

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. For the purpose of this Return, Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the trial transcript, and the record on appeal. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant's PCR application claims ineffective assistance of counsel. Respondent contends that Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). If the court does determine that Applicant's alleges specific instances of ineffective assistance which are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All

claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified, or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Signature follows.

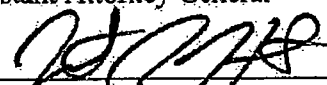
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

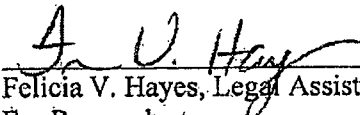
_____, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	2016-CP-40-04677
	)	
MICHAEL ORLANDO BROWN,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
 Law Office of Leah B. Moody, LLC
 Post Office Box 1015
 Rock Hill, SC 29730

DATED this the 30th day of June, 2017.


 Felicia V. Hayes, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND) 2016-CP-40-4677

MICHAEL ORLANDO BROWN)
)
vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)

FEBRUARY 19, 2019
COLUMBIA, SOUTH CAROLINA

BEFORE THE HONORABLE KRISTI CURTIS

APPEARANCES:

LINDSEY A. MCCALLISTER, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

LEAH MOODY, ESQUIRE
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM
16TH Circuit Court Reporter

ALL FEES PURSUANT TO RULE 607 (h)(i), SCACR
COPIES AVAILABLE UPON REQUEST FROM COURT REPORTER

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
MICHAEL BROWN				
By Ms. Moody	6			
By The Court	28			
By Ms. Moody (contd)	28			
By Ms. McCallister		45		
By Ms. Moody			67	
JUDY CASTRO				
By Ms. Moody	69			
By Ms. McCallister		75		
CECELIA CASTRO				
By Ms. Moody	76			
By Ms. McCallister		79		
Anastasia L. Walker				
By Ms. McCallister	81			
By Ms. Moody		106		
By Ms. McCallister			124	
By Ms. Moody				129
Meghan L. Walker				
By Ms. McCallister	132			
By Ms. Moody		139		
By Ms. McCallister			143	

E X H I B I T S

<u>No.</u>	<u>DESCRIPTION:</u>	<u>ID.</u>	<u>EV.</u>
A-1	Report of Dean	108	124
A-2	Statement form	108	124
A-3	911 call log report	116	124
A-4	Handwritten statement of Green	139	150

1 THE COURT - Okay, we're here on Michael Orlando
2 Brown.

3 MS. MCCALLISTER - Yes, Your Honor, Michael
4 Orlando Brown vs. The State of South Carolina, 2016-CP-40-
5 04677.

6 Your Honor, Mr. Brown was indicted in April of
7 2014 for attempted armed robbery. He was represented on
8 those charges by Anastasia Walker and Alicia Goode. On
9 August 4th to 5th, 2014 he proceeded to trial before Judge
10 Barber in a jury and was found guilty as indicted. He was
11 sentenced to life in prison without the possibility of
12 parole. He filed a timely notice of appeal and an appeal
13 was perfected by Laura Baer of the South Carolina
14 Commission on Indigent Defense Appellate Division. The
15 South Carolina Court of Appeals affirmed his conviction and
16 sentence by Order filed July 6th, 2016 and the Remittitur
17 was returned on August 1st, 2016. He timely filed this
18 Application for Post Conviction Relief on August 3rd, 2016.
19 Ms. Leah Moody has been appointed to represent him. Both
20 Mr. Brown and Ms. Moody are in the courtroom, and at this
21 time I would ask Ms. Moody if she would please put his
22 allegations on the record that we're going forward on here
23 today.

24 MS. MOODY - Thank you, Your Honor. May it please
25 the Court.

1 THE COURT - Yes, ma'am.

2 MS. MOODAY - Again, as to his allegations, you
3 have this application. Prior to this hearing we've
4 exchanged information about his in-depth allegations. The
5 first allegation is a preservation of his appeal. The
6 statement which alleged he was offered a plea of guilty;
7 The second one is admitting to the alleged statement that
8 the DNA would convict him, and so those are the issues
9 under preservation of appeal. The next issue that he would
10 have and present to the Court is the issue of alibi -- his
11 alibi witnesses not being called in the case; Number two,
12 the DNA evidence expert was not called to challenge the
13 State's DNA; Three, the DNA evidence was not challenged
14 under Rule 403; Four, the failure to challenge -- excuse me
15 -- challenge the alleged videos of identification against
16 the defendant, failure -- the next one would be the failure
17 to cross examine the State's witnesses. The next issue
18 would be the trial attorney soliciting damaging testimony.
19 The next issue would be the failure to file a Motion to
20 Dismiss the charges. The next would be failure to inform
21 the Court about a letter from the applicant or the
22 defendant to the trial attorney that ended up in the
23 State's hands about the case. The next would be the trial
24 attorney lied about whether or not the defendant made
25 allegations or alleged statements which the defendant told

MICHAEL BROWN - DIRECT BY MS. MOODY

6

1 the trial attorney that the defendant never stated any of
2 these statements provided in the statement. The last issue
3 would be the prosecutor's deliberate deception of the Court
4 -- of a Court by presentation of knowingly false evidence,
5 and so these issues have been presented to the State back
6 in July of 2018, and these are the issues that he wishes to
7 go forward on.

8 And at this time, Your Honor, I'd like to call
9 Mr. Brown to the stand.

10 THE COURT - Yes, ma'am.

11 MICHAEL ORLANDO BROWN, AFTER BEING DULY SWORN,
12 TESTIFIES AS FOLLOWS:

13 DEPUTY CLERK - Thank you. Please have a seat in
14 the witness stand and state your full name for the record.
15 State your full name.

16 MR. BROWN - Michael Brown.

17 DIRECT EXAMINATION

18 BY MS. MOODY -

19 Q Mr. Brown, where are you currently incarcerated?

20 A Evans Correctional Institution.

21 Q And can you tell the Court what you're incarcerated
22 for?

23 A I'm incarcerated for attempted armed robbery on Chuck-
24 E-Cheese.

1 Q Okay. And do you recall the date when that armed
2 robbery took place?

3 A Yes, ma'am.

4 Q Can you ---

5 A January 3rd, 2013.

6 Q And as to those charges you went to trial?

7 A Yes, ma'am.

8 Q And who was your attorney in that trial?

9 A Anastasia Walker and her co-counsel was Alicia Goode.

10 Q Do you recall who the prosecutors were in that case?

11 A Yes, Meghan Walker and Ms. Mosier.

12 Q Ms. Mosier.

13 A Right.

14 Q All right, so you filed this Post Conviction Relief
15 action against Anastasia Walker.

16 A Yes.

17 Q Okay. And can you tell me when did Ms. Walker begin
18 to represent you?

19 A Ms. Walker, actually, -- I had Luke -- Luke Shealy to
20 start with. I went to his office here and talked to him,
21 and he was in the process of going into private practice,
22 and he told me Anastasia was going to get appointed to me.
23 Anastasia, actually, -- my first time meeting her was I
24 want to say December of 2013, December, 2000 -- yeah,
25 December, 2013.

MICHAEL BROWN - DIRECT BY MS. MOODY

8

1 Q Okay, so let's back up for one second. So Mr. Shealy
2 was in the public defender's office, Richland County Public
3 Defender's office?

4 A Yes.

5 Q Okay, so he was your initial attorney and your case
6 was reassigned to Ms. Walker.

7 A Right.

8 Q Okay. Did you have any hearings or do any courtroom
9 proceedings with Mr. Shealy?

10 A None.

11 Q Okay. So, did you -- what was the first hearing that
12 you had with Ms. Walker? Do you recall?

13 A The first hearing was trial.

14 Q Okay.

15 A Right.

16 Q So, do you recall the first time meeting her?

17 A Yes, the first time meeting her was in Lexington
18 County Detention Center.

19 Q Okay. And why were you in Lexington County?

20 A For some charges in Lexington County.

21 Q Okay. But she represented you only on the Richland
22 County charges?

23 A Correct.

1 Q Okay. And so when you met with her, did you have an
2 opportunity to tell her about your case or what you recall
3 happening on the day in question?

4 A Um, I remember her -- the first time she came to see
5 me, um, behind the glass, um, and I think she was still
6 waiting, getting all -- all the paperwork, because I didn't
7 have none of the discovery material yet, um, and I let her
8 know that, you know, I wanted to go to trial. Um, I asked
9 her to, um, to get me all the discovery material so I can
10 go over it.

11 Q All right, did you all have an opportunity to go over
12 the discovery?

13 A Yes, we went over the discovery material. She
14 brought, uh, -- once it came into me, it was a few things I
15 was missing. I was looking for the chain of custody, and I
16 told her to get that, there was not chain of custody in
17 there, um, told her I didn't commit this crime, told her
18 the allegations that investigator was making about some
19 statements -- I said -- I told her I never said none of
20 that.

21 Q Okay. Well, we're going to get to like all those
22 specific things. So, but you did have an opportunity to go
23 over the discovery material with her?

24 A Yes.

MICHAEL BROWN - DIRECT BY MS. MOODY

10

1 Q Okay. And upon going over the discovery material, did
2 you all talk about what you were facing if you went to
3 trial, like if you were found guilty?

4 A Yes.

5 Q Did you talk about, you know, what would occur if you
6 took a plea?

7 A We talked about a plea, but I also had got a notice
8 from the solicitor that said regardless of trial or a plea,
9 they was looking for the, uh, LWOP for enhancement.

10 Q Okay. And so after you discussed, you know, the
11 consequences of a plea or a trial, what, if anything, did
12 you discuss with Ms. Walker?

13 A I told Ms. Walker that, basically, um, gave her my
14 alibi, um, told her my alibi witnesses, um, told -- told
15 her I wasn't (phonetic) go to trial. That's how it,
16 basically, started off.

17 Q Okay. And so after that, did you have any other
18 opportunities to meet with Ms. Walker?

19 A Yes, she -- Ms. Walker also came -- she -- to the
20 county jail and showed me a video on a laptop.

21 Q And were there any other meetings with Ms. Walker?

22 A Not that I recall.

23 Q And after seeing the video, how quickly did you
24 proceed to trial? Do you recall?

25 A About two -- two or three weeks later I went to trial.

1 Um, it was video -- it was like a little ten-second video
2 when -- I mean you -- she -- she was telling me she didn't
3 see what they seen in the video or anything like that, and
4 in -- in -- we had some paperwork, incident report, and I'm
5 asking her, okay, where's this other video at that they
6 keep talking about in this incident report. Um, this is --
7 this is just showing somebody coming in, coming out, and it
8 doesn't show nothing in detail that the reports were
9 stating it.

10 Q And so, based off after seeing that video, you still
11 wanted to proceed to trial?

12 A Yes, ma'am.

13 Q Did you do any other preparation for trial with Ms.
14 Walker?

15 A Yes, I wrote Ms. Walker a letter and letting her know
16 the things that I wanted done for my trial, and that was
17 included with I wanted -- like I told you before -- chain
18 of custody. Um, I basically wanted her to have the DNA
19 expert present to challenge the State's DNA. I wanted her
20 to challenge the DNA -- re-test the DNA, this alleged DNA
21 that's supposed to be mine off some bandana. I told her to
22 talk to my alibi witnesses, um, and to, basically, make
23 sure -- let me look at something real quick -- (pause) --
24 okay, yeah, also had brought it to her attention when I was
25 going over the paperwork about questioning some of the, uh,

MICHAEL BROWN - DIRECT BY MS. MOODY

12

1 the victims of the crime, because some of them was -- it's
2 no statement from them that it shown that it was other
3 people at this location.

4 Q Okay. So this is all before you all go to trial.

5 A Yes, ma'am.

6 Q Okay, so you told her all the things that you felt
7 were wrong with your case.

8 A Right.

9 Q Okay. And so then on August 4th and 5th, you
10 proceeded to a trial -- excuse me -- August 4th through the
11 5th of 2014 you all proceeded to trial.

12 A Yes.

13 Q Okay. And so the previous testimony that you just
14 provided to us, that's the extent of y'all's trial
15 preparation?

16 A Yes, correct.

17 Q Okay. So, now you've gone to trial and you made these
18 allegations, and one of the allegations you say, or two of
19 them under one single heading, is that your attorney did
20 not preserve your appeal?

21 A Correct.

22 Q Can you please tell the Court what you mean by that?

23 A Um, during pre-trial, um, right prior to trial, um,
24 she did bring up about some statements that was supposed to
25 been made to an investigator. Um, one was, uh, stated

1 about DNA would convict me, no, I'm not going to give you
2 no DNA, DNA would convict me, and another one was, uh, can
3 you help me with me a plea, uh, I want to plead -- plead
4 guilty in this case. Allegedly that's what the statements
5 were. Um, I told Anastasia I never made those statements,
6 but during the pre-trial, you know, the Judge did ask her
7 is you denying your client made the statement, and she told
8 the Judge flat out loud, no, I'm saying he said it, but I
9 told her I didn't, I never said it. Um, the only thing
10 that when we -- when I did talk -- told her I talked to the
11 investigator, I -- once he told me the charges and
12 everything, I asked him for a phone call, and I didn't want
13 to talk about anything. Everything else was made up after
14 that. I don't how and why she didn't tell the Judge, no, I
15 did not never made -- make any of those statements.

16 Q So, what is it that you're saying your attorney
17 should've done as to those statements?

18 A Um, well, during that when the Judge allowed that in,
19 it was a Motion in Limine, um, she still had a chance to
20 object during the trial, which she didn't, you know, and
21 let the Judge know regardless, the presumption of innocence
22 is gone. Basically, it -- you turned it into saying I said
23 something that I didn't, and I'm at trial now and you got
24 the jury thinking I made this statement of DNA was going to
25 convict me and, uh, um, I want to plead guilty to something

MICHAEL BROWN - DIRECT BY MS. MOODY

14

1 lesser or something. The Judge was confused by that whole
2 statement also, and I'm pretty sure the jury was confused
3 by it, um, but ---

4 Q So, let me -- let me ask you this. You mentioned
5 Motion in Limine. So your Attorney, Ms. Walker, filed the
6 Motion in Limine, ---

7 A Right, correct.

8 Q --- okay --- as to those statements.

9 A Correct.

10 Q Okay, and so there was argument heard on that motion
11 regarding those statements.

12 A Right.

13 Q Okay. And so when it came up in the case in chief
14 with the prosecution presenting this information through
15 their witness, ---

16 A Correct.

17 Q --- your attorney didn't object?

18 A She did not object. She didn't object. Four -- four
19 -- I think four or five testified before that statement
20 came into -- into play. She still didn't object.

21 Q Okay, so you feel that you she was ineffective for
22 failing to object?

23 A Yes, she was till ineffective.

24 Q Okay. Is there anything else you wish to say about
25 those statements, the failure to object?

1 A Um, I just know that if, uh, Anastasia would have
2 objected to those statements prior to trial to been
3 preserved for the Court of Appeals to go over it, they
4 would've saw the same errors that my appellate lawyer did
5 on my brief, but they didn't hear it, because they said
6 it's not preserved for the record, so it prejudiced me and
7 it didn't allow me to get of (sic) relief for the Court of
8 Appeals to rule on it.

9 Q Okay. All right. Now, your next issue is your
10 attorney failed to call your alibi witnesses.

11 A Correct.

12 Q Now, who were your alibi witnesses?

13 A Ms. Judy Castro and Ms. Cecelia Castro.

14 Q Okay. And what, if anything, did you discuss with Ms.
15 Walker about your alibi witnesses?

16 A Well, I told Ms. Walker that it was impossible for me
17 to do this crime, um, I was somewhere else. I was actually
18 -- I was, actually, uh -- everyday I kept my dogs at Ms.
19 Castro's house. We used to me in a relationship, but my
20 dogs still stayed where, because I didn't have no fence at
21 the house I was staying at to keep them, so I go feed them
22 everyday, and I told them that particular day that that
23 happened, -- because I remember it, because it was two days
24 away from New Year's, -- that I was at Ms. Castro's house
25 around -- I got there around -- probably around 5:00 and I

MICHAEL BROWN - DIRECT BY MS. MOODY

16

1 was there until she brought C-C to us, which Cecelia there
2 around 6:30. Uh, and I stayed there; we watched a movie
3 and I stayed there all night, and I told her that. I never
4 had no time to do any -- any crime.

5 Q And so, what, if anything, did your attorney do
6 regarding -- or following up on your alibis?

7 A Um, she did go and, uh, she had a private investigator
8 go talk to them, and she went herself to go talk to them.
9 She told me she went over there, her and Ms. Goode, and
10 they confirmed my alibi.

11 Q And so when it came down to the trial, what happened -
12 - um, did you have your alibis testify?

13 A That's what was strange. Um -- um, it was as two-day
14 trial. Um, the first day, um, basically, was the State,
15 um, presenting their -- their witnesses. The second day,
16 um, I didn't see Ms. Castro or her daughter, you know, in
17 the bench, sitting on the bench, and, um, I didn't think
18 nothing of it. I'm -- I'm thinking they going to be there
19 to testify, maybe they didn't make it there yet. Um, but
20 it -- come to find out when it's time for, you know, the
21 Judge called me up and asked me if I'm wanted to testify,
22 and I didn't realize the trial was over. Um, I didn't --
23 she didn't tell me she wasn't going to call them, uh, uh,
24 to my trial, because I was under the impression that they
25 was going to be next to testify in my behalf.

1 Q So your attorney had your alibi witnesses come to
2 trial?

3 A Yes.

4 Q Okay. And you know that because of what?

5 A Um, from the, uh, -- she filed a alibi -- a motion for
6 alibi defense.

7 Q So she gave notice of your alibi witnesses?

8 A Correct.

9 Q Okay. And then she had your witnesses come to Court.

10 A I'm not sure if they even made it; I think they did
11 make it, and I think she turned them around.

12 Q Okay. So on the first day that you all went to trial,
13 you did not see your witnesses?

14 A I seen them the first day, and I seen them leave back
15 out on the first day.

16 Q Okay. Then the second day ---

17 A I didn't see them at all.

18 Q Okay. And so what, if any, discussion did you have
19 with Ms. Walker about any kind of defense you were putting
20 up?

21 A Um, well, me and her agreed to have a alibi defense
22 for -- for my alibi, and I -- I mean I -- that was the only
23 thing we talked about. I told her I wasn't going to get on
24 the stand myself. I was just going to sit there, and I was
25 going to let my alibi witnesses get on the stand, because

MICHAEL BROWN - DIRECT BY MS. MOODY

18

1 they told me about my priors probably would get brought up
2 if I got on the stand.

3 Q So at no point were you alerted that your witnesses
4 were not going to be called.

5 A No. Actually, I only found out after trial when I
6 called -- called and asked where my witnesses -- where they
7 was at, and they told me Anastasia called them and ---

8 MS. MCCALLISTER - Objection, Your Honor, to
9 hearsay.

10 THE COURT - I sustain ---

11 Q So -- be careful about when you say ---

12 So -- let me rephrase the question. Ms. Walker did not
13 inform you that she -- well, when did Ms. Walker inform you
14 that your witnesses were not going to be at the trial to
15 testify?

16 A When the trial was over.

17 Q So at any point when -- on that second day, you didn't
18 ask about your witnesses?

19 A I didn't think I had to. I'd already -- we'd already
20 discussed that they would be there.

21 Q Okay. So your witnesses were not called. You also
22 had an allegation that the DNA evidence expert was not
23 called to challenge your DNA.

24 A Correct.

1 Q All right. So could you please tell the Court what
2 you mean by your DNA witness not being called -- expert
3 being called?

4 A Okay. Anastasia, um, she had a DNA expert named
5 Ronald -- oh, I can't pronounce his last name -- Owstrowski
6 (phonetic) -- I think that's his last name -- to -- to --
7 she hired him to testify in my behalf. He was there at
8 trial, and for some reason, she didn't even call him on the
9 stand, and I was there -- he -- I can -- I'm sure he wanted
10 to get on the stand, because I heard him tell her that, but
11 ---

12 (WHEREUPON, MS. MCCALLISTER STANDS)

13 MS. MOODY - Objection.

14 MS. MCCALLISTER - Yeah.

15 MS. MOODY - She's getting ready to object.

16 MR. BROWN - That's why I stopped.

17 MS. MOODY - That's the State's objection.

18 MR. BROWN - Right.

19 Q So you can't say what he said to her. Okay?

20 A Okay.

21 Q He didn't testify. Correct?

22 A He didn't testify at all.

23 Q Okay. But your attorney did get a DNA expert.

24 A Yes, she did.

MICHAEL BROWN - DIRECT BY MS. MOODY

20

1 Q Okay. And what, if any, did you all discuss about the
2 DNA, meaning you and Ms. Walker?

3 A Well, the, um, me and Ms. Walker -- the reason why I
4 wanted her to get a DNA expert, because I wanted her to
5 have the D -- the items retested. They allegedly said my
6 DNA was on there; I didn't believe them; I didn't commit
7 the crime. So she told me she was hiring a DNA expert,
8 because the State was going to have one. Okay, so, the
9 State had one, and, basically, I asked her about why --
10 what's the purpose of him testifying for.

11 Q Okay, well, let's ---

12 A Right.

13 Q When you say the purpose of him testifying, your
14 expert testifying?

15 A Well, both of them.

16 Q Okay.

17 A But it was mainly before the State's at first, and
18 that's when she was letting me know he was going to testify
19 after the State's, you know, for any other -- for the rest
20 of the information, uh, basically, what he done tested and
21 what results he came up with.

22 Q So what, if anything, did Ms. Walker share with you
23 about the results from any testing that Mr. Owstrowski
24 performed?

1 A She didn't -- nothing at all. I didn't get any paper
2 -- no -- any type of paperwork or anything.

3 Q Were there any tests performed by him?

4 A I -- to my knowledge, I don't know what he did. She
5 didn't provide me with none of that information.

6 Q So was he -- Mr. Owstrowski -- was he present for the
7 entire trial?

8 A Yes, he was.

9 Q Okay. And, again, your testimony here is today he
10 didn't testify.

11 A He didn't testify.

12 Q And were you aware of why he did not get called to the
13 stand?

14 A No, ma'am, I wasn't.

15 Q When did you learn that he wasn't going to placed on
16 the stand to testify?

17 A After trial was over. I mean prior to then she didn't
18 -- she didn't even let me know anything. So when trial was
19 over, I realized it was over, he wasn't going to testify.

20 Q All right. So you also alleged that your attorney
21 failed to challenge the DNA evidence, make a 403 challenge
22 to the DNA evidence?

23 A Right.

24 Q Can you tell the Court what you mean by that?

MICHAEL BROWN - DIRECT BY MS. MOODY

22

1 A Okay, basically, it probative value -- it was preju --

2 -

3 Q Probative?

4 A Yes, it was more prejudicial than anything. The State
5 solicitor who testified that he came -- the DNA evidence
6 does tell the person who committed this crime, so therefore
7 it was no -- anything he testified other than that, it
8 prejudiced me. He said it was no -- it was no timing
9 evidence. He can't say how long the DNA been on there,
10 whose DNA. It was three sets of DNA. What DNA got on
11 there, first, second, third, who had this piece of evidence
12 on during the commission of the crime. He say -- he
13 testified that he could not ackno -- answer any of those
14 questions and those are the questions that the jury would
15 need to hear, need answered.

16 Q And so did you have an opportunity to discuss this
17 challenge with Ms. Walker at the trial?

18 A Right. I did, and Ms. Walker -- basically, that's
19 what Mr. Ronald Owstrowski was supposed to be for.

20 Q Okay. So you didn't question her about why she didn't
21 place him on the stand?

22 A I -- at the time I didn't, because I didn't realize
23 she wasn't going to put him on the stand. Um, like I said,
24 it all happened so fast with the Judge asking me if I was
25 going to testify, and I told him I wasn't, and that was the

1 conclusion of trial. And when she said she wasn't going to
2 offer any other witnesses, so I -- I had no idea that that
3 was about to happen.

4 Q Is there anything else you want to say about the 403
5 challenge?

6 A Just give me one second. (Pause) One second.
7 (Pause)

8 Q If there's nothing else ---

9 A No, that's it. That's it on that.

10 Q All right. Your next issue you have it involves the
11 video.

12 A Right.

13 Q Now, you stated that your attorney failed to obtain,
14 and/or challenge the videos in the -- as it relates to your
15 identification.

16 A Correct.

17 Q Explain to the Court what you mean by she failed to
18 challenge the -- the videos or obtain those videos. Which
19 videos are they?

20 A Okay, it was only one video that the State provided
21 during trial, and it was, actually, more than one video
22 that was viewed.

23 Q And who -- who had these videos -- you said the State
24 presented ---

25 A Right.

MICHAEL BROWN - DIRECT BY MS. MOODY

24

1 Q --- but who originally had the videos?

2 A Um, originally had the videos, they come from the
3 establishment, uh, Chuck E. Cheese.

4 Q Okay. And how do you know there was more than one
5 video?

6 A It was -- it was testified multiple times. You had
7 the incident report from John Sullivan, Richland County
8 Investigator mention that he called the GM, General Manager
9 for Chuck E. Cheese to review the videos, and he rewinded
10 the videos, and he was able to see aspects of the robbery.
11 He was able to see, um, the surveillance of the outside
12 footage of the suspect running from the front entrance out
13 to the back toward the El Toro Night Club, and also you had
14 the dispatch reports stating the surveillance video, the
15 other surveillance videos and also the State, Ms. Walker,
16 asked Mr. Sullivan how many videos, actually, were they, he
17 stated two, there was more than one video. And he also had
18 the -- the manager of Chuck E. Cheese stated that there was
19 32 different angles that they, actually, record from and
20 they -- and he showed them to the officers.

21 Q And so when you say your -- your attorney failed to
22 obtain the videos, do you mean that she failed to get them
23 from Chuck E. Cheese, or do you mean she failed to get them
24 from the State?

1 A She failed to -- she -- well, the State failed to
2 provide them. She, she -- she did file a, um, a motion for
3 disclosure for the videos which should've been included,
4 and the State did not provide them.

5 Q And did you have an opportunity to discuss with Ms.
6 Walker whether they existed or what happened to those
7 videos?

8 A Yes, Ms. -- Ms. -- me and Ms. Walker talked about it,
9 and she was under the -- thinking the same thing, was
10 wondering why the State haven't turned over these videos
11 that everybody said they watched that they knew that was
12 recorded.

13 Q And so at the trial, how many videos were presented?

14 A Um, one -- one video.

15 Q Okay. And a part of this allegation you indicated
16 that Ms. Walker didn't challenge the video.

17 A Right.

18 Q And what -- what did you -- what should she have
19 challenged?

20 A Well, she should have challenged with the video it was
21 used to make the bandana and the wig relevant to the crime.
22 It -- it -- it allegedly showed the direction that the
23 suspect ran to and that's where they supposedly, allegedly
24 had found, um, -- had -- was able to find this wig and
25 bandana from what the video showed, and also Mr. Sullivan

1 also stated that it showed aspects of the robbery as well
2 in those other videos.

3 Q Okay, but again, what should she have challenged as it
4 relates to you?

5 A Can you -- re- ---

6 Q Okay, so you indicated ---

7 A Yeah.

8 Q --- that identification ---

9 A Right.

10 Q In your allegation you said she failed to challenge
11 the videos in the identification of the defendant, being
12 you.

13 A Right.

14 Q So how did you want her to challenge as it relates to
15 identification? What did you want her to point out about
16 the video?

17 A Well, the video -- they -- in the video they tried to
18 use something about a ring, and they took pictures of me
19 and said I had a ring on, um, and they -- they were saying
20 something about a beard and -- it was -- it was -- it was
21 stuff that you couldn't view on the video. Um, they also
22 even mentioned a mask being worn that, you know, that is
23 totally false also. There was no mask on that video
24 either, the one that they showed. But that video,
25 basically, the bandana is they trying to say my DNA was on

1 that bandana, particular bandana that was shown on the
2 video to identify me on the video as being the one that
3 wore that bandana and the wig.

4 Q So did you not want the video to come in?

5 A No, I -- I, actually, wanted the other video that they
6 used to say this is the bandana and the wig used from this
7 crime that they did not produce. This -- the other video
8 is a different issue with that I was going to bring up
9 later.

10 Q Well, what, if anything, did you tell Ms. Walker about
11 -- and I'm assuming is the video that ties the bandana? Is
12 that what you're talking about?

13 A Right, the bandana.

14 Q What did you -- how did that -- I guess what I'm
15 trying to get out is, how did you want her to challenge it?
16 Did you want her to have it suppressed, ---

17 A Right.

18 Q --- or did you want her to ask particular questions?

19 A Okay. Okay, I wanted her to have it -- any testimony
20 of that alleged video that they didn't produce suppressed,
21 and I wanted it disclosed if they could obtain it, which
22 they could have.

23 Q And what, if anything, did Ms. Walker say with regard
24 to obtaining that video to you?

MICHAEL BROWN - BY THE COURT / CONTD DIRECT BY MS. MOODY 28

1 A Ms. Walker, basically, she -- she stated that, um,
2 with that video she -- is like I said, um, she was
3 wondering where the video was also, um. Now, she did -- I
4 -- she did file a subpoena for tech manager of these
5 videos, but it had the date of no later than August the
6 25th on there, and the trial was August the 4th, so really
7 I don't know -- what -- what she was trying to get out of
8 that to make it so late.

9 Q All right. So your next issue -- are you finished
10 with that issue?

11 A Yes, I'm finished with that one.

12 THE COURT - So I've got a question.

13 EXAMINATION

14 BY THE COURT -

15 Q So are you saying that they -- that witnesses
16 testified about this video that was never produced at
17 trial?

18 A MR. BROWN - Yes, ma'am.

19 Q They testified about what they saw on a video that was
20 never introduced.

21 A Yes, ma'am.

22 DIRECT EXAMINATION

23 BY MS. MOODY (contd.) -

24 Q All right. Your next issue is your attorney failed to
25 cross examine the State's witnesses.

1 A Correct.

2 Q Can you please explain to the Court what you mean in
3 terms of she failed to cross examine the State's witnesses?

4 A Yes, ma'am, you had, um, the canine detect -- the
5 canine handler, Mr. Steven Peril, (phonetic). He
6 testified, um, that he made a -- his dog made a track.
7 Basically, that's how he was supposed to had tracked to the
8 items, alleged items, that was used in the robbery.

9 Q Let me stop you right there. When you say tracked,
10 the dog alerted?

11 A He -- track meaning he -- said he put his hand to
12 ground, the dog sniffed and found a scent and chased off
13 after it.

14 Q Okay.

15 A So he got on the stand and, basically, he -- he wrote
16 a report, and it was different than what he was testifying
17 to. He's stating that his dog ran straight to the items.
18 At one point he's saying his dog went to the left of the
19 establishment. In his report he's saying something totally
20 different, he went to the right.

21 MS. MCCALLISTER - Your Honor, I would object to
22 him discussing what the report says. That's hearsay as
23 well.

MICHAEL BROWN - DIRECT BY MS. MOODY

30

1 THE COURT - I'm going to allow it to the extent
2 of what he thinks his attorney should've cross examined
3 this particular witness on, so I'm going to allow that.

4 MS. MCCCALLISTER - Thank you, Your Honor.

5 Q Go ahead. You said that the dog -- excuse me -- he
6 testified that the dog immediately went to ---

7 A Yeah, he said the dog immediately went to -- once he
8 established a track, the dog immediately went to these
9 items, alleged items, then in his report they got the
10 direction going one direction, and then he testified to a
11 different direction, and you have the Richland County
12 Sheriff's Department incident report, um, it's stating that
13 the dog never went -- or for seven minutes the dog was
14 running over there toward a whole nother (sic) business on
15 a different road, and she had -- she had this evidence in
16 front of her to cross examine to impeach any of his testi -
17 - the testimony he was testifying to, and she didn't.

18 Q Okay. And when all this was occurring in the trial,
19 what did you -- did you ask your lawyer or did you alert
20 your lawyer to it when the witness was testifying?

21 A Well, when he was testifying, um, some of the
22 information -- and of course I didn't have -- she didn't
23 provide with me with anything she did.

24 Q What do you mean?

1 A Um, you have the dispatch reports talking about this
2 video and -- the canine dog and talking back and forth.
3 Um, you have the Richland County Sheriff's Department
4 incident report with the dispatch talking about it, um, and
5 she didn't provide them for me during trial, so I didn't
6 know about this at that time. But she did know, and she
7 didn't -- she didn't -- when -- when the Judge asked her
8 any -- she said no questions for the witness, and it didn't
9 make sense to me, because during testimony he already
10 testified to something totally different than whatever the
11 report stated.

12 Q Okay. So now going back to when you all prepared for
13 trial, did you see the dispatch reports?

14 A No, I didn't see dispatch reports at all; she kept
15 them from me.

16 Q Okay, so like when you say kept them from you, did she
17 have her file there?

18 A She had her file there and my discovery material, she
19 -- that I had, it was not included in mine.

20 Q Okay. All right, do you know whether or not --
21 whether those dispatch reports were obtained after y'all
22 met to go over your discovery?

23 A No, I -- they were -- they were obtained before, um,
24 trial, um, because, you know, when I filed the motion
25 again, I -- the Rule 5 again I did get them. I got them

MICHAEL BROWN - DIRECT BY MS. MOODY

32

1 that time. That's why I figured all the -- it is even more
2 evident that she should have cross examined him on this to
3 impeach him.

4 Q All right. So are there any other witnesses that you
5 feel she should've -- that she failed to cross examine or
6 bring out evidence from?

7 A No, ma'am.

8 Q All right, your next issue is your trial attorney
9 soliciting -- solicitation of damaging testimony?

10 A Yes, correct.

11 Q Can you tell the Court what you mean by that?

12 A Right, um, during her cross examining of Investigator
13 Martin, um, she asked him a question, basically, -- excuse
14 me -- after he got a DNA match back from me, he went and
15 got a warrant, an arrest warrant, and he answered the
16 question, yes, so somehow she just asked the same question
17 over again, so he said -- told her, uh, you won't allow me
18 to say it. Ms. Walker jumped up and said, Your Honor, we
19 may have a matter of law. So they talked about it outside
20 the jury, and Ms. Walker and Anastasia ---

21 Q Okay, let's be clear on which Walker you're talking
22 about.

23 A Right.

24 Q You had two Walkers. You had Meghan Walker and then
25 you got Anastasia Walker.

1 A Right. Well, Ms. Meghan Walker addressed it, and Ms.
2 Anastasia Walker she said, well, the only thing his report
3 is saying that after he got the DNA match, he went and got
4 arrest warrant, and Ms. Meghan Walker went back and told
5 him, well, he testified that it was more factors that went
6 with that, with the other charges, basically, with the
7 Springdale charges in Lexington County that I was -- that I
8 had pending. Um, so the Judge -- the Judge was going to
9 let it go, but Ms. Walker was like ---

10 Q Which Ms. Walker?

11 A --- Ms. Meghan Walker was like, well, Judge, this is
12 already out there that -- the investigator, he just soon as
13 he get a DNA hit, he went straight and got a warrant for
14 his arrest, so when they let the jury back in, they had to
15 clean that up, that whole situation up, and, you know, Ms.
16 Meghan Walker was able to, uh, uh, beg -- re-cross the
17 Investigator Martin on those factors and she, basically,
18 said you said it was other factors, but don't tell me what
19 those other factors is, leaving (sic) allusion to the jury
20 that it was something else that they not privy to is the
21 reason why I got arrested for this charge.

22 Q Okay. And so you're saying that when you say trial
23 attorney, are you talking about Anastasia Walker?

24 A Yes, the -- Anastasia Walker -- Anastasia Walker, she
25 went back to questioning him. She had to leave that whole

1 question alone, because it was already thrown out there
2 that it was other factors. Ms. Meghan Walker is the one
3 that re-crossed him on the other factors, but don't tell me
4 what the factors are.

5 Q You felt your attorney should've object -- have
6 objected to that?

7 A Yes, she should have objected, but she -- she,
8 basically, couldn't object because she's the one that
9 initiated it.

10 Q Okay.

11 A So, uh, she initiated the damaging testimony, and the
12 jury could only think that, well, what's these other
13 factors, something else is out there that he done done, uh,
14 and that we not allowed to know about.

15 Q Your next issue you have that your failed to file a
16 motion to dismiss charges. Are you -- I want you to
17 explain to the Court what you mean by failed to file a
18 motion to dismiss the charges.

19 A Okay, with that, um, we found out that Investigator
20 Martin did no investigation in the case period. Um, and it
21 wasn't fair to me to go, you know, to face charges when the
22 investigator admitted he had too many cases, so they moved
23 on to the next. He didn't -- he didn't never -- the first
24 time meeting the victims was at trial. He didn't even know
25 what -- he couldn't even point them out or who the victims

1 were, and he did no type of pre-trial investigation. Um,
2 he also -- he had a warrant drawn up for -- in the warrant
3 it had something about demanding money, which didn't come
4 up until the day of trial. How did -- would he make a
5 warrant for something he didn't even investigate. Um ---

6 Q So let's back up here.

7 A Right.

8 Q You're talking -- are you saying that your attorney
9 should've filed before y'all went to trial a motion to
10 dismiss the charges?

11 A She should've filed -- yes -- yes, ma'am.

12 Q Okay. As opposed to moving for a motion to dismiss
13 after the State presented their case.

14 A Right. She should have after that also. But it was,
15 basically, before and after.

16 Q Okay. All right. Your next issue is your attorney
17 failed to inform the Court about a letter that you wrote to
18 the trial attorney that ended up in the State's hands about
19 this case.

20 A Right.

21 Q Can you explain that issue?

22 A I wrote a letter, you know, explaining to Anastasia,
23 basically, what I wanted done during the trial. Um, ---

24 MS. MCCALLISTER - Your Honor, I would object to
25 this as hearsay again. I mean I think he's talking about a

MICHAEL BROWN - DIRECT BY MS. MOODY

36

1 letter that he wrote. He needs to produce the letter and
2 not describe the contents of it.

3 MS. MOODY - Your Honor, I would say that I --
4 have the file that was given to us, but we don't have that
5 file, because the file was destroyed I believe.

6 THE COURT - Well, if he can -- he wrote the
7 letter. I would say you can ask him about the fact that he
8 wrote a letter and -- without going into the contents

9 MS. MOODY - Say that again, I'm sorry.

10 THE COURT - You can ask him about the letter that
11 he wrote without going into the contents of it.

12 MS. MOODY - All right.

13 Q So you wrote a letter to your Attorney, Ms. Walker.

14 A Yes, ma'am.

15 Q Okay. And you're testifying that somehow that letter
16 ended up in the State's hands.

17 A Yes, ma'am.

18 Q Okay. And you wrote a letter -- what was the letter
19 about, not the specific contents?

20 A It was about the trial strategy.

21 Q Okay. And so how is that -- when did you learn that
22 it ended up in the State's hands?

23 A Um, Anastasia came to visit me in Lexington County,
24 and she told me herself. She said it went to the wrong

1 person and -- and -- it went to the solicitor's office
2 instead of to her desk.

3 Q Okay, so the mail was addressed to Anastasia Walker.

4 A Right.

5 Q Okay, but it, actually, went to Meghan Walker?

6 A Yes.

7 Q Okay. And so on the outside of the envelope -- you
8 addressed the envelope yourself?

9 A Yes, ma'am.

10 Q To your attorney.

11 A To Anastasia Walker.

12 Q Okay. And what did you want your lawyer -- you said
13 in this allegation that your lawyer failed to inform the
14 Court?

15 A Yes, she failed to inform the Judge that, um, -- that
16 the State had, basically, a letter from -- that I wrote to
17 Anastasia Walker to, uh -- to the, uh -- and it went to the
18 State's hands -- that I wrote to Anastasia Walker in Meghan
19 Walker's hand and they didn't inform the Court.

20 Q And when you say they didn't inform ---

21 A Right.

22 Q --- the Court, you're saying the State didn't inform
23 the Court?

24 A Right, Anastasia or the State didn't inform the Court.

MICHAEL BROWN - DIRECT BY MS. MOODY

38

1 Q Okay. And when did you learn about the letter going -
2 - and you may have already testified -- just ---

3 A Right. Right before trial.

4 Q Right before trial.

5 A Right.

6 Q And Ms. Walker -- Ms. Anastasia Walker told you about
7 it.

8 A Yes.

9 Q Okay. And what -- I mean, like, you wanted them to
10 inform the Court so as to -- what did you want the Court to
11 do about that?

12 A Basically, I thought that, you know, I should had got
13 different solicitors on my case since they already was able
14 to read this letter and figure out our trial strategy. It
15 should've been reassigned.

16 Q Okay, so you -- when Ms. Walker informed you about the
17 letter going to the wrong Walker, ---

18 A Right.

19 Q --- did she say whether or not the letter was open or
20 just that the letter went to their office?

21 A She said when she got the letter, it was already
22 opened.

23 Q And so your assumption is that they read the letter.

24 A Right, because she said she wasn't the one that opened
25 it. Ms. Anastasia said she wasn't the one that opened it.

1 Q Okay. All right. By chance did Ms. Anastasia Walker
2 tell you who gave her the letter?

3 A No, I don't remember.

4 Q All right. Your next issue is you have your trial
5 attorney lied about whether or not -- I don't know whether
6 you're saying that she lied about it, but whether or not
7 you made alleged statements and that you denied making
8 those statements.

9 A Right. Those are the statements we talked about at
10 the beginning, um, that wasn't preserved. I told
11 Anastasia, um, that I never told the investigator anything
12 -- all the allegations he make saying I said, I never said
13 any of that.

14 Q All right, but that -- now -- let me just make sure
15 I'm clear on this. When you give that allegation, you're
16 saying she didn't challenge it in the trial?

17 A No, with that allegation, the Judge asked her if I
18 made that statement, are saying your -- your client made
19 that statement or didn't make the statement. She said that
20 I made the statement.

21 Q Okay.

22 A Right.

23 Q And so ---

24 A But she knew I didn't.

MICHAEL BROWN - DIRECT BY MS. MOODY

40

1 Q Okay. All right. And this may be a repeat of your
2 preservation but you -- well, excuse me -- you said the
3 prosecutor deliberate deception of the Court -- of a Court
4 by presentation of known false evidence.

5 A Right.

6 Q What do you mean by that?

7 A Okay, that went to that mask that I was talking about
8 it, um, -- hang on, let me read something from that.
9 Basically, it was no mask ever mentioned, um, at all, uh,
10 during trial from the victims or any testimony to it. Um,
11 Ms. Meghan Walker during closing arguments and during
12 opening statement from Ms. Mosier said that the suspect had
13 a mask on, um, basically, this is why he cannot be
14 identified in no photo line-up, because a photo line-up was
15 never shown, but she tried to down-play it, say the reason
16 why is because nobody can't get picked out through no mask
17 because it's covering up his face. She even put the mask -
18 - the, uh -- the bandan -- then she put a bandana on, say,
19 tell me if you can see -- basically, if you can see --
20 identify somebody through this bandana, but it was never no
21 mask mentioned. Um, she just made an allusion -- and this
22 is the reason why I did not get picked out of a line-up,
23 um, ---

1 Q So -- let's slow down. So you're saying the only
2 evidence that -- up until the trial that they said once you
3 do this particular robbery was the bandana and the wig.

4 A Right.

5 Q Okay. And are you saying that Ms. Walker -- Ms.
6 Meghan Walker presented evidence or made statements in the
7 closings about a mask which was never testified to in the
8 trial?

9 A Yes.

10 Q Okay. And did you discuss that -- what, if anything,
11 did you discuss with Ms. Anastasia Walker with regard to
12 this mask?

13 A Well, I was looking for her to object to that
14 testimony, because that -- that was false testimony that
15 was never stated during trial by anybody, um, but -- but
16 she never did.

17 Q Okay. And did you tell her -- I mean when you say you
18 were looking to her, did you alert her to it or -- I mean --
19 --

20 A Well, I alerted to her, you know, after trial, you
21 know, because it was during her closing argument, um --
22 matter -- matter of fact, yes, I did. I wrote her -- I
23 wrote it down on a pad and I told Anastasia, what mask, and
24 she -- and she just gave me a look and I'm thinking she was

1 going to go up there during her closing and correct that,
2 and she didn't.

3 Q Okay, so you wanted her to either object to it or
4 correct it.

5 A Right.

6 Q And she did not.

7 A And she did not.

8 Q So, now, this is all your allegations that you have
9 against Ms. Walker, and this -- these are the things that
10 you felt she should've done. Can you tell the Court how
11 you were prejudiced by her failure to do these things
12 throughout the trial?

13 A Well, how I was prejudiced -- you want me to go by
14 each -- each issue how I was prejudiced or overall?

15 Q Overall.

16 A Well, overall I was prejudiced, um, as -- everything
17 she did, it didn't give me a fair trial, um, and it,
18 basically, um, dealing with the not preserving issues -- it
19 gave me -- it hurt me, and I couldn't get a fair shot at my
20 Court of Appeals, um, um, with her not, uh, cross examining
21 the State witnesses, it let the -- it prejudiced me by
22 allowing the witness to get up there and try to make also
23 this bandana relevant through a canine track which was --
24 it was bogus. Make sure I get all the issues. Um, the
25 video, um, it prejudiced me, because also in the same

1 aspect it was something we asked for with the Rule 5 Brady
2 and the State didn't provide it, and it didn't allow me to
3 corroborate their testimony of what they saw happen in
4 these videos and didn't give me a chance to be able to go
5 over them myself and point out the things that were -- that
6 probably could have changed the tide of the trial.

7 Q Okay, so when you say corroborated, meaning
8 challenged?

9 A When I -- well, basically, challenge it. Right.

10 Q Okay. All right, and so like as a result you were
11 found guilty.

12 A Right.

13 Q And so you're in prison.

14 A I'm in prison with a life sentence.

15 Q Okay. And so what relief are you seeking from the
16 Court?

17 A Well, I really would like a new trial, and I think,
18 you know, um, that I'm entitled to a new trial, um, because
19 her performance was -- it was very poor. It was ---

20 MS. MCCALLISTER - Your Honor, I ---

21 A --- from start to finish.

22 MS. MCCALLISTER - --- I have an objection. I
23 mean I understand that they have to prove prejudice, so I'm
24 kind of letting this go a little bit, but I feel like he's

MICHAEL BROWN - DIRECT BY MS. MOODY

44

1 starting to make some conclusions that he --- and he's
2 making some legal conclusions about prejudice and ---

3 MS. MOODY - Well, I believe, Your Honor, he can
4 testify that he feels like his lawyer did not -- I mean I
5 guess it's making the choice of words, but I think he can
6 testify as to what his lawyer didn't do that caused him to
7 be in prison, how was he prejudiced.

8 THE COURT - And I understand you're getting
9 fairly general right now, and I think your question was,
10 specifically, how was he prejudiced.

11 MS. MCCALLISTER - Right. Which I -- I mean -- I
12 think you -- maybe we disagree on that, so I guess we do.
13 I think she -- he's answered the question. He's prejudiced
14 because he was convicted and he's in jail, but in terms of
15 like specific legal conclusions about issues and whether he
16 got a fair trial and all that stuff, I mean I'm trying to
17 let her put her up case, because I know she has to prove
18 that prong, but I think we're getting a little ---

19 MS. MOODY - I think he's entitled to say why.

20 THE COURT - I'm going to allow it.

21 A Okay, um ---

22 Q So, okay, so I -- the question I asked you was, how
23 were you prejudiced?

24 A Right, um, because like I said, um, I -- I really
25 didn't feel like -- well, I know that, you know, I didn't

1 get the fair trial that I feel I'm entitled to. Her -- I
2 just know that -- hang on one second -- that even with the
3 going to the alibi I was prejudiced with the alibi, because
4 my whereabouts could've been corroborated. It could've
5 been -- uh, the jury could've known that I had no way
6 whatsoever -- had opportunity to do this crime. By her now
7 doing -- using my alibi, um, it prejudiced me in that
8 aspect which could've changed the trial also, um, giving it
9 -- letting the jury know where I was during this. Um, I
10 think I already mentioned the video, um, the video
11 relevance and the statements. I think I mentioned that
12 also how it prejudiced me.

13 Q Okay. And so you're asking for a new trial?

14 A Yes, ma'am.

15 MS. MOODY - I have no further questions for this
16 witness. Please answer any questions the State may have.

17 CROSS EXAMINATION

18 BY MS. MCCALLISTER -

19 Q Okay, Mr. Brown, this attempted armed robbery occurred
20 on January 3rd of 2013. Correct?

21 A Yes.

22 Q And when were you arrested for this?

23 A March, -- March 13th, 2013.

24 Q Okay.

25 A Or 14th.

1 Q So you were arrested in March and then -- in March of
2 2013 and I think you testified that originally Luke Shealy
3 was assigned to your case.

4 A Correct.

5 Q Okay. And he was going into private practice so then
6 Ana -- Ms. Walker, Ana Walker came and took the case over
7 from Mr. Shealy.

8 A Right.

9 Q Okay. And you first met with Ms. Anastasia Walker in
10 December of 2013?

11 A It was the end of the year, end -- end of the year.
12 Right.

13 Q Okay. And when did she take over your case? Was it
14 around that same time?

15 A I think she took it over before then. I want to say
16 in August that she took it over, but I -- I didn't meet her
17 until after that.

18 Q Okay. And you were -- were you out of jail at this
19 point?

20 A Yes, I was out of jail.

21 Q Okay. Okay, and so you meet her for the first time in
22 December of 2013 and by that time -- by December you were
23 back in jail in Lexington County. Is that -- am I
24 understanding your testimony correctly?

1 A I was back in jail -- let me get this right -- in
2 Lexington -- in August -- yes, I was in jail when I first
3 met her.

4 Q Okay.

5 A Right.

6 Q And you had one meeting with her in December at -- at
7 Lexington County.

8 A If I recall I think it was in December.

9 Q Okay. And at that meeting, did you go over discovery
10 at that point or was she still waiting on things or both?

11 A Well, we didn't -- I didn't have any -- um, the first
12 meeting I didn't have any type of discovery material. We
13 talked about it and she was supposed to get it to me.

14 Q Okay. So what did you talk about at that meeting if
15 you didn't have any discovery?

16 A Um, we talked about her getting the discovery
17 material.

18 Q Okay. And that's it. She just -- was it just kind of
19 like introducing herself to you?

20 A Basically.

21 Q Okay. Um, did you tell her at that time that you had
22 an alibi?

23 A I either told her the first or the second time. I
24 can't recall it's been so long ago, but I did tell her.

1 Q Okay. But you can't say for sure that was in December
2 of 2013.

3 A It was -- it was either Dec -- the first meeting or
4 the second meeting.

5 Q Um, -- okay, so when was the second meeting?

6 A I don't even recall. I didn't write any of that down,
7 but it was 2014.

8 Q Okay, so -- okay. So you see her in late 2013 and
9 then you see her again in -- some time in 2014.

10 A Right.

11 Q Was it like right around the time of trial or was it a
12 couple months before trial?

13 A Well, I might've seen her three times in -- three or
14 four times in 2014, so ---

15 Q Okay.

16 A --- it probably -- it was way before trial.

17 Q Okay, so let's back up then, because I guess -- maybe
18 I misunderstood your testimony earlier. So you're not
19 saying you only had two meetings total with Ms. Walker.

20 A No, I had about three or four meetings total with Ms.
21 ---

22 Q Okay. And -- so if you had four meetings total, then
23 three of them would've had to have been in 2014.

24 A Right.

25 Q But you don't know dates of ---

1 A No.

2 Q --- those meetings.

3 A No.

4 Q Okay. And you testified that, um, one of your issues
5 is that she -- about these statements to the investigator
6 that you say that you never made.

7 A Right.

8 Q Okay. You denied making those specific statements
9 that were testified to at trial. Correct? Those two
10 sentences that -- I'm paraphrasing -- but generally the
11 issue about DNA will convict me. You deny making that
12 statement.

13 A Right.

14 Q And you deny making the second statement about
15 offering to plead guilty.

16 A Right.

17 Q Okay. Are you denying that you made -- that -- did
18 you talk to the investigator at all? Did you have a
19 conversation with him?

20 A The only conversation me and investigator had was once
21 he told me what the charges was, um, I told him, uh, that -
22 - that I didn't want to talk to him no more, that I want to
23 get an attorney, and I made -- and a phone call.

24 Q Okay.

MICHAEL BROWN - CROSS BY MS. MCCALLISTER

50

1 A So we never discussed -- we didn't get past go,
2 basically.

3 Q So you're -- so you recall at trial that he went
4 through like a waiver form, like your Miranda ---

5 A Right.

6 Q --- rights and everything. Are you saying that that
7 never happened?

8 A I never -- no, that did happen.

9 Q That happened.

10 A That did happen.

11 Q Okay. So he -- so you're saying -- I just want to be
12 clear on what you're saying happened. Your testimony is
13 that they arrested you and brought you back to the station
14 and went through this Miranda form that was written down
15 and you signed that and you're not denying that that
16 happened, but then the only thing that you said to the
17 officer was, I want an attorney and I want a phone call?

18 A No, the only thing I said to him was, once he told me
19 what the charges were, that I want an attorney -- I want an
20 attorney for these charges. I never -- we never talked at
21 all. I don't know where he got that from.

22 Q Okay. So his testimony about telling you that they
23 had your DNA, you're saying that conversation never
24 happened?

25 A Never happened.

1 Q And your testimony is that you told all of this to Ms.
2 Walker.

3 A Yes.

4 Q Okay. And then, um, you -- your testimony then as far
5 as your alibi is that you were at the home of Judy and
6 Cecilia Castro ---

7 A Yes.

8 Q --- on this specific night.

9 A Right.

10 Q And you said you got there at 5:00 until 6:30?

11 A No, I got there at 5:00 around 5:00, and they got
12 there around 6:00 or 6:30.

13 Q Okay. And your testimony today is that you never left
14 there after you got there at 5:00.

15 A I left probably around 2:00 or 3:00 in the morning.

16 Q You left at 2:00 or 3:00 in the morning.

17 A Right.

18 Q Okay. And you testified that you told this to Ms.
19 Walker and she did -- she sent an investigator out and she
20 herself went out and talked to the witnesses that you asked
21 her to talk to.

22 A Yes.

23 Q And you saw them, they came -- they showed up for at
24 least a portion of your trial, a portion of your trial.

25 A Right.

1 Q And you personally saw them though.

2 A I seen Ms. Castro come through the door, yes, I did
3 see them there.

4 Q Um, but -- but they never -- she never called them
5 when it was your turn to present a case.

6 A No.

7 Q And she never offered you an explanation for why she
8 chose not to do that.

9 A No.

10 Q Did you ask her about that?

11 A No, after the trial she just -- she said the State
12 didn't put up a good case, so she didn't need them.

13 Q Okay. And the same thing that Mr. Orstrowski
14 /Ostrowski, um, the DNA expert, you thought that he was
15 going to testify.

16 A Right.

17 Q And he didn't testify, and did you ask Ms. Walker
18 after trial why didn't you put up the DNA expert?

19 A No, she really didn't give me no explanation of why.
20 You know, I was really past that point, you know, got
21 convicted of something I didn't do.

22 Q At any point when this is happening -- I know your
23 testimony was that it happened quickly, but at any point
24 did you tell her, hey, stop, I do want to put up a case,
25 what are you doing?

1 A Well, we already had that impression that she was
2 going to put up a case.

3 Q Right.

4 A Right.

5 Q And I think you testified that the Judge had the
6 conversation with you ---

7 A Right.

8 Q --- about whether you wanted to testify, and you
9 didn't want to testify.

10 A Right.

11 Q And then -- but you still thought that even if you
12 didn't testify, your other witnesses would be presented.

13 A Right.

14 Q Am I understanding you correctly?

15 A Right.

16 Q Okay. When you realized that your other witnesses
17 were not going to be presented and that they were going on
18 to do their closing arguments, why didn't you say right
19 then and there, hey, no, stop, I do want -- I have
20 witnesses that I want to put up?

21 A Because I'm in the -- under the impressions I'm not
22 allowed to do anything like that, is ---

23 Q I mean I'm talking about to Ms. Walker, to your own
24 attorneys.

25 A She wasn't standing beside me; she was standing up.

1 Q What about Ms. -- Ms. Goode?

2 A Well, no, I didn't -- I didn't bring it to her
3 attention. I didn't know -- I mean -- by the time she did
4 that, it was over. It was too late for me when I realized
5 what's going on to even address that situation.

6 Q Okay. Okay, let's talk about this issue of the video.
7 There was one video that was played at trial. Correct?

8 A Right.

9 Q Okay. And you talked a little bit about some of the
10 testimony that the manager testified that there were other
11 cameras ---

12 A Right.

13 Q --- other than just the one video that shows the door.
14 Correct?

15 A Right.

16 Q And that's what was played at trial, was the one video
17 that shows the door.

18 A Right.

19 Q Okay. And so the manager testified that there were
20 other cameras in the Chuck E. Cheese that night.

21 A Correct.

22 Q But those videos were not available at your trial.

23 A Correct.

24 Q Okay. And you recall that your attorney made a motion
25 about that issue. Correct?

1 A She made a motion for enhanced videos.

2 Q Okay, you don't recall -- okay. So she made this
3 motion and do you recall that the State told her that that
4 was the only video that they had; they had no other videos.

5 A Well, the only motion she made regarding the videos
6 was to make sure there wasn't any enhanced videos, because
7 she could not see any of the things as far as the ring and
8 everything they were saying about that one video that they
9 did turn over, ---

10 Q Okay.

11 A --- so as far as her making a motion for the other
12 videos, no, it wasn't.

13 Q Okay, so you don't recall her asking the State to turn
14 over any other videos that they had, ---

15 A She -- yes, she did that through ---

16 Q --- and the State's response was I don't have any --
17 we don't have any.

18 A Okay, yeah, she did that through her motion, but the
19 State didn't turn nothing over.

20 Q Okay. And you don't have those videos here today.

21 A No, but I have the evidence -- the -- the incident
22 reports and everything that's stating these videos existed.

23 Q Okay, and I -- I understand that, but I'm just saying,
24 you don't have copies of the videos today that you have

MICHAEL BROWN - CROSS BY MS. MCCALLISTER

56

1 like since obtained from the State's files or anything like
2 that.

3 A No, I don't.

4 Q So when the State says on the record at trial, we
5 don't have any videos other than this one that we're going
6 to play, you don't have any anything except for an incident
7 report that says that they were -- at some point existed?

8 A Well, I got the -- the testimony also from the manager
9 saying he replayed the video over and over.

10 Q Right, he -- I believe the manager testified that they
11 played the videos that night and then he was going to make
12 a copy for the officers. Correct?

13 A Uh, he stated he -- yes, he played it that night, um,
14 for the officers and he -- he normally make the -- burn the
15 copies within 24 hours.

16 Q And he says he normally did, but in this case there
17 was testimony that the officers had some significant issues
18 trying to get this man to make them a copy of the videos.
19 Correct?

20 A The only issue that they had -- I'm not going to say
21 that's correct. The only issue that they had was for them
22 turning over the video. Far as downloading the video, that
23 was never the problem. That was just for the manager to
24 give them the video.

1 Q Okay. So assuming the videos didn't exist at all,
2 assuming there was no video, there was still three eye-
3 witnesses who testified and described the person who
4 entered into Chuck E. Cheese that night. Correct?

5 A Um, you said three people?

6 Q I believe Cadasia (phonetic) Green, Kyree (phonetic)
7 Green and Ronnie Martin.

8 A You had -- you had two people write statements.

9 Q Two people wrote statements, but three people ---

10 A Right.

11 Q --- testified. Correct? Mr. Martin didn't write a
12 statement, but he did testify at trial.

13 A Right.

14 Q Okay. So we had three witnesses from inside Chuck E.
15 Cheese who testified what the person was wearing and looked
16 like that night when they came in to the restaurant.

17 A Well, you had -- yes, you had three people testified.

18 Q Okay. And they also testified that the -- that the
19 robber was wearing a bandana and a wig and glasses.
20 Correct? They described the disguise that the person was
21 wearing.

22 A Um, one of them I know did ---

23 Q Okay.

24 A --- in -- in his statement.

1 Q Okay. So you're not disputing the fact that the
2 witnesses claimed that a robber came in wearing a wig and a
3 bandana.

4 A Well, I'm disputing the evidence in general, as far as
5 they said this is the location since they found the
6 evidence at a nightclub. Um, so I'm disputing the location
7 that they said the, uh, person ran to and that's where they
8 found the evidence at.

9 Q Okay, I understand that, but you testified earlier
10 that the video was the way that the State connected the
11 bandana to the crime, and I'm asking you that there were
12 also eye-witnesses who could connect a robber wearing a
13 bandana to the crime.

14 A Well, what I'm stating is the -- the State -- okay,
15 you had the State first say the evidence was found right
16 outside the door. Okay? The evidence wasn't found outside
17 the door; the evidence was found up the street, not a few
18 feet away from the incident, up the street. They said the
19 camera showed the suspect with this -- these items on them
20 running in that direction over there behind the El Tora,
21 and that's where they found it at. So I'm challenging -- I
22 need that video to challenge that. They said this is the
23 items that had been worn for the robbery and you can have
24 video that you didn't produce.

1 Q Okay. So you're saying it's not good enough to have
2 the witnesses come and testify to what the robber wore and
3 where the robber went, it has to be on the video.

4 A Well, a bandana and a wig are -- is something that is
5 common.

6 Q Okay.

7 A Right.

8 Q But they did have one video of the robber that shows
9 that person wearing a video (sic) -- I mean a bandana and a
10 wig.

11 A Well, I -- I mean it had a bandana -- I didn't see no
12 wig on the video.

13 Q Okay. And that video was shown to the jury.

14 A Right.

15 Q And your attorney was able to cross examine the
16 officers about that video and point out the fact that the
17 officer was saying, oh, you can see a ring and you can see
18 these things that she was able to point out that maybe you
19 can't really see them as much.

20 A Right, you couldn't see any of that.

21 Q Okay. Okay, and then you have this other allegation
22 about the cross examination of the canine handler.

23 A Right.

24 Q And I just want to make sure I'm understanding what
25 your allegation is. You're saying that you -- didn't --

1 you're saying that you have since made a new motion for
2 your Rule 5 discovery -- correct? -- like some point since
3 your trial ended?

4 A (No response)

5 Q Is that what you were saying, and that's how you got
6 these dispatch reports?

7 A Well, when I -- when I had a appellate lawyer, that's
8 when I got the discovery material again and also when Ms.
9 Moody sent me copies of the discovery material.

10 Q Okay. So she had asked you if you alerted your
11 attorney when that witness was testifying about the things
12 that you say you wanted her to cross examine on.

13 A Right.

14 Q And if I understood you correction, you said, no,
15 because you didn't see those dispatch reports until later.

16 A No, I never told her, uh, no, that -- about the
17 dispatch reports. I said that she knew about the dispatch
18 reports, so she should have cross examined them.

19 Q Okay. So why didn't -- but if you're hearing this
20 testimony and you think there should be some cross
21 examination, did you tell your attorney there should be
22 some cross examination on this? Did you write a note?
23 Because you said at one point you were writing some notes
24 to your attorney.

1 A Right, um, no, I didn't -- when -- when the witness
2 finished testifying, she got up so fast before I could even
3 know -- she didn't come to me and say, hey, you want me to
4 testify -- you want me to cross examine or not. She didn't
5 do that. She just said no further -- no questions for the
6 witness. It was over with.

7 Q Okay. Um, and then you've raised this issue about
8 soliciting damaging testimony. The jury was not told that
9 you had other charges. Correct?

10 A Right.

11 Q Okay. They were just told that you were arrested
12 based on DNA and other factors. Correct?

13 A Correct.

14 Q And the other factors were pending charges.

15 A Correct.

16 Q Which I assume you don't want a jury to hear about.

17 A I mean that's what he's saying that's what it was, was
18 other factors, but regardless if it's thrown out there for
19 the jury to know, and they didn't know what those other
20 factors are; only thing they can do is guess.

21 Q Okay. But that was the truth as far as you're aware,
22 that you were arrested based on DNA and other factors, the
23 other factors being the charges.

24 A Actually, -- I mean I don't -- I don't know if that is
25 why I was arrested.

1 Q Okay. That's what the officer testified to.

2 A Right.

3 Q Okay. Um, and you've raised this issue about failing
4 to file a motion to dismiss the charges and you -- Ms.

5 Moody asked you kind of what the basis for that was, and

6 you talked about Investigator Martin not investigating the

7 case and not speaking to witnesses and these sorts of

8 things. Your attorney was able to cross examine him on all

9 of that on what he did in his investigation at trial.

10 Correct?

11 A Right.

12 Q And a jury heard all those things. They heard him say

13 I have a huge case load and I had to move on, and I did get

14 to talk to these people.

15 A Right.

16 Q Okay. And your attorney did make a motion for a

17 directed verdict after the end of the State's case.

18 Correct?

19 A Correct.

20 Q And that issue was, actually, one of the issues that

21 was raised on appeal. Correct?

22 A Correct.

23 Q Okay. So the Court of Appeals heard -- got to look at

24 that issue.

1 A Well, I don't -- I don't -- I mean they -- they just
2 denied it because it was direct evidence they said --
3 direct and circumstantial evidence.

4 Q Okay, so that -- your attorney made the motion; it was
5 denied at trial, and the Court of Appeals agreed with the
6 trial Judge's decision to deny that motion.

7 A Yes, because of the fact that the statement got
8 allowed in and the DNA evidence.

9 Q Okay. Okay, the -- this letter that you've talked
10 about that got to the State somehow, your testimony was
11 that Ms. Walker is the one who told you that it had gone to
12 Meghan Walker instead of herself.

13 A Correct.

14 Q And that the envelope was open when she received it.

15 A Correct.

16 Q Did she tell you who opened the envelope?

17 A She didn't know.

18 Q She didn't know.

19 A No, she just know it was in the State's ---

20 Q Do you know who opened the envelope?

21 A She just knew it was in the State's hands.

22 Q Do you know who opened the envelope?

23 A No, I don't.

24 Q So for all you know it could've been the secretary at
25 the front desk who opened the envelope.

1 A Um, it wasn't the secretary.

2 Q How do you know?

3 A It was opened ---

4 Q You don't know that.

5 MS. MOODY - Objection.

6 Q I'm asking you, you don't know that. You don't ---

7 A I'm ---

8 Q You weren't there and you don't know that.

9 A I'm not sure. She ---

10 MS. MOODY - Objection, Your Honor. I'd ask that
11 she allow him to answer her question. She asked and then
12 she cuts him off.

13 THE COURT - I think his testimony was he doesn't
14 know who opened the envelope. Is that correct, sir?

15 MR. BROWN - Correct.

16 Q Okay. You testified about -- I think you were saying
17 that the -- your allegation that your attorney lied about
18 whether you made the statements, that's the same -- that's
19 kind of the same thing as the -- it kind of got brought up
20 twice, but those are the same allegations. Correct?

21 A Correct.

22 Q Okay. The first allegation about the preserving those
23 issues for appeal.

24 A Right.

1 Q Okay. And then your last allegation was the
2 prosecutor's intentional deception of the Court by using
3 the word mask. Correct?

4 A Right.

5 Q Okay. And you talked about that in her -- she --
6 you're saying she did that in her closing arguments?

7 A Yes, in her closing arguments.

8 Q You seem like you're familiar with the transcript.
9 Can you tell me where in the closing arguments you're
10 talking about?

11 A Okay, um, I got it right here.

12 Q Just the page numbers if you have -- if you know.

13 A You have it in -- it started off in the opening
14 statement, ---

15 Q Okay.

16 A --- transcript page 109, lines 23 through 25. That's
17 where it started at. (Pause) Transcript 280, 9 through 17,
18 transcript 288, lines 14 through 25, continued to page 289,
19 1 through 5 -- um -- make sure I got that page right.

20 (Pause) Transcript 350, lines 24 through 25. (Pause)

21 Transcript page 353, lines 10 through 11. (Pause)

22 Transcript 355, 19 through 20, and transcript 356, lines 7
23 through 11. This was the part where Ms. Walker's statement
24 -- Meghan Walker's statement, and we brought in people who
25 picked a mask man out of a photo line-up, questioned every

1 single piece of evidence we ever put before you, because
2 that is made up that people start wearing mask and still
3 can pick them out of a photo line-up.

4 Q Okay. So on some of these instances that you're
5 pointing out that you're -- you're saying are problematic,
6 um, if you read through them, it sounds -- it sounds like
7 Ms. Walker is using mask and bandana to mean the same
8 thing.

9 A Well, she -- in -- in a lot of instances she was
10 using, mask, bandana and wig together.

11 Q Okay, and there are several times where she says mask
12 and she corrects herself though and says, oh, I mean the
13 bandana.

14 A I don't -- I don't remember seeing that, but if she
15 did, I mean regardless, um, she -- she still made the
16 statement about a mask covering a face, and that's why they
17 couldn't get picked out of a line-up.

18 Q Okay.

19 A I mean -- maybe she can try to correct it, but then
20 she goes right back into stating this is why they can't
21 pick him out of a line-up because of a mask and a bandana.
22 That's separate to me.

23 Q Okay. To you that's separate.

24 A And possibly to the jury if that's the excuse she
25 using for the photo line-up.

1 Q Okay. Do you remember -- never mind.

2 MS. MCCALLISTER - I'll withdraw the question.

3 That's all the questions I have.

4 THE COURT - Ms. Moody?

5 MS. MOODY - May it please the Court, briefly,

6 Your Honor.

7 RE-DIRECT EXAMINATION

8 BY MS. MOODY -

9 Q Mr. Brown, earlier you testified that as it relates to
10 the dispatch logs, ---

11 A Right.

12 Q --- you -- correct me if I'm wrong, did you have a
13 copy of the dispatch logs in the discovery that you had?

14 A Talking about discovery I have now?

15 Q No, no, no, the discovery that you went over with Ms.
16 Anastasia Walker, I believe your testimony was that at the
17 time she had the dispatch logs or records, but you did not
18 have it in your packet.

19 A Right, she didn't share it with me.

20 Q Okay. And so it wasn't until you received a copy of
21 the discovery from my office and then a copy from your
22 appellate attorney that you saw the dispatch logs.

23 A Right, correct.

24 Q So at the trial, because you didn't have it in your
25 packet, would -- where -- when would you have seen it to

MICHAEL BROWN - RE-DIRECT BY MS. MOODY

68

1 like ask her to challenge or ask those questions of that
2 witness?

3 A If I would've had it at the beginning, I would've make
4 sure that she have -- I would've brought it to her
5 attention that, you know, here we go right here, make sure
6 you bring this up prior to trial.

7 Q So at the time -- I believe you testified when Ms.
8 McCallister asked you, she jumped up or it went so quick
9 you were unable to tell her?

10 A Right.

11 Q Okay. But it was also in addition that you didn't
12 have a copy of the dispatch ---

13 A Right.

14 Q --- records yourself.

15 A Right.

16 MS. MOODY - No further questions for this
17 witness.

18 MS. MCCALLISTER - Nothing further, Your Honor.

19 THE COURT - Thank you, sir. You can step down.

20 MS. MOODY - At this time I will call Ms. Judy
21 Castro.

22 JUDY CASTRO, AFTER BEING FIRST DULY SWORN,
23 TESTIFIES AS FOLLOWS -

24 DEPUTY CLERK - Please have a seat in the witness
25 stand and state your name for the record.

JUDY CASTRO - DIRECT BY MS. MOODY

69

1 MS. CASTRO - Judy Castro.

2 DIRECT EXAMINATION

3 BY MS. MOODY -

4 Q Ms. Castro, good afternoon.

5 A Good afternoon.

6 Q Where do you currently reside?

7 A I reside at 305 Lewedwood (phonetic) Drive in West
8 Columbia.

9 Q Okay. And are you familiar with Mr. Brown?

10 A Yes, I am.

11 Q Okay. And how are you familiar with Mr. Brown?

12 A Mr. Brown was my -- our neighbor for years when we
13 resided at 217 Octaw (phonetic) Court, and then we briefly
14 attempted a relationship, and we just decided to remain
15 friends after that.

16 Q Okay. All right, so you're familiar with the trial
17 that he went through for armed robbery?

18 A Yes, I am.

19 Q And how are you familiar with this trial?

20 A Um, at the time that the incident occurred, um, Mr.
21 Brown was at my home, and once Mr. Brown was arrested, he
22 called and I spoke with the investigative officer. I guess
23 they had given him the one call, and he said, I've been
24 arrested, and I said, for what, and he said they said I
25 robbed a place and I said, when was this supposed to have

JUDY CASTRO - DIRECT BY MS. MOODY

70

1 happened, and he said the date, and I said you were at my
2 house that day, and, um, I said -- you know, after that he,
3 apparently, gave the statement to his attorney and they
4 came out and gave -- requested the statement and we gave a
5 statement to his attorney.

6 Q Now, did you only talk to Ms. Walker, his attorney?

7 A Ms. Walker and another lady came out to speak with me
8 and Cecilia, but also a gentlemen came out as well to
9 speak.

10 Q And do you recall that gentleman's name?

11 A I do not recall his name.

12 Q If I told you Russell Dean, would that jog ---

13 A Yes.

14 Q --- your memory?

15 A Yes, I believe that's his name.

16 Q And who did he identify himself as to you?

17 A As detective looking into -- into the case.

18 Q Now, he was -- when you say detective, was he an
19 investigator for ---

20 A Yes.

21 Q --- Ms. Walker?

22 A Yes.

23 Q Okay. And you cooperated and spoke with him about
24 this case.

25 A Correct.

1 Q Now, back in August of 2014 did you ever -- or prior
2 to August 4th, 2014, did you receive a subpoena?

3 A To be honest I don't remember if I received a subpoena
4 or not. I remember speaking with the -- his attorney and
5 she said that she would notify us when ---

6 MS. MCCALLISTER - Your Honor, objection to what
7 the attorney told her, hearsay.

8 MS. MOODY - I think she was just getting ready to
9 testify as to what the attorney needed her for with regards
10 to the subpoena.

11 THE COURT - Well, she's, I think, was about to
12 testify as to what the told her, which would hearsay, so
13 that's sustained.

14 Q So when you spoke with Ms. Walker -- well, were you
15 asked to testify in this case?

16 A She told me that we would be called. Yes, she told me
17 we would be called.

18 Q Okay. So you were asked to testify in the case
19 though.

20 A Yes, that is correct.

21 Q Okay. All right, and did you meet with Ms. Walker
22 after learning that you would be called as a witness in the
23 case?

24 A No, I spoke with her over the telephone.

25 Q And did you come to Court for the case?

JUDY CASTRO - DIRECT BY MS. MOODY

72

1 A I showed up at Court, but I had spoken -- I spoke with
2 Ms. Walker, and she said that it was not going to be
3 necessary for Cecilia and I to attend, so at that point ---

4 Q Okay.

5 A --- I did not go.

6 Q Okay, so you showed up for the trial on August 4th?

7 A (Indicating yes)

8 Q You've got to verbally say.

9 A Yes. I'm sorry. I apologize.

10 Q Okay, so you showed up on August 4th?

11 A (Indicating yes)

12 Q You've got to say yes or no.

13 A Yes.

14 Q Okay. And did you sit through the first day of the
15 trial?

16 A No, I did not.

17 Q On that day did you speak with Ms. Walker?

18 A No. I -- I did not speak with her during the trial.

19 I spoke with her that evening, because she said that there
20 was no need to take Cecilia out of school, because ---

21 Q Okay, well, let's not say what she said.

22 A Okay.

23 Q You spoke with her after the first day of the trial?

24 A Yes, I did.

25 Q And was that by telephone or was that face-to-face?

1 A By phone.

2 Q By phone. And then the second day did you come to
3 Court?

4 A No, we did not.

5 Q Okay. But you -- you -- how would you have gotten
6 notice of coming to Court for August 4th?

7 A I didn't receive a subpoena; I spoke with her by
8 phone.

9 Q Okay. All right. Were you given any reason -- don't
10 -- well, no. Were you given any reason why you were not
11 necessarily needed for trial?

12 A No.

13 Q Don't say what she said.

14 A No, I was not given a reason.

15 Q Okay. But you planned to be there for the trial for
16 those two days.

17 A That is correct.

18 Q Okay. All right, now when you spoke with Mr. --
19 well, when you -- being there at the trial, what would you
20 have testified to with regard to your knowledge of this
21 case?

22 A Um, on the day in question, I had gotten off work and
23 I came home; I brought Cecilia home, and I left Cecilia and
24 Michael there eating and watching movies.

25 Q At your home.

JUDY CASTRO - DIRECT BY MS. MOODY

74

1 A At my home.

2 Q Okay. And do you recall when you left your home?

3 A Um, it would've been around about 7:30, 8:00. I had a
4 prior engagement.

5 Q Okay. And do you recall when you returned?

6 A About 2:00, about 2:30, 3:00 o'clock, because I woke
7 them up, because Cecilia was asleep on one sofa, and he was
8 asleep on the other.

9 Q And Michael being at your home, was this a common
10 occurrence?

11 A Yes, they did movie nights.

12 Q And what day was movie nights?

13 A Wednesday and Thursday.

14 Q And so and this night it was no different from any
15 other ---

16 A No.

17 Q --- time?

18 A No. His dogs were at my house, so he came over every
19 night to take care of his dogs.

20 Q Okay. And so, again, you didn't show -- well, you
21 didn't get to provide this testimony to -- in this trial?

22 A That is correct.

23 MS. MOODY - No further questions for this
24 witness. Please answer any questions the State may have.

25 CROSS EXAMINATION

1 BY MS. MCCALLISTER -

2 Q So your testimony is, that on the day in question you
3 came home around 7:00 or 8:00 pm and Mr. Brown was already
4 at your home.

5 A No, my testimony is that I got home between about
6 6:30, 7:00-ish, and I left Mr. Brown at my home about
7 between 7:00 and 8:00 pm.

8 Q Okay, so you come home around 6:30 to 7:00. Is he
9 there when you get there?

10 A Normally, yes.

11 Q Okay. Was he there that day?

12 A Yes, he was.

13 Q And then you left some time between 7:00 and 8:00 pm.

14 A Correct.

15 Q And you didn't return home until 2:30 or 3:00 o'clock
16 in the morning.

17 A That is correct.

18 Q So between 7:00 or 8:00 pm and 2:30 or 3:00 in the
19 morning, you did not have eyes on Mr. Brown.

20 A No, I did not.

21 Q Were you ever engaged to Mr. Brown?

22 A No, I was not.

23 Q You were not his -- you were never his fiancee?

24 A No, I was not.

25 Q Not at the time of this incident?

CECILIA CASTRO - DIRECT BY MS. MOODY

76

1 A No, I was not.

2 Q Okay. How long was your relationship?

3 A Maybe a month, month and a half.

4 Q And when was that?

5 A 2011, 2011, 2012-ish, somewhere in there.

6 MS. MCCALLISTER - That's all the questions I
7 have, Your Honor.

8 MS. MOODY - No further questions, Your Honor.

9 THE COURT - Thank you, ma'am. You can step down.

10 MS. MOODY - At this time, Your Honor, we'll call
11 Cecelia Castro.

12 CECILIA CASTRO, AFTER BEING FIRST DULY SWORN,
13 TESTIFIES AS FOLLOWS -

14 DEPUTY CLERK - Thank you. Please have a seat in
15 the witness stand and state your full name for the record.
16 (Pause) State your full name.

17 MS. CASTRO - Cecilia Castro.

18 COURT REPORTER - She needs to speak up a little
19 bit.

20 MS. CASTRO - Cecilia Castro.

21 DIRECT EXAMINATION

22 BY MS. MOODY -

23 Q Good afternoon, Cecilia. Can you please tell the
24 Judge how you know Mr. Brown?

1 A He used to be our neighbor and then him and my mom
2 became really close friends, and me and Mike used to be
3 really close and at the time my dad wasn't there, so I used
4 to call him rental dad, so that's how I know him.

5 Q And do you recall this particular case where Michael
6 was arrested?

7 A Yes.

8 Q Okay. And at the time do you recall how old you were?

9 A Um, 13 or 14, but it was January, so 13.

10 Q Okay. And so you had -- you spent time with Mr. Brown
11 or Michael.

12 A Yeah, everyday, basically.

13 Q Okay. And how did you spend time with him everyday?

14 A He used to help me with school and I had -- I had a
15 dogs, like what -- his dogs, so he and I used to play with
16 our dogs outside and he helped me name -- well, I helped
17 him name some of his dogs.

18 Q And so what other things did you do with Mr. Brown, or
19 Michael?

20 A He used to pick me ---

21 MS. MCCALLISTER - Your Honor, I just -- I'm going
22 to object to the relevance of this, what they used to do
23 and ---

24 MS. MOODY - Well, I can be more specific.

25 MS. CASTOR - Sorry.

1 Q Did you used to watch movies with Michael?

2 A Yeah.

3 Q Okay. And on the night in question regarding this
4 case, did you have opportuni -- well, excuse me -- say it
5 like this -- did you have opportunity to speak to Michael's
6 attorney?

7 A Uh, yeah.

8 Q And did you speak with an investigator regarding
9 Michael?

10 A I don't remember. I just remember they asked me -- my
11 mom and I were talking to some people that came over, ---

12 Q Okay.

13 A --- and I remember being asked questions and my mom
14 being told to go to another room.

15 Q Okay. And those questions, do you recall being asked
16 whether you were watching movies with Michael?

17 A Yes, they asked me to -- they asked me to tell them
18 what we did that day and if I was with him.

19 Q And what did you tell them?

20 A I had told them that we were watching movies after we
21 had handled the dogs, and after that we just kind of fell
22 asleep. We went to eat and then fell asleep.

23 Q Okay. And so, do you recall that you were going to --
24 whether or not you were going to testify on Michael's
25 behalf?

1 A Yes.

2 Q Okay. And did you ever get to testify on his behalf?

3 A No.

4 Q Did you speak with anyone after you spoke the first
5 time with someone about what you did on that night?

6 A No. I was told that, um, -- by my mom that we didn't
7 have to come back or we didn't have to testify.

8 MS. MOODY - No further questions for this
9 witness. Thank you. Please answer any questions the State
10 may have.

11 CROSS EXAMINATION

12 BY MS. MCCALLISTER -

13 Q How do you know that this day in question was the day
14 that you were watching movies?

15 A Well, Wednesday and Thursday we always watched movies,
16 but on Friday I didn't have school that day, so ---

17 Q When you say you always watched movies, I mean ---

18 A Like that night -- that night we watched Hunger Games,
19 because that was the movie that just recently came out.

20 Q Okay.

21 A So we would watch the newest movies, I guess.

22 Q And you said you watched movies and then you went to
23 eat and then you fell asleep.

24 A Yeah, we fell asleep in the living room.

25 Q Okay. What time did you fall asleep?

CECILIA CASTRO - CROSS BY MS. MCCALLISTER

80

1 A Well, probably during the movie, so I want to say
2 towards the end of it, probably like 10:00 or 11:00. I
3 don't really remember.

4 Q Okay. You don't remember?

5 A Yeah, but -- probably 10:00 or 11:00, because it was
6 already the beginning of the movie, and I watched towards
7 the end, and that's an hour and a half.

8 Q Okay. And you slept through the whole night until
9 your mom came or, or did you sleep ---

10 A I slept on the couch.

11 Q You slept on the couch that night.

12 A Yeah.

13 Q So when you woke up that morn -- the next morning, you
14 woke up on the couch.

15 A Yes.

16 Q Okay. And was Mr. Brown there when you woke up?

17 A No.

18 Q So you don't know what time he left?

19 A I don't know what time he left. I woke up like the
20 next day early in the morning, but not like midnight-ish.

21 MS. MCCALLISTER - Okay. Okay, thank you.

22 THE COURT - Anything else, Ms. Moody?

23 MS. MOODY - No, ma'am.

24 THE COURT - You can step down, ma'am.

1 MS. MOODY - At this time, Your Honor, we have no
2 further witnesses.

3 THE COURT - Thank you.

4 Is it Ms. McCallister?

5 MS. MCCALLISTER - Yes, Your Honor. The State
6 calls Anastasia Walker.

7 ANASTASIA WALKER, AFTER BEING FIRST DULY SWORN,
8 TESTIFIES AS FOLLOWS -

9 DEPUTY CLERK - Thank you. Please have a seat in
10 the witness stand and state your full name for the record.

11 MS. WALKER - My name's Anastasia Walker.

12 DIRECT EXAMINATION

13 BY MS. MCCALLISTER -

14 Q Ms. Walker, where are you currently employed?

15 A South Carolina Legal Services.

16 Q Okay. And at some point were you employed as a public
17 defender in Richland County?

18 A I was.

19 Q And what -- do you recall, generally, the dates of
20 that employment?

21 A It was 2007 to 2017, I believe.

22 Q And do you recall being appointed to Mr. Brown in this
23 case?

24 A I do.

25 Q Okay. And you don't have a file here today. Correct?

1 A I do not.

2 Q Okay. And I see you've got something in your hand
3 there. Do you have notes or ---

4 A These are notes that were entered into the computer,
5 so I don't have any of my handwritten notes. These are
6 just the ones that were ---

7 Q Okay. So you just have the computer printout.

8 A That's all I have, yes.

9 Q Okay. And you don't know what happened to the file.

10 A This has been an on-going search, and at some point
11 when this case was scheduled for PCR hearings it was in the
12 office and since then has been misplaced is what I've been
13 informed, so they have not been able to locate it for
14 purposes of today's hearing.

15 Q Okay. Okay, but do you recall your representation of
16 Mr. Brown?

17 A Some of it.

18 Q Okay. You have heard his testimony against you and
19 the allegations that he is raising against you, so, um, can
20 you -- before we start, can you just kind of briefly
21 describe the evidence in this case?

22 A If I remember correctly, Mr. Brown was accused of
23 attempting to rob a Chuck E. Cheese. The suspect that went
24 in had a bandana and a wig and a hat on, I believe, had
25 gone into the Chuck E. Cheese, I believe brandished a

1 weapon, grabbed a woman by the arm, went to go towards the
2 back of the Chuck E. Cheese, some other employees came out
3 and then the suspect fled, and then the wig and bandana was
4 recovered at a neighboring building, I believe it was a
5 nightclub, and then I think the only other evidence outside
6 of that were the statements that came in.

7 Q Okay. Well, the wig and the bandana were recovered
8 and then DNA test were conducted on those items. Correct?

9 A Yes.

10 Q And Mr. Brown's DNA was found to match the DNA on the
11 bandana. Correct?

12 A It was part of a mixture.

13 Q Okay. And then the statements that Mr. Brown made to
14 the officers. Correct?

15 A Yes.

16 Q Okay. So because the suspect was disguised, there was
17 no identification. Correct?

18 A I don't believe so.

19 Q Okay. You've heard Mr. Brown's testimony today about
20 these two statements, the two separate statements that were
21 made that came in through the police officer. Correct?

22 A Yes.

23 Q Okay. And you had some pretrial motions on these
24 issues. Correct?

25 A I did.

1 Q Okay. And you argued for those statements to be kept
2 out.

3 A I did.

4 Q Okay. And then the trial Judge ruled against you, at
5 least in part; he did keep out part of the statement about
6 the DNA -- correct? -- about -- I believe there was
7 something about Mr. Brown being asked to take a DNA test
8 and he declined, and that statement was not allowed in, but
9 his statement about the DNA will convict me was allowed in.
10 Correct?

11 A That sounds familiar.

12 Q Okay.

13 A If that's what's in the transcript, that's -- is
14 what's accurate.

15 Q Okay. But you did -- you do recall these two
16 statements being an issue and you recall that there was
17 some pretrial motions about that.

18 A Yes.

19 Q Okay. And you made your arguments for why they should
20 not come in.

21 A I did.

22 Q And the trial Judge ruled against you and decided that
23 at least part of these statements were coming in.

24 A I believe that's correct.

1 Q Okay. And then when the officer testified, you did
2 not object.

3 A I did not.

4 Q Okay. And that issue, actually, went up on appeal,
5 and the Court found that it was not preserved. Correct?

6 A Correct.

7 Q Okay. Did you -- there's been some suggestion though
8 that -- that -- by Mr. Brown that he told you he never made
9 any statements at all. Do you remember that issue? Do you
10 remember his testimony about that?

11 A I do remember his testimony about it, and
12 unfortunately I do not have anything in my notes, nor do I
13 recall him telling me, specifically, that he did not make
14 those statements, ---

15 Q Okay.

16 A --- but I don't believe that was the issue that I
17 brought up at trial.

18 Q Okay, and that's kind of what I'm getting it. That
19 seems to be a different issue than what was brought up at
20 trial, and that's what I'm asking. Do you recall him ever
21 telling you, I didn't make a statement at all?

22 A I don't, and I can't recall if we had a -- if there
23 was a Denno or if I -- if that's why I made the objections
24 or if I had a separate motion. I can't recall.

25 Q Okay.

1 A But I don't recall the issue being whether or not the
2 statements were, actually, made. I just recall making a
3 motion based on the content of the statements that they
4 shouldn't be let in, but, again, the transcript would
5 certainly be accurate as to reflect what I was arguing.

6 Q Okay. So if I'm understanding you correctly, the way
7 you recall the issue is that it was -- it was not that a
8 statement was made or not made, it was what is the content
9 of that statement.

10 A That's my recollection.

11 Q Okay.

12 A If the transcript says differently, certainly that
13 would be correct.

14 Q Okay. Okay. And you -- I don't want to put words in
15 your mouth. Are you testifying that you don't recall Mr.
16 Brown ever telling you, I never made a statement?

17 A I do not personally, no. I do not off the top of my
18 head recall that.

19 Q Okay. Um, okay. Ms. Judy Castro and Cecilia Castro
20 have testified that you went out and spoke with them. Do
21 you recall going and doing that?

22 A I do.

23 Q And you -- ultimately, they were not called as alibi
24 witnesses at trial. Do you recall why you made that
25 decision not to call them?

1 A I do.

2 Q And what was the reason?

3 A There were a few issues with the alibi notice. So I -
4 - during my representation of Mr. Brown, I had not been
5 informed of an alibi until very close to the trial. It was
6 very somewhat last minute. By the time that I had spoken -
7 - personally I think we had sent an investigator out to
8 speak to Ms. Castro and her daughter, and then Ms. Goode
9 and I went out to verify it ourselves, and at that point it
10 was -- we had to make the decision to file alibi notice or
11 lose the opportunity to even call it at trial, so my
12 deadline was that day. I believe I was calling somebody on
13 the phone while I was driving in the car back from Gaston
14 to say, file this notice, because it needs to be done. In
15 the -- I believe in between that period of time, between
16 filing alibi notice and, actually, going to trial, Ms.
17 Meghan Walker brought it to my attention that there were
18 jail phone calls that sounded -- I can't remember the exact
19 wording, but they gave the impression that there was
20 coaching for the alibi. Outside of those jail phone calls,
21 also on top of that, I felt like that alibi wasn't specific
22 enough. There wasn't -- at the time I recall that they
23 couldn't tell me what movie was watched, just that they had
24 had movie nights every Wednesday, this was a Wednesday, so
25 he must've been there, and then I believe there's also this

1 issue about falling asleep, so there's a period of time
2 that's unaccounted for where they did not -- I believe that
3 it didn't encompass the time of the alleged armed robbery,
4 I believe, if I remember correctly. So based on all those
5 issues, we decided that it would be more harmful than
6 helpful to use alibi and Ms. -- this was a -- certainly a
7 point of contention between me and Mr. Brown, and I made
8 that choice against Mr. Brown's wishes.

9 Q You made that choice against his wishes, but did you
10 explain to him these issues ---

11 A Yes.

12 Q --- of the alibi?

13 A Yes.

14 Q Okay. So he was aware that you felt the alibi
15 witnesses were problematic and could potentially hurt his
16 case.

17 A I would've put -- I would've let Mr. Brown know
18 everything I knew walking into Court, and if I knew I
19 wasn't calling that, he would've known, and I remember us
20 disagreeing about that, so that would've been prior to the
21 actual time it would've been called when we put up a case.

22 Q Okay. So prior to the actual time -- so this -- the
23 second day of trial when the State rest and it's your turn
24 and he says that's the first time that he knew, you're

1 saying you had these discussions with him some time prior
2 to that.

3 A I would disagree with Mr. Brown, yes.

4 Q Okay. And the witnesses that you heard here today,
5 was there testimony the same as what was given to you at
6 the time?

7 A I believe it was substantially the same, other than --
8 I don't -- I want to say that the movie was not named,
9 because it was -- I remember thinking that the alibi was
10 too general, and so -- and that a name -- they couldn't
11 name a movie at the time, so that's the only difference
12 that I can kind of remember. I do remember that Ms. Castro
13 would not have been part of the alibi, which is exactly
14 what she testified to, that she wasn't present.

15 Q Okay. So the alibi really is Cecilia and not Ms.
16 Castro.

17 A (Indicating yes) and I think she, basically, testified
18 to the same thing.

19 Q Okay. Oh, the jail phone calls. Mr. Brown was aware
20 of the jail phone calls and the fact that the State
21 intended to use them. Is that right? Is that your
22 testimony?

23 A I ---

24 Q If you called the alibi witnesses. I'm sorry.

1 A If I called the alibi witnesses, the State's intention
2 was to play these jail phone calls and that they -- and
3 what I can remember is that both Ms. Castro and Cecilia
4 were on the jail call, and it sounded somewhat coached, but
5 I can't remember the exact statements, but I do remember I
6 felt that they were damaging enough to be harmful at trial.

7 Q Okay. So when you're saying that you -- that they
8 were -- you felt like they were coaching, that's because
9 you listed to these phone calls.

10 A I did.

11 Q This is your assessment of the phone calls, not Ms.
12 Meghan Walker's assessment of the phone calls.

13 A No, Ms. Meghan Walker -- I believe -- so a lot of
14 times at these trials we would just get disks of thousands
15 and thousands and thousands of phones, so Ms. Walker would
16 have told me the actual file, the specific call.

17 Q Okay. And you were able to listen to that phone call.

18 A I did, yes.

19 Q And you were able to discuss that issue with Mr.
20 Brown.

21 A I believe I would have discussed that. I don't -- I
22 don't know if he heard the actual phone. That could be
23 true that he did not hear that phone call, but I would've
24 told him my concerns and why I felt that I would not use
25 the alibi defense.

1 Q Okay. And you hired a DNA expert. Correct?

2 A I did.

3 Q Okay. And his name is Ron Ostrowski?

4 A Ostrowski, yes.

5 Q Ostrowski?

6 A Ostrowski.

7 Q Ostrowski.

8 A (Indicating yes)

9 Q And was Mr. Ostrowski present at trial?

10 A He was.

11 Q Was he there for the whole trial?

12 A No.

13 Q Okay.

14 A He was only there for the cross examination of the
15 State's DNA witness, ---

16 Q Okay.

17 A --- Mr. Barron (phonetic) maybe, I think?

18 Q Was he there for Mr. Barron's direct testimony?

19 A He was, and then he ---

20 Q And ---

21 A I'm sorry.

22 Q No, he was there -- go ahead -- he was there for ---

23 A So prior -- prior to the, um, -- prior to the trial,
24 he had helped me prepare for direct and given me a very
25 extensive lesson on DNA and then helped me prepare for my

1 cross, and then he also sat in during his direct so that he
2 could give me additional questions for cross that were more
3 tailored to that testimony.

4 Q Okay. So was he an expert for educating you, or did
5 he, actually, review some tests or do his own tests?

6 A He did not do any of his tests. He did review the
7 results in this case.

8 Q Okay. And did he agree with the State's results in
9 this case?

10 A Um, if I remember correctly it was -- what we were
11 mostly arguing about the DNA was not that it was -- I don't
12 believe we were arguing that it was incorrect. I think we
13 were just arguing because that was a mixture and then he,
14 obviously, couldn't place a time on it to know when Mr.
15 Brown's DNA would have got there or how it got there or --
16 um, and -- that there were other individuals also present,
17 if I remember correctly.

18 Q Okay. Do you recall why you chose not to call him to
19 testify?

20 A I think that he, essentially, wasn't going to disagree
21 with the State. It was just that he was -- we were trying
22 to bring out more information regarding that DNA doesn't
23 place time, and DNA couldn't account for these other
24 individuals, other than there were other individuals
25 present, maybe -- it might've been one out of six

1 individuals instead of one out of three. I do remember
2 that that was the major issue at trial.

3 Q Okay. Did Mr. Brown ever offer you any kind of
4 explanation for why his DNA was on that particular bandana?

5 A I don't recall that.

6 Q So your -- your -- in terms of challenging the
7 evidence, it was not that you were challenging the
8 identification of Mr. Brown, but you were challenging that
9 that was not, um, a sufficient link given the presence of
10 all this other DNA as well.

11 A Yes, and I believe Dr. Ostrowski reviewed the bench
12 notes and the results to make sure that there were no
13 blaring errors in the testing that we would have to
14 challenge as well.

15 Q Okay. And when did you make the decision not to call
16 him?

17 A I don't -- that I don't know. I think I included him
18 on the witness depending how the direct and cross went for
19 the State's case, if we would need him for additional
20 information, but after that was completed, I think that's
21 probably when I decided, just depending on what information
22 we were able to get out at that point whether I needed Dr.
23 Ostrowski for further information.

1 Q Okay. And so after you -- after the direct and cross
2 examination of the State's experts, you decided you felt
3 like you didn't need to call him yourself, your own expert?

4 A Right. I think that was, generally, what I had
5 planned to do, but I also had him under subpoena just in
6 case we -- depending on what happened at trial so that we
7 could adjust accordingly, so it would've been after that
8 that I would've made the definitive decision to not call
9 him.

10 Q Okay, and you -- that's when Mr. Brown would've been
11 informed about that decision?

12 A That I -- I don't know. I may have informed him,
13 look, if direct goes okay, then I'm not going to call him,
14 because then there was also the issue if we weren't going
15 to put up alibi and we weren't going to put up Dr.
16 Ostrowski, then we -- we would have last closing if we
17 didn't put up a case, and that, if I remember correctly,
18 would've been all of our witnesses other than Mr. Brown.

19 Q Okay. And in terms of -- I mean Mr. Brown has raised
20 a couple of issues about the DNA, and I think you've
21 touched on some of them. You were able to cross examine
22 the State's witness on the fact that you can't put a time
23 on it, you can't explain the other people and kind of some
24 of the problems with that identification. Correct?

1 A I was able to do that on cross. Is that what you're
2 asking?

3 Q Yes.

4 A I believe so.

5 Q Okay. So the jury was able to hear those arguments.
6 Those were arguments that you made in defense. Correct?

7 A Yes, and they would've there for cross.

8 Q Okay. Did you see any issues in terms of chain of
9 custody of the evidence or any issues -- any way to
10 challenge that other than by kind of arguing that it wasn't
11 strong enough evidence but in terms of challenging the
12 results themselves?

13 A Of the DNA?

14 Q Yes.

15 A That's the other reason Dr. Owstrowski was hired, to
16 review and make sure that there were no errors in the
17 testing that he was aware of based on what was on paper.

18 Q And based on his review, he didn't inform you of
19 anything to challenge.

20 A Not that I recall.

21 Q Okay. Okay, um, the issue -- we talked a little bit
22 about the issue of the video that was played at trial. Do
23 you recall making a motion to have videos turned over to
24 you?

1 A I would've made a Riddle motion to return over any
2 additional evidence that hadn't been turned over before,
3 additional videos, phone calls, anything, just to kind of
4 blanket to make sure that nothing new had come up.

5 Q Okay. And do you recall being told that the one video
6 that was played was the only video that the State had?

7 A If that's what's in the transcript, then, yes, but I -
8 - my memory only remembers one video as well, ---

9 Q Okay.

10 A --- and that was the interior of the Chuck E. Cheese,
11 if I remember correctly.

12 Q Showing the front door. Correct?

13 A Yes.

14 Q Okay. Do you recall investigators or anybody
15 mentioning other camera angles?

16 A The only thing that I can recall is that Ms. Goode and
17 I did go to the location, and there were other cameras. I
18 know that we talked to corporate, and I cannot remember the
19 results of that, but I did not obtain any additional
20 videos, and the State did not turn over any additional
21 videos, so I -- I don't have any other additional videos,
22 but I -- I know it was looked into, but I can't remember
23 what was ---

24 Q Okay, so it was looked into, and, ultimately, this was
25 the only video that anybody ever produced to you.

1 A That's all I had, yes, and that's all -- I want to say
2 that we may have subpoenaed Chuck E. Cheese and they had
3 nothing.

4 Q Okay.

5 A I don't know what their excuse was or why, but that's
6 what I kind of can remember.

7 Q Okay. And do you recall, as well, that there were eye
8 witnesses who could describe what took place during the
9 attempted robbery and what the robber looked like, I mean,
10 at least in terms of what the robber was wearing, ---

11 A Right.

12 Q --- the description?

13 A Yes.

14 Q Okay. And they testified at trial, as well?

15 A I believe so.

16 Q Okay. And you testified that then the -- the wig and
17 the bandana were found outside by another business.

18 Correct? Is that what you ---

19 A Where they were found was -- yes. I think they were -
20 - there's like a building and the -- they were -- the wig
21 and the bandana were on the other side of the building
22 maybe.

23 Q Okay.

ANASTASIA WALKER - DIRECT BY MS. MCCALLISTER

98

1 MS. MOODY - Your Honor, if I may? She's -- she
2 just stated that Ms. Anastasia Walker testified. I'm a
3 little bit confused as to who testified.

4 MS. MCCALLISTER - That's what I thought she
5 testified to earlier, that they were found behind another
6 business.

7 Q Is that -- I don't want to put words into your mouth,
8 but I thought I heard you say earlier that the wig and the
9 bandana were found outside behind another business.

10 A I think that may be what I said when you asked for a
11 summary of the evidence.

12 Q Okay. And they were found -- you recall that there
13 was testimony that they were found by a tracking dog.
14 Correct?

15 A I recall Mr. Brown testifying to that. I --
16 personally, I do not recall that.

17 Q Okay. And his testimony was that you didn't cross
18 examine that witness.

19 A And -- if that's what's in the transcript, then I may
20 not have.

21 Q Okay. And do you recall a reason why you didn't cross
22 examine that witness?

23 A Um, I do not recall the specific reason. I don't
24 recall the testimony.

1 Q Okay. Um, would you have cross examined the witness
2 if you felt like the witness was testifying to something
3 different than what was in the discovery?

4 A Well, I -- I would say that I would've cross examined
5 them if I needed to. I -- I can't remember what the
6 testimony was or why I chose not to. I -- he may not have
7 said anything that I felt was relevant. I -- I could make
8 a guess, but I don't know.

9 Q Okay. Um, well, -- okay, let's talk about that a
10 little bit. This -- did you see any -- do you recall in
11 the discovery seeing any reason or potential arguments or
12 challenging the track of the dog and how that -- those two
13 items were recovered?

14 A No, I recall that -- I recall this case mostly
15 focusing on the DNA issue in this case.

16 Q Okay. Okay. Do you recall being asked or do you
17 recall ever seeing any arguable basis to file a motion to
18 dismiss these charges?

19 A No, not that I can recall.

20 Q Do you recall Mr. Brown ever asking you to do that?

21 A I do not recall that; he may have, but I do not -- I
22 do not recall that, specifically.

23 Q Okay, and the issues that he mentioned about the
24 investigation and the investigator's case load and what he

ANASTASIA WALKER - DIRECT BY MS. MCCALLISTER

100

1 did, um, those are items or issues that you were able to
2 cross examine at trial, the witness at trial. Correct?

3 A That sounds familiar that it was on cross, talked
4 about, that specific issue was discussed.

5 Q Do you recall Mr. Brown writing you a letter that
6 somehow didn't come straight to you?

7 A I do not recall anything about this letter,
8 unfortunately.

9 Q Okay. Do you recall having a conversation with him
10 about that?

11 A I do not recall that, personally, no.

12 Q He's raised an issue about you -- that he wanted you
13 to object to some characterizations of the robber wearing a
14 mask. Do you recall that happening during trial?

15 A I do not recall that, specifically, no.

16 Q Do you recall if that's something that you would've
17 found problematic that needed to be objected to?

18 A That specific -- I do not recall that specific issue
19 being problematic, but ---

20 MS. MCCALLISTER - Beg the Court's indulgence one
21 moment.

22 Q Mr. Brown has testified that you all met maybe three
23 or four times? Does that sound correct, or do you have
24 notes on that?

1 A So my notes reflect that we met about seven times, and
2 that's just my electronic notes. What -- so I was assigned
3 the case when Mr. Shealy left the office, and then there
4 was a period of time Mr. Brown was out on bond. It says
5 that we had scheduled a meeting at my office and then he
6 did not show up in August of 2013, and then I went to meet
7 him for the first time January, 2014, and that was at the
8 Lexington County Jail, and I do not know -- I know that our
9 -- our computer system would reflect who was in the Alvin
10 S. Glenn, and I don't know if it ran necessarily the
11 Lexington County Jail unless you manually put that in, so I
12 am unaware of when he went back to Lexington County.

13 Q Okay. But your notes reflect a similar timeline. I
14 think he's testified December, 2013, and yours say January,
15 2014 was your first meeting.

16 A Right.

17 Q Okay. And then you met seven times total between
18 January and August when trial started. Correct?

19 A Um, ---

20 MS. WALKER - Beg the Court's indulgence.

21 A My notes reflect seven, and that's not including
22 trial.

23 Q Okay. And I think you testified a little while ago
24 that he gave you the alibi information at the last minute

1 before trial. Do you have in your notes about when you
2 received that information?

3 A So I have in my notes that we talked about alibi
4 notice on July 16th. I filed the notice on the 18th is
5 what my notes say, and then trial was continued for a week,
6 so we -- we're supposed to go to trial on the 24th and I
7 believe there were some outstanding things and it was
8 continued -- and my notes reflect it was continued for a
9 week, and then that's the last note that I have
10 electronically.

11 Q Okay, um, so that meeting that you had with Mr. Brown
12 in July, would that have been the first or second meeting
13 with him, or would that have been more like the sixth or
14 seventh meeting with him?

15 A That was like the fourth or fifth meeting with him.

16 Q So that was the fourth or fifth meeting on July 16th,
17 and trial was originally scheduled for July 24th.

18 A Yes, is what -- well, -- that's what my notes say is
19 that on the 16th it says, talked about trial and alibi. I
20 know that it was close to that period of time that he
21 would've told me about alibi. I don't know if that date is
22 the first time I heard about the alibi, but I do recall it
23 was very close to the trial was the first time I heard
24 about it.

1 Q Okay, so he -- he did not tell you about in your first
2 meeting in January or December.

3 A That is not what I recall.

4 Q And in terms of trial preparation with Mr. Brown, you
5 testified that you talked to him about the issues with the
6 alibi witnesses, um, you -- did you review the video with
7 him, as well?

8 A I believe he -- I don't have anything in my notes
9 saying that I went and saw the video with him,
10 specifically. I believe he testified that I showed him the
11 video.

12 Q But that's what you would normally do?

13 A I would normally do that, yes.

14 Q Okay. And you discussed with him the DNA evidence, as
15 well, and the implications of that with the DNA expert? Is
16 that correct?

17 A Are you asking if I -- if the DNA expert talked to
18 him?

19 Q Um, no. I'm sorry, let me rephrase that. You -- you
20 talked to him about the DNA results and how they would be
21 used at trial. Correct?

22 A Yes.

23 Q And you talked to him about the fact that you had a
24 DNA expert.

25 A I believe so, yes.

1 Q Okay. That was helping you and that you would,
2 potentially, call as a witness.

3 A Yes.

4 Q Okay. But he and the DNA expert, did they ever speak?

5 A Not that I remember.

6 Q Okay.

7 A He was -- Dr. Owstrowski was present that one day of
8 trial, but that's all I can recall them crossing paths
9 would've been.

10 Q Okay. Do you recall, specifically, reviewing any
11 other discovery or evidentiary issues with Mr. Brown?

12 A Specifically, no.

13 Q Okay. Do you normally have a meeting where you go
14 through discovery with your clients?

15 A Normally we would review discovery, um, and then
16 whatever other concerns that the client may have.

17 Q Okay. And, um, do you ask your client for witnesses
18 or leads to investigate?

19 A Certainly.

20 Q Okay. Mr. Brown has made an allegation today that he
21 wanted you to challenge the DNA evidence as being more
22 prejudicial than probative under Rule 403. Did you talk
23 about making that argument with him?

24 A I don't recall making that argument.

1 Q Okay. Do you recall why you didn't make that
2 argument?

3 A Um, other than it was DNA evi -- I don't know that
4 that would've been the appropriate objection.

5 Q Okay. Do you recall if you ever talked to Mr. Brown -
6 - I may have asked you this -- about -- about how he could
7 explain his DNA kind of on the bandana or at the -- I know
8 the bandana wasn't found at Chuck E. Cheese, but in the
9 area?

10 A I don't recall if we had that specific conversation or
11 not.

12 Q Okay. Do you recall there being an issue in terms of
13 his statement to the police officers, him telling the
14 police that the last time he was there was in 2011 or 2012?
15 Do you recall that?

16 A I don't recall that.

17 Q Okay. Do you recall if Mr. Brown ever told you, I've
18 never been to Chuck E. Cheese, or anything along those
19 lines?

20 A I don't remember that.

21 MS. MCCALLISTER - Okay. I think that's that all
22 the questions I have, Your Honor.

23 MS. MOODY - Thank you. May it please the Court,
24 Your honor.

25 THE COURT - Yes, ma'am.

1 CROSS EXAMINATION

2 BY MS. MOODY -

3 Q Ms. Walker, you indicated earlier that, um -- that you
4 had talked to Ms. Castro and her daughter.

5 A Yes.

6 Q And one of the issues you had was the specificity of
7 their memory as to certain things that occurred that night
8 in question. Correct?

9 A Right.

10 Q Okay. And so do you recall hiring an investigator or
11 assigning a -- a task to an investigator to meet with them?

12 A Yes.

13 Q Okay. And do you know -- do you recall the name of
14 that investigator?

15 A Russell Dean.

16 Q Okay. What, if any, meeting did you have with Russell
17 Dean about the alibi?

18 A What I would have done is I would've submitted an
19 investigation request to my boss, and then she would've
20 assigned Mr. Dean. I probably wrote a little blurb about
21 the facts and called him and told him what I needed him to
22 do, and so he went out and -- I can't remember if he spoke
23 to her and Cecil -- Ms. Castro and Cecilia or if he just
24 spoke to -- I can't remember, but I recall that Ms. Goode
25 and I spoke to Ms. Castro and her daughter.

1 Q Okay, and this is from the first date that you
2 received notice of the alibi.

3 A Yes.

4 Q Okay, and that was, I believe you said July 16th, 2000
5 -- was that '15 or ---

6 A So I said that in my notes that that's when I wrote
7 that I had talked about trial and alibi. I see on the 3rd
8 that I spoke with Ms. Castro by phone, and she informed of
9 the alibi.

10 Q The 3rd of what?

11 A July. And so then I sent the investigation request,
12 and then I didn't get the statements until the 15th.
13 That's when I got the statements.

14 Q Okay, so the first time -- when you -- earlier you
15 testified the first time that he mentioned -- Michael Brown
16 mentioned about alibi was July 16th?

17 A Yes, I said that was the first time that it was in my
18 notes ---

19 Q Okay.

20 A --- that I spoke to him about it.

21 Q Okay. But you knew -- that you spoke to him -- but
22 you knew before then there was an alibi.

23 A It looks like on the 3rd is when I got an
24 investigator, because that's when I would have talked to
25 Ms. Castro.

ANASTASIA WALKER - CROSS BY MS. MOODY

108

1 MS. MOODY - Okay. Your Honor, may I approach the
2 witness.

3 THE COURT - (Indicating yes)

4 MS. MOODY - First can I just have these two
5 things marked for exhibits.

6 (WHEREUPON, DOCUMENTS MARKED FOR IDENTIFICATION
7 AS APPLICANT'S EXHIBITS 1 AND 2)

8 MS. MOODY - Thank you.

9 Q I'm going to hand to you what's been marked as
10 Applicant's Exhibit 1 and 2 and ask you to identify those
11 documents starting with number 1.

12 A Number 1 looks like it's Mr. Dean's report regarding,
13 um, the interview of -- I'm sorry, I'm just looking for it.
14 Okay. So this was his summary about what he did, and then
15 the statement form is number 2, and that's what Cecilia
16 signed to.

17 Q Okay. So the first one is the interview, and the date
18 on that Exhibit 1 is what date, Exhibit 1?

19 A July 14th.

20 Q Okay. And so the person ordering that investigation
21 would've been yourself?

22 A I would have sent that to my boss, yes.

23 Q Okay. And on his report it identifies you as being
24 the person he received the assignment from?

25 A Yes.

1 Q Okay. And in that report he talks about having met
2 with Ms. Castro and Cecilia.

3 A Is it okay if I read it?

4 Q Oh, yeah, sure.

5 A I just haven't -- I haven't seen this in a while.

6 (Pause) Okay. So that's Mr. Dean's summary, yes.

7 Q Okay. And in his summary, doesn't he, specifically,
8 say that Ms. Castro and Cecilia, specifically, recall the
9 details of that night?

10 A They said what time that they were there and then, um
11 -- that's what Mr. Dean's assessment was, yes.

12 Q Okay, can you read that line?

13 A Ms. Castro and her daughter we (sic) capable of
14 recalling the specific events without hesitation or
15 prompting.

16 Q Outside of the scrivener's error, you would assume
17 that that's -- they were capable of recalling the details,
18 specifically.

19 A That's what Mr. Dean said, yes.

20 Q Okay, and one of your issues of why you didn't recall
21 either of them was because, one, I think you testified
22 earlier that they couldn't even -- or Cecilia couldn't
23 remember the movie that they watched?

24 A Right.

25 Q Okay, and in Exhibit 2, can you review that?

ANASTASIA WALKER - CROSS BY MS. MOODY

110

1 A Yes, and I see that's incorrect. She did say that the
2 Hunger Games was the movie they watched back then.

3 Q Okay, so when you said earlier that -- because they
4 couldn't remember specific details, that's not correct, is
5 it?

6 A That specific detail? She did recall that, yes.

7 Q I mean but Mr. Dean says they recall specific details
8 about what happened on that night and where Mr. Brown was.

9 A Right, and then I think that's a major reason Ms.
10 Goode and I went out again, to make sure to verify the
11 details, and so my assessment was that it was lacking in
12 specificity.

13 Q But do you normally go behind your investigator that
14 you contract to talk to the witnesses to verify with the
15 witnesses whether they recall incidents?

16 A I'd say that I -- sometimes that I've gone behind
17 investi -- not behind investigators, but I would go verify
18 the information and make sure, especially if I was going to
19 call them to the stand to make sure ---

20 Q Okay, in this instance, what -- what was it that stood
21 out in your mind that ---

22 A I think -- and I can't tell you if I -- if I was aware
23 of the phone calls at this point. I don't think I was if I
24 filed alibi notice, because I can't tell you when I became
25 aware of those, because it's not in my notes. Um ---

1 Q Do you recall talking about the phone calls at the
2 trial?

3 A The jail calls?

4 Q Yes. Is that what you're talking about?

5 A Yes. I don't know when I became aware of them.

6 Q Okay. So I'm handing to you what is the transcript.

7 A (Indicating yes)

8 Q On page 80, if you can take a moment to read from
9 where you're starting to speak to the Judge on page 80 at
10 line 12, I believe that's -- A Walker is you. Correct?

11 A (Indicating yes)

12 Q Okay. Can you look at that and -- does that jog your
13 memory as to whether or not you -- when you received the
14 calls?

15 A Certainly, and my concern was I'd say about two weeks
16 ago they turned over about thirteen hundred files regarding
17 phones. We did our best to get through as many as we
18 humanly could. Unfortunately, I got through 2014 and not
19 so much -- and then the Judge speaks.

20 Q Okay. So does that help you recall whether or not you
21 got through all the phone calls?

22 A I -- I would not have gotten through all the phone
23 calls if that's what I said. I did not go through all
24 thirteen hundred, no.

1 Q And, in fact, Ms. Walker -- she had not identified
2 which calls she was going to use in trial. Correct?

3 A Right, because she was only bringing them up to rebut
4 the alibi.

5 Q Okay. So she was going to use them if it got into
6 something in cross. Right?

7 A You mean when she crossed the alibi witnesses? Is
8 that what you're asking?

9 Q Yes.

10 A I believe that was her intention.

11 Q Okay.

12 A That's what I believe she told me.

13 Q So help me understand. When deciding whether or not
14 to call Ms. Castro and her daughter, Cecilia, you didn't
15 have any knowledge of any specific phone call that would
16 make you not want to call them.

17 A When are you asking if I knew that, when I knew that?

18 Q At the trial.

19 A At the trial I did know that those calls existed, yes,
20 that those specific calls existed.

21 Q So you were able to listen to those specific phone
22 calls?

23 A No. Ms. Walker turned over those -- told me the file
24 names of the specific ones she was referring to.

1 Q Okay, so when she turned over the files, did she give
2 you -- when you're saying she turned them over, she gave
3 you thirteen hundred or did she give you individual phone
4 calls -- that she separated them out, I guess, is what I'm
5 trying to get at.

6 A I don't recall that. I recall -- normally the way
7 they turn them over is just a CD full of files. I'm not
8 sure exactly how the State is able to search those down,
9 specifically, and how they turn them over, but then she
10 would've told me the specific calls she intended on using
11 regarding -- she didn't intend to use any on their case in
12 chief I remember -- or is what it says here, but then she
13 gave me the specific ones that she felt sounded like
14 coaching that she intended to bring out as a rebuttal to
15 alibi. Does that make sense?

16 Q Well, that's what I'm trying to get clear in my mind.

17 A Right.

18 Q She pointed out the specific phones calls, and so from
19 the disk of thirteen hundred, you knew the specific phone
20 calls, and you were able to listen to the specific phone
21 calls, and at that point you decided not to present the
22 alibi witnesses.

23 A (No response)

24 Q So like did she give you phone call on January 31st,
25 2014, this particularly sounds like a ---

1 A Right. I believe that's how the file names were; it
2 was like a date and a time, and so she would've told me the
3 file name or she may have, actually, sent me the file by
4 itself individually outside of those. I -- I do not recall
5 how she had told me.

6 Q So in your notes, did you make note of that at all?

7 A In my electronic notes? No. I do not have anything.
8 I don't -- I -- on the 23rd I say that I received jail
9 phone calls, July 23rd, 2014 and I -- the only other note
10 is that it -- the next day it was continued, the trial was
11 continued for a week, and that's the -- the extent of my
12 electronic notes.

13 Q Okay, so would -- would it have been notated in your
14 file somewhere, written notes or did you only put
15 electronic notes?

16 A I have written notes, as well.

17 Q And those documents are ---

18 A I have no idea where those documents are.

19 Q So -- okay so basic ---

20 A I don't -- I'm sorry. I don't know if my notes
21 reflect that either in the file. I have no idea.

22 Q So, basically, the whole reason for not using the
23 alibi witnesses were the phone calls, and those phone calls
24 led you to believe that the alibi was not so?

1 A I think it was -- well, the late notice of the alibi
2 gave me some pause, so that's why we tried to investigate
3 it as much as we could and that my assessment was that it
4 lacked specificity. Mr. Brown certainly disagreed with me.

5 Q But when you say late notice, what do you mean? You
6 had not missed the deadlines of putting them on notice for
7 the alibi, so it wasn't necessarily late was it?

8 A No, I didn't provide late notice. I received what I
9 assessed as late notice from my client. I had not heard
10 about the alibi or -- like I said, I know it was close -- I
11 do recall that it was close to trial, and it may be that
12 Ms. Castro told me about it before Mr. Brown ever did, but
13 I do know it was close to trial before I ever had the first
14 inkling of an alibi was present. Whether it was the 3rd or
15 the 16th, I'm -- I'm not sure, unfortunately.

16 Q Okay. So now when you -- you stated you met with Mr.
17 Brown seven times and the first time that y'all were
18 scheduled to meet in August of 2013? Is that correct?

19 A Yes.

20 Q He was a no-show.

21 A That's what it says, yes.

22 Q Did you send any letters to him, or how did you
23 schedule the meeting to meet with him on August 13th?

24 A That's not in my notes. My practice would've been
25 that it would've been by phone call or that he couldn't

ANASTASIA WALKER - CROSS BY MS. MOODY

116

1 contacted my paralegal and set it up. It could've been any
2 number of ways. I didn't, typically, send mail to set up
3 appointments unless somebody like had a bench warrant, and
4 I was trying to search -- and I couldn't reach them by
5 phone and was trying to get them to get in contact with me,
6 so I didn't, traditionally, make appointments by letter.

7 Q Okay, so would you initiate appointments with the
8 client?

9 A Um, they -- and I can't tell you without my file if we
10 would have done like a transfer letter to let him know that
11 the file was given to me, so I -- it could be that -- I
12 have no idea if any letters were sent.

13 Q So when you keep those electronic notes, what do you
14 put in your electronic notes? What exactly does that do?

15 A Um, a lot of the times with my electronic notes, I
16 would just reflect to my handwritten notes and say, met
17 with client, blah, blah, blah, see handwritten notes is
18 what my typical way of using electronic notes. People use
19 them more, specifically, than I do certainly.

20 Q Okay.

21 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
22 APPLICANT'S EXHIBIT NUMBER 3.)

23 Q I'm going to hand to you what's been marked at
24 Applicant's Number 3. Can you identify that document?

25 A It looks like 911 call log.

1 Q And so I think it's four pages. Oh, no, it's,
2 actually, ---

3 A Okay.

4 Q And can you identify what that page is?

5 A It says that it's a supplementary report.

6 Q Okay. Now, earlier Mr. Brown talked about -- he
7 questioned the dispatch logs. Do you recall that testimony
8 where he talks about the dispatch log and he -- you may
9 know -- you did not cross examine the canine handler?

10 A If that's what's in the transcript, then I did not
11 cross examine the canine handler.

12 Q Okay. So this dispatch log was a part of your file.

13 A Okay.

14 Q And did you have an opportunity review this dispatch
15 log prior to trial?

16 A If it was in my file, then yes.

17 Q Can you look at that log on page three?

18 A (Witness complies) Yes.

19 Q Does it say anything about the direction in which the
20 suspect ran?

21 A Suspect left on foot going left on Burning Tree.

22 Q Okay. And if you look at page five of that exhibit.

23 A The supplementary report?

24 Q Yes. What does that supplementary report say about
25 the direction of the suspect?

1 A Subject ran from the front door and turned right and
2 ran to the back of the building.

3 Q So I mean do you recall ever discussing that with Mr.
4 Brown about the question -- the direction that was -- the
5 direction the suspect was supposedly going that night from
6 the robbery?

7 A I don't recall that being something that I remember.
8 I don't recall that being an issue.

9 Q So I mean do you recall why you didn't talk with or
10 question the canine? (sic) Did y'all talk that at any of
11 your one of seven meetings?

12 A Not that I can recall.

13 Q So -- I mean -- I guess I'm trying to figure out
14 whether you felt like the canine was important at all
15 within this trial.

16 A I may not have at the time. I certainly see the
17 discrepancy here. I can't tell you why I didn't question
18 on that. I have no idea.

19 Q So what -- what was strategy going into trial?

20 A Uh, if I recall correctly, the main strategy was that
21 they didn't have any identification of him, that the person
22 that -- the suspect that robbed or attempted to rob the
23 Chuck E. Cheese they couldn't identify. The DNA was a
24 mixture, couldn't place any certain time. I can't remember
25 if the mixture was three individuals or six, but there were

1 multiple individuals on it, so I think that's what I
2 focused on at trial.

3 Q Okay. And so I guess outside -- I mean you made a
4 decision, apparently, not to put up any witnesses, the DNA
5 expert or what-have-you, so most of your defense was poking
6 holes in the State's case in chief.

7 A I'd say that was my entire defense, yeah.

8 Q Okay. And so do you not think it was important to
9 cross examine all the witnesses to do all that?

10 A Um, if it was -- if it went towards the defense, yes,
11 with the DNA. I -- again, I cannot tell you why I would
12 not have cross examined on that specific issue. I have no
13 idea why I would not have.

14 Q And then as far as the mask was concerned, was there a
15 mask involved in this case?

16 A No.

17 Q And so it didn't alarm you when the State used the
18 terms, wig, bandana, and mask?

19 A My assessment of that would've been that I think she
20 was using interchangeably. I don't think that that was a
21 major point of confusion, because there was no mask
22 presented; nobody alleged anything about a mask, so I don't
23 think that I focused on that as an issue, no.

1 Q Okay. So at any point during the trial did Mr. Brown
2 say anything? I mean did y'all have any communication
3 during the trial?

4 A I am sure that we did. I cannot recall, specifically,
5 what we discussed, if that was part of it. That could've
6 been something that was brought up. I -- I don't recall.

7 Q So at the end of the trial how did you feel about the
8 case? Um ---

9 A How did I feel about the case?

10 Q (Indicating yes)

11 A Um, if I remember correctly, in talking to Mr. Brown
12 going into the trial, I didn't think it was a terrible case
13 for trial. I thought that there were some issues,
14 especially, with the DNA. I thought that there were --
15 there was cause for concern there, but there were certainly
16 some negative things in that he also had some charges in
17 Lexington that he had to, kind of, assess as part of what
18 to do with my case, unfortunately, so it wasn't just in a
19 vacuum this one case, because he had this outstanding
20 Lexington charge, so if I remember correctly, I think that
21 I told him -- I think that I probably recommended that he
22 take the deal. He was never inclined to do so. I don't
23 think he ever gave an inkling that he wanted to, and from
24 the transcript -- I think we even got in down to maybe 15
25 in Richland, but that wasn't guaranteed, and Lexington was

1 what was really problematic for him I think. That being
2 said, when the trial was done, I felt that we had attacked
3 the DNA sufficiently, um, so I didn't feel terrible at that
4 time. Reflecting now, I do -- I am concerned about my
5 failure to object to his -- regarding the, uh, the
6 contemporaneous objection to the statements.

7 Q Okay. And in your notes, do you have that notated?

8 A My notes end -- my electronic notes end a week before
9 the actual trial, so I don't have any in my trial notes.

10 Q So there were no notes post-trial ---

11 A Electronically.

12 Q Okay, but the other notes you had would've been in
13 your file?

14 A I would imagine they would be. I would've taken notes
15 during the trial that I would put in the physical file.

16 Q So how do you recall the failure to make the objection
17 to the contemporaneous -- make the contemporaneous
18 objection? How do you recall that that you didn't make
19 that ---

20 A Oh, I recall that now after PC -- I believe it was
21 brought to my attention on the -- I failed to do it once
22 the appeal came down, so that's when it would've been
23 brought to attention.

24 Q Okay.

ANASTASIA WALKER - CROSS BY MS. MOODY

122

1 A At the time of trial, I don't think that was something
2 that I had -- that was complete neglect on my part. I
3 don't think it was something that I reflected that I had
4 failed to do, because I had not thought of it,
5 unfortunately.

6 Q And outside of that, any discussions you had prior to
7 trial with Mr. Brown, did you lead him to believe -- did
8 you ever lead him to believe that he could come away --
9 walk away from this without a conviction?

10 A I would never, ever, ever tell somebody what -- what
11 the end result of trial would be, never. The jury ---

12 Q But you -- go ahead.

13 A Juries are unpredictable, and I can never promise a
14 result. Even with a guilty plea, I would never promise any
15 sort of result.

16 Q Well, no, not promise, but I mean did you talk about
17 the likelihood of getting a conviction versus being
18 acquitted and being able to walk away from this charge?

19 A I do remember telling him that I didn't think this was
20 a terrible case to go to trial but that I thought he should
21 take the deal.

22 Q And that -- I don't think we put it on the record, but
23 what was the offer?

24 A So the last thing my notes reflect is that it was 20
25 to 30 for all charges including Lexington, but the

1 transcript indicates, and I believe Judge Barber put Mr.
2 Brown under oath, in the transcript said it was 15 for
3 Richland and -- but then he would still face 15 to 30 in
4 Lexington, and Lexington was certainly outside of my
5 negotiation practice there. That was, I believe, Sarah
6 Hahn and maybe John Carrigg represented him in Lexington,
7 so whatever they had negotiated, and I'm not aware of their
8 conversations with him regarding that evidence.

9 Q Okay. All right, um, but at the end of this trial you
10 did file the notice of appeal?

11 A I -- yes, ---

12 Q Okay.

13 A --- I believe so.

14 MS. MOODY - No further questions for this
15 witness. I would like to move these into evidence.

16 THE COURT - Any objections?

17 MCCALLISTER - I don't think I saw all of them.

18 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
19 WHICH WAS NOT REPORTED)

20 MS. MOODY - No further questions for this
21 witness. I'm sorry, Your Honor.

22 No objection?

23 MS. MCCALLISTER - No objection, Your Honor.

24 THE COURT - Okay, they're admitted.

25 MS. MOODY - Thank you, Your Honor.

ANASTASIA WALKER - RE-DIRECT BY MS. MCCALLISTER

124

1 (WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS
2 APPLICANT'S EXHIBITS 1, 2 AND 3.)

3 MS. MCCALLISTER - May I approach -- sorry ---
4 RE-DIRECT EXAMINATION

5 BY MS. MCCALLISTER -

6 Q Okay, I think you've been fairly clear that you, um --
7 you made the decision not to call either of the Castros as
8 alibi witnesses based on not just Mr. Dean's report but
9 your own assessment of the conversation with him. Correct?

10 A Yes.

11 Q Okay. And you testified that you felt that their
12 testimony today was, substantially, similar to what they
13 told you at the time.

14 A Yes.

15 Q And you do recall, specifically, Cecilia Castro
16 telling you that they fell asleep. Correct?

17 A That sounded -- that was something I recall, that I
18 felt that the alibi didn't -- it sort of didn't include the
19 time of the robbery.

20 Q Okay. Do you recall if she told you or in either of
21 these statements -- and I will hand this to you to look at
22 --- if she gave a time like she gave today?

23 A Are you asking if Cecilia or ---

24 Q Yes, Cecilia.

1 A --- and I'll just call her Judy just for the sake of -
2 - not disrespectful but just for the sake clarity.

3 Q I'm talking about Cecilia.

4 A Cecilia's statement?

5 Q Either that statement or her conversation with you.

6 A It looks like -- and I don't have the notes from when
7 I interviewed her, so this is all that we have. It says
8 that she arrived home at 6:30 and that he had already
9 started watching the movie, restarted the movie and then he
10 was there until 2:00 a.m.

11 Q Okay, so she, actually, didn't even tell the
12 investigator that they fell asleep at some point.

13 A Um, in her statement, it does not look like she says
14 anything about falling asleep, ---

15 Q Okay.

16 A --- and then -- Ms. -- Judy Castro said that she woke
17 Mr. Brown up around 2:00 a.m. when she returned home.

18 Q Okay. And that they were both asleep on the couch --
19 couches when she returned home? Is that right?

20 A (Pause) She just says that Mr. Brown had fallen
21 asleep on the couch and that she woke him up.

22 Q Okay. And that was at 2:30.

23 A She says 2:00 a.m. Or -- and this is Mr. -- she
24 didn't have a sworn statement. This is his summary.

25 Q This is -- that's his summary.

1 A Right.

2 Q Okay. And so then you get these two summaries and you
3 decide that you need to go back out there and talk to them
4 and pin them down on exactly what they would say.

5 A Ms. Goode and I went out to Gas -- Gaston, I believe,
6 and spoke to them, yes.

7 Q And so the conversation that you had with them
8 would've been after the date of that report by Mr. Dean.

9 A Yes.

10 Q Okay. And as a result of those conversations with
11 them, as well as the knowledge that you had about the jail
12 calls, you decided not to call them.

13 A Yes.

14 Q Okay. So it was a combination of two factors, the
15 fact that you felt like it wasn't specific enough and the
16 fact that you felt like there were jail calls that could
17 impeach the alibi.

18 A And I -- yes, that's -- yes.

19 Q Okay. In terms of your strategy, I think you told Ms.
20 Moody a little bit earlier that your strategy was, or your
21 defense was that there was no identification of him.

22 Correct?

23 A Correct.

24 Q None of the witnesses could identify him.

25 A Correct, if I remember correctly.

1 Q Nobody picked him out of a line-up and nobody
2 identified him in Court.

3 A I don't believe so.

4 Q Okay. And the video that he's talking about in terms
5 of -- and I think he alleges that the video was used for
6 identification, but the robber in the video has his face
7 covered -- correct? -- and a wig on.

8 A Yes, in the video, yes.

9 Q Okay. So Mr. Brown -- it wasn't that investigators
10 watched this video and were able to get a picture or some
11 way to identify the robber from the video.

12 A No, I don't think so at all.

13 Q Okay. Um, so were you contesting the fact that this
14 wig and the bandana that were found were the same wig and
15 bandana that the robber wore?

16 A I don't believe I contested that at trial.

17 Q Okay. And I don't -- I'm just trying to get it
18 straight here -- but the defense was that just because his
19 DNA is on those items, there's also at least two other
20 people on here, too, and those people can't be eliminated
21 as the robber either.

22 A Right.

23 Q So is it, essentially, that -- this is -- this -- the
24 mixture of DNA was enough to create reasonable doubt was,
25 essentially, your argument.

1 A I believe the mixture and that they couldn't put a
2 time when the DNA would've been deposited there.

3 Q Okay. So his -- he could've -- that DNA could've been
4 there for years and somebody else could've had that bandana
5 that night.

6 A Right.

7 Q Okay. And you made all of those arguments in your
8 closing and in terms of information that you elicited from
9 witnesses.

10 A If that's what's in the transcript, then yes.

11 Q Okay. And this issue with the dispatch logs and
12 whether he ran out and went right or went left, I think you
13 testified a little bit about the fact that you didn't -- I
14 understand that it's a discrepancy, but is it an issue
15 that's really being contested or is it an issue that really
16 makes or breaks guilt or innocence at trial which way the
17 person ran when they went out the door?

18 A I -- I don't know that I can make that assessment. I
19 -- I don't recall being aware of that discrepancy, ---

20 Q Okay.

21 A --- and that may have been my own oversight or -- that
22 I just don't recall.

23 Q Do you recall whether which way the robber ran was
24 something that was an issue or that you felt like needed to
25 be contested in order to present a defense for him?

1 A I don't remember that being an issue, no.

2 Q Okay.

3 A That's not what I remember.

4 MS. MCCALLISTER - I think that's all the
5 questions I have.

6 THE COURT - Go ahead.

7 RE-CROSS EXAMINATION

8 BY MS. MOODY -

9 Q I just want to make sure, you don't have your file in
10 here today. Correct?

11 A I do not.

12 Q You don't have any of your notes as to your
13 conversation with Ms. Castro and Cecilia. Correct?

14 A I do not. I just have the -- we went to speak with
15 her. I don't have any notes outside of that.

16 Q So we don't have the benefit of what was your basis
17 for not calling them as alibi witnesses. Right?

18 A Well, we don't have it in notes, no.

19 Q Okay. But they did place Mr. Brown at their house on
20 the night in question. Correct?

21 A That's what their statements indicate.

22 Q And we don't have the notes where it shows where you
23 asked them the specific questions as to what time whether
24 or not Cecilia woke up or what time they went to sleep. So

1 we don't know any of that, because you don't recall that
2 here today. Correct?

3 A I recall the issue about her falling asleep at some
4 point while they were together, but I don't recall what --
5 if at the time that Ms. Goode and I interviewed them if
6 specific times were given. I don't have those notes.

7 Q But we do know that you didn't call them and put them
8 on the stand ---

9 A I did not.

10 Q --- on the day of the trial. Correct?

11 A I did not.

12 Q And they were his alibis. And regardless of when he
13 told you about the alibi, he did give you that information
14 for use in his trial.

15 A He did.

16 Q Okay. And you made the decision not to call him (sic)
17 -- call those witnesses. Did you discuss with Mr. Brown at
18 all your decision not to call them as witnesses?

19 A Yes, I would have.

20 Q Do you recall that or you know that for certain?

21 A I -- I would venture to say I almost know that for
22 certain. That would not have been -- I do know that we
23 disagreed about the fact that I was not going to call those
24 witnesses, so it would've had to have been discussed, so I

1 am positive that we discussed it. When I -- we discussed
2 that, specifically, I don't know.

3 Q I think this is the last question. What would it have
4 hurt if you called those two witnesses as -- for his alibi?

5 A Then those jail phone calls would've come in where it
6 sounded like they were being -- where the impression was
7 given that they were being coached.

8 Q I lied. This wasn't the last question. How many jail
9 phone calls were they that showed that it was ---

10 A I know there was one, but I want to say there were
11 two.

12 MS. MOODY - No further questions for this
13 witness. Thank you.

14 MS. MCCALLISTER - Nothing further.

15 THE COURT - All right, thank you, ma'am. You can
16 step down.

17 MS. MCCALLISTER - Your Honor, I may have one more
18 witness. Can we take a quick few minute break?

19 THE COURT - Yeah. Let's just be at recess for
20 ten minutes.

21 (WHEREUPON, RECESS TAKEN)

22 THE COURT - Thank you. Y'all please have a seat.

23 MS. MCCALLISTER - Your Honor, the State calls
24 Meghan Walker.

MEGHAN WALKER - DIRECT BY MS. MCCALLISTER

132

1 MEGHAN WALKER, AFTER BEING FIRST DULY SWORN,
2 TESTIFIES AS FOLLOWS -

3 BAILIFF - Have a seat and state your name for the
4 record.

5 MS. WALKER - Thank you, sir. Meghan Walker.

6 DIRECT EXAMINATION

7 BY MS. MACCALLISTER -

8 Q Ms. Walker, where are you currently employed?

9 A At The South Carolina State Ethics Commission.

10 Q Okay. And were you previously employed as a solicitor
11 in Richland County?

12 A I was.

13 Q And do you recall the dates of that employment?

14 A If I recall correctly, I started in 2012, and I left
15 in February of 2018.

16 Q Do you recall prosecuting Mr. Brown for these --
17 attempted armed robbery charge?

18 A I do.

19 Q Okay. And you've been present in the courtroom today
20 for the testimony. Correct?

21 A I have.

22 Q Okay. Mr. Brown has made an allegation, specifically,
23 about you introducing false evidence of a mask. Was there
24 a mask involved in this case in terms of a mask that fits
25 over a face?

1 A In -- during the transcript or in the transcript there
2 are times when I say the word mask. In this case there was
3 a bandana, which a bandana, as I think everybody knows, has
4 been worn around people's heads as head coverings, worn in
5 people's pockets used as pieces of cloth to wipe away
6 sweat. In this case when Mr. Brown went into the Chuck E.
7 Cheese, he used it as a mask to cover his face.

8 Q Okay. So in the transcript when you're saying mask,
9 you're referring to the bandana.

10 A Yes, ma'am.

11 Q Okay. Was it ever your intention to try to deceive
12 the Court or the jury about a mask versus a bandana?

13 A No.

14 Q Okay.

15 A I think in the transcript I correct and say, I let the
16 jury know that I -- when I'm saying mask, I'm referring to
17 the bandana, and that's in the transcript.

18 Q Okay. And in this case the bandana was used as a
19 disguise to disguise the identity of the robber. Correct?

20 A Yes, it was -- it was used along with, um, like a
21 curly wig of some sort, if I recall correctly.

22 Q Okay. Um, and you've heard testimony about some of
23 these statements of Mr. Brown that came in.

24 A Yes.

1 Q One -- something along the lines paraphrasing of, I'll
2 plead guilty to this or help me plead guilty to this, and
3 one about, I know the DNA will convict me.

4 A I recall that.

5 Q Okay. Um, the State's -- what was the State's
6 argument for why those statements should come in?

7 A We felt that they were inculpatory.

8 Q Okay. Um, so they were -- you -- in your opinion and
9 your argument was that those were, essentially, admissions
10 or confessions to this crime.

11 A That his willingness to plead guilty to the
12 investigator was an admission of sorts, yes.

13 Q Okay. And the same thing about the DNA.

14 A Yes.

15 Q I know the DNA will convict me. Your -- in your
16 opinion that was a confession.

17 A We agreed with his assessment that the DNA was enough
18 to convict him.

19 Q Okay. And those were the arguments that you presented
20 to the Trial Court. Correct?

21 A If I recall correctly, yes.

22 Q Okay. And the Court, ultimately, agreed with you that
23 those two statements were sufficient in terms of an
24 admission against his interest were a confession that they
25 would be allowed in.

1 A Correct.

2 Q Okay. And you've heard testimony about the State's
3 potential use of some jail phone calls. Do you recall
4 listening to jail phone calls involving Mr. Brown in this
5 case?

6 A I do. There were -- this case was unique in that Mr.
7 Brown was not housed during the entirety of his pre-trial
8 detention at the Alvin S. Glenn Detention Center, which is
9 our detention center here in Richland County. There were
10 periods of time in which he was at the Lexington County
11 Detention Center, because he was also facing an armed
12 robbery or attempted armed robbery charges that were
13 similar in nature to the ones in Richland County, and
14 that's what Mr. Martin, Investigator Martin, was talking
15 about when he talked about a host of other factors that
16 went into getting an arrest warrant in this case, so at
17 that point in time we had the jail phone calls, I think,
18 from Richland County. We then went and got the jail phone
19 calls from Lexington County.

20 Q Okay.

21 A While all of this is going on in terms of prepping for
22 trial, we got notice of alibi. In going through all of the
23 jail phone calls, we, um, turned over all of the ones, of
24 course, and then just kind of as a heads-up once we got the
25 notice of a alibi -- I can't remember if I e-mailed Ms.

MEGHAN WALKER - DIRECT BY MS. MCCALLISTER

136

1 Walker or talked to her over the phone, Ms. Anastasia
2 Walker, and said, hey, before you guys put an alibi witness
3 on the stand, you may want to go listen to these, however,
4 many jail phone calls where he's talking to Ms. Castro in a
5 nature that I perceived, that Ms. Campbell perceived -- and
6 Ms. Campbell perceived to be coaching her as to what the
7 alibi should be or as to how to be best helpful, and so we,
8 um, -- we alerted the defense attorneys to that.

9 Q Okay, so you gave them all of the phone calls, but you
10 alerted them, specifically, to the ones that you felt like
11 you would use if they presented these witnesses.

12 A Yes, and that's something we -- at least I did as a --
13 on a regular basis. I didn't want to do trial by ambush or
14 a trial by a surprise; this is the evidence we're going to
15 have; this is how we intend on using it, so that nobody was
16 caught off guard.

17 Q Okay. And you agree with Ms. Anastasia Walker's
18 assessment of those phone calls that they are at least --
19 they argue -- there was an argument there that he is
20 coaching the witnesses.

21 A Yes.

22 Q And that was an argument that you were prepared to
23 make to the jury should -- if she put those witnesses up.

24 A Well, that was an argument that I really wanted to
25 make to the jury should she put the witnesses up. That was

1 my attention. It also, um, had she put the witnesses up
2 would've given us an opportunity to close last, which is
3 something we wanted to do, as well. So by not putting that
4 -- those witnesses up, she took both the opportunity to put
5 in the jail phone calls where you can kind of also see the
6 nature and demeanor of Mr. Brown in those jail phone calls,
7 as well as my ability to close last.

8 Q Okay. So you had no way to get those jail phone calls
9 in without her -- unless one of the Castros testified as an
10 alibi.

11 A They would've been used for -- I mean us putting in
12 the jail phone calls without an alibi witness would've been
13 weird and out of context.

14 MS. MCCALLISTER - Okay. Beg the Court's
15 indulgence.

16 Q There's also been some allegations regarding the
17 videos from the Chuck E. Cheese location, and there's been
18 some testimony about there's mentions in reports about
19 additional videos. Do you recall that issue at trial or in
20 this case?

21 A I don't recall that issue. I remember there being one
22 video that shows the entrance. You walk into Chuck E.
23 Cheese, you have like kind of the front door, then a small
24 gap and like a ticket booth area where you kind of check-
25 in. I remember there being a video right in that area that

1 showed Mr. Brown walk in. There was, um -- and you could
2 see the -- a wig and a cov -- a mask or bandana being used
3 as a mask to cover his face. That's the best recollection
4 I have of the video in this case.

5 Q So to your knowledge Chuck E. Cheese is the one who
6 controlled those videos -- correct? -- in terms of the
7 recording device.

8 A That was my understanding.

9 Q Okay. And they turned over to you one video.

10 A They turned -- they would've given it to the Richland
11 County Sheriff's Department who would've provided that to
12 us, and we would've turned it over to the defense in
13 discovery.

14 Q Okay. And you did turn it over to the defense.

15 A Yes.

16 Q Okay. And so in your file, in your prep for this
17 case, that's the only video that you had?

18 A Yes.

19 Q Okay. There's also been some testimony about a letter
20 from Mr. Brown to his attorney that ended up in your hands.
21 Do you recall that issue at all?

22 A No.

23 Q Okay. Do you not recall ever seeing a letter that he
24 wrote to his attorney?

25 A No.

1 MS. MCCALLISTER - Okay. I think that's all the
2 questions I have.

3 THE COURT - Ms. Moody?

4 CROSS EXAMINATION

5 BY MS. MOODY -

6 Q Now, Ms. Walker, as you said earlier that it was a
7 mask and the mask was covering the face, do you recall,
8 specifically, that that was the case in this matter that
9 the mask covered half his face?

10 A What I recall from -- from the description that the
11 witnesses gave at trial, was that there was the wig and the
12 covering lower. I can't remember if it was -- how high or
13 how low it was, but that it was on his face, and ---

14 Q Okay.

15 A --- that's, um -- that's what I recall from the
16 testimony at trial.

17 Q I'm going to hand to you what's been marked as ---

18 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
19 APPLICANT'S EXHIBIT NUMBER 4)

20 Q --- as Plaintiff's (sic) Exhibit Number 4. Can you
21 identify that document?

22 A It says Kyree Green with a date.

23 Q And so Kyree Green was one of the witnesses?

24 A I don't recall their names, but I'll -- I'll take your
25 word for it.

1 Q Okay. Can you read that?

2 A You want me to read that out loud?

3 Q No. Just take your time to read it.

4 A Oh. (Witness complies) Yes.

5 Q Okay. And so Kyree Green -- Kyree Green -- what did
6 they say in terms of the bandana?

7 A Mr. Green said that he had a wig on with a red bandana
8 around his neck with glasses on.

9 Q So when you looked at the video that was involved in
10 this case, did -- does that jog your memory of where
11 exactly how far it came up or ---

12 A If I recall correctly from the testimony at trial, it
13 was covering his face.

14 Q Covering his face.

15 A But I -- like I said, I would have to -- if you have
16 something in the transcript that's different, then please
17 refresh my memory.

18 Q Okay. Well, as to how many videos there were, ---

19 A Okay.

20 Q --- do you recall that there were two videos?

21 A I do not recall multiple angles of the video.

22 Q You said what?

23 A I don't recall multiple angles of the video.

24 Q Okay. On page 147 starting at line 9 -- well, 9 -- at
25 10, excuse me, 147, line 10.

1 A Yes.

2 Q Okay, so how many videos were there?

3 A It says that there were two different videos in this
4 case, one out -- one from him running away outside and then
5 one from a camera on the -- on the building and one in the
6 building.

7 Q Okay. So, but the State turned over to the defense
8 one video or two?

9 A I think it would've been a disk, but I'm saying
10 would've been a disk -- I don't know how many angles were
11 on that, but I recall one video being shown at trial.

12 Q So the way you presented them the disk or the videos,
13 it was on one disk; it could've contained two angles or
14 videos from two different video cameras, I guess.

15 A It could have, yeah.

16 Q Okay. All right, so as far as the jail calls, do you
17 recall how many calls that you had that -- I mean I guess
18 you wanted to show his demeanor, Mr. Brown's demeanor, do
19 you recall how many calls you had?

20 A What we wanted to show was him attempting to coach an
21 alibi witness. His demeanor and the way he spoke to the
22 witness was an added bonus for us.

23 Q Okay. So out of all the thirteen hundred calls, was
24 that not the, of course, the speak (sic) -- they talked to
25 each over kind of harshly?

1 A I wouldn't -- I would not describe it that way. I
2 would not describe it as them talking to each other
3 harshly, no.

4 Q Okay. And you listened to all thirteen hundred calls?

5 A I can't recall if I listened to all thirteen hundred,
6 but as -- during my time as a prosecutor, I spent a great
7 deal of time listening to jail phone calls, so I would've
8 listened to a lot of jail phone calls.

9 Q How many hours is that?

10 A I don't know, because what you have to remember about
11 the Lexington County jail systems is the, um -- they will
12 download an incomplete call, too. So if there are thirteen
13 hundred calls, I don't know how many of them were -- were
14 complete, and I don't know if all of them lasted fifteen
15 minutes, which is usually the duration of a jail phone
16 call, so I could not answer that question.

17 Q So but you know that there were thirteen hundred of
18 them.

19 A I know that, because you said it.

20 Q Okay. It's in the transcript. Would you agree?

21 A Sure.

22 Q Okay. All right, so of the ones that you sent, you
23 don't recall whether or not you e-mailed them or whether
24 you told his attorney over the phone.

1 A Which ones that I sent. We sent all of them. We
2 provided all of the jail phones calls.

3 Q But I mean she didn't listen to all thirteen hundred
4 of them. You identified something that she needed to
5 listen to before she decided whether she brought the
6 witnesses forth on the stand. Right?

7 A (No response)

8 Q So did you, specifically, identify which dates ---

9 A I would've -- it depends on -- and I can't remember
10 how Lexington's files were or labeled, but it would've been
11 check out this phone call at this -- on this date at this
12 time.

13 MS. MOODY - Beg the Court's indulgence.

14 THE COURT - Yes, ma'am.

15 MS. MOODY - No further questions for this
16 witness.

17 THE COURT - Ms. McCallister?

18 MS. MCCALLISTER - Just briefly.

19 RE-DIRECT EXAMINATION

20 BY MS. MCCALLISTER -

21 Q In terms of the cameras and the two videos, you only
22 recall one video being played at trial. Correct?

23 A That's what I -- that's what I recall.

1 Q Okay. Was there ever any testimony that the
2 perpetrator's identity is -- was revealed on any of these
3 videos?

4 A No. I mean that was -- I think the -- Mr. Brown
5 testified that I even -- I put on the mask and the wig
6 during the closing argument, because the biggest bone of
7 contention that Ms. Anastasia Walker was getting out was
8 that nobody identified him -- none of the victims
9 identified him, and I wanted to illustrate that the reason
10 that they couldn't identify him was because when he did it,
11 he was wearing a mask and a wig, um, and so there was never
12 an issue as to whether or not they could identify him.
13 They all agreed that they couldn't identify him. What they
14 could identify was that there was a wig and a bandana, and
15 that the wig and the bandana matched the wig and bandana
16 that were located that had his DNA on it, that that was
17 what we were trying to show.

18 Q Okay. And you felt you could show that through the
19 witnesses themselves, the testimony of the eye-witnesses
20 could tie the bandana that was recovered to the robbery.

21 A Yes, if I -- if I recall correctly, there was a canine
22 track that led to the bandana and the wig out of the Chuck
23 E. Cheese, and it was to a building nearby. They recovered
24 the bandana and the wig there, the canine track then
25 continued to St. Andrews Road or Bush River, somewhere in

1 that area, and then disappeared leading the canine and
2 detectives to believe that the individual got into a car
3 and drove off, so we were bringing up the eye-witness
4 testimony to illustrate that this bandana and wig that the
5 canine tracked to was the same one as that they described
6 seeing, and that it contained Mr. Brown's DNA.

7 Q Okay. And so you didn't need the videos to tie the
8 wig and the bandana to Mr. Brown, because you had the three
9 eye-witnesses who could tie the wig and the bandana to a
10 perpetrator and those items tied to Mr. Brown via his DNA.

11 A Yes, and if I recall correctly, I think there had been
12 a number -- I think there -- that it was -- I don't think
13 it was six people. I think there were two contributors on
14 the DNA -- um ---

15 Q If I told you three ---

16 A Three?

17 Q Okay.

18 A Okay. There was a major and a minor contributor, and
19 if I recall correctly, Mr. Brown was the major contributor.

20 Q Okay. Thank you.

21 A But again, it was like five years ago, so forgive me
22 I'm mistaken.

23 MS. MCCALLISTER - Thank you.

24 THE COURT - Nothing further?

1 MS. MOODY - I'd ask that she not be excused but
2 nothing further.

3 THE COURT - You can step down. Thank you.

4 MS. WALKER - Yes, ma'am.

5 MS. MCCALLISTER - Nothing further from the State,
6 Your Honor, except -- I don't know how you want to do -- if
7 you want argument or if would you like us to submit
8 something written or you don't want anything at all or ---

9 THE COURT - Whatever you prefer. I mean do you -
10 - do you want to make a closing statement? I'm glad to
11 hear it.

12 MS. MOODY - Well, Your Honor, I would just ask --
13 I would say we want to rely on the transcript, because I
14 think the age of this case there's some discrepancies as to
15 video, mask, bandana and we would rely on transcript
16 because that's what happened in the trial. I think coupled
17 with the fact that there's a missing file from the public
18 defender's office, that we'd have to rely on the transcript
19 anyway for a number of things such as dealing with the
20 bandana, mask and wig or bandana/mask, what-have-you, we
21 would ask the Court to rely on the transcript in that
22 regard. One thing that we would point out is that there is
23 one issue where the preservation for appeal for the Court
24 to -- Court of Appeals even review the issue and as to
25 whether or not there was an error in this case, I think

1 counsel admitted to that on the stand. Again, we don't
2 have the benefit of her file to show what her thinking was
3 on a number of things. As far as the -- I believe the
4 State wants to rely on the audios, and I don't think the
5 Court's going to listen to thirteen tapes, but I do think
6 that the issue as far as the alibi is concerned -- I guess
7 the -- I guess the missing part of this is the file, the
8 notes as to why the witnesses were not used or utilized and
9 I think that they would've been helpful in the case to some
10 degree. They would've heard some -- something on behalf of
11 the defense in terms of where he was, and I think the jury
12 was entitled to hear that. Now, as to whether that amounts
13 to ineffective assistance of counsel, I would have to like
14 look further since we can only deal with what we heard from
15 here today in terms of what information was given. The
16 timeframe -- I know that you have to have the actual
17 incident covered and that's an issue, and I know there's
18 case law out there for that, but we would rely on the
19 transcript as to the number of videos that were available,
20 the arguments, the mis-objections in
21 this particular case.

22 THE COURT - Thank you. Ms. McCallister?

23 MS. MCCALLISTER - Your Honor, as far as the
24 issue with failing to preserve the objections, I do have a
25 -- I do have some case law, and I think Mr. Brown has to

1 prove that he was prejudiced by that failure, meaning that
2 he would've prevailed on appeal and the Court of Appeals
3 would've disagreed with the Trial Court's decision to let
4 those statements in, and the State's position is that he is
5 not able to do that, that those statements were admissible,
6 they were confessions, and I think there's some case law
7 out there that supports their admissions, so I can hand
8 that up. Ms. Moody presented ---

9 MS. MOODY - --- with those cases.

10 MS. MCCALLISTER - She's got eleven -- I think I
11 counted eleven, maybe twelve different issues. I would
12 just ask maybe if we could do proposed orders from each
13 side, because I think -- I also have case law that I would
14 need to present to the Court to support the State's
15 arguments and that would take a while to go through all
16 eleven issues.

17 THE COURT - I don't mind leaving the record open
18 for like 30 days if there's anything y'all want to submit
19 to me in the form of either a proposed order or a
20 supplemental memorandum.

21 MS. MCCALLISTER - Okay.

22 THE COURT - Whatever form you want to put that
23 in, basically, whatever's easiest for you ---

24 MS. MCCALLISTER - Okay.

25 THE COURT - --- is fine with me.

1 MS. MCCALLISTER - Okay. I would also ask, if
2 we're able to locate, for example, if Ms. Walker emailed
3 the other Ms. Walker just the two files and not the
4 thirteen hundred files, the State would ask to put those
5 two files in, to leave the record open in order to put
6 those two jail calls in.

7 THE COURT - I have no objection to that.

8 MS. MCCALLISTER - I don't know if we can find
9 them, but if we can.

10 MS. MOODY - I mean, I have no problem with that.
11 I would think that they -- I don't know how they back-up
12 their system, but ---

13 MS. MCCALLISTER - Okay.

14 THE COURT - Okay, so allow the record to remain
15 open for 30 days, basically, for the purpose of y'all being
16 able to submit anything additional to the Court and in
17 terms of legal authority and also in the event that you're
18 able to locate that audio tape.

19 All right, anything else?

20 (WHEREUPON, NO RESPONSE)

21 THE COURT - All right, thank y'all so much.

22 MS. MOODY - Thank you.

23 THE COURT - And we're adjourned until 9:30
24 tomorrow? Is that correct.

25 MS. MCCALLISTER - Yes, Your Honor.

1 THE COURT - All right, thank you.

2 MS. MOODY - Thank you, Your Honor.

3 (WHEREUPON, APPLICANT'S EXHIBIT NUMBER 4 ENTERED
4 INTO EVIDENCE OFF THE RECORD WITHOUT OBJECTION)

5 (END OF TRANSCRIPT)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

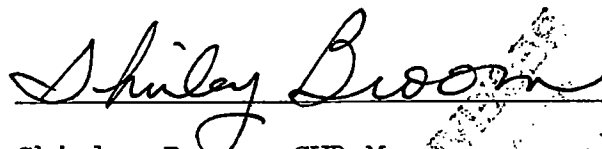
24

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 150 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Michael Orlando Brown vs. State of South Carolina, as taken by me in The Court of Common Pleas for the Fifth Judicial Circuit on February 19, 2019 and provided by me this the 12TH day of DECEMBER, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

CONFIDENTIAL REPORT

15 July 14



Attorney Anastasia Walker	Re: Our File No.	: 1311156
Richland County PD Office	Add'l File No.	: N/S
Columbia, SC 29201	Subject	: Michael O. Brown
	DOA	: N/S

Assignment Received	: 14 July 15
Previous Correspondence	: None
Type of Case	: Armed Robbery
Assignment	: Interview Potential Witnesses

Synopsis

Pertinent Information: Pursuant to your request, an investigation was initiated in an effort to gain useful information regarding the above referenced defendant and his lack of involvement in the armed robbery he is now accused. I began this investigation by traveling to the home of Judy Castor to interview her teenaged daughter, Cecilia Castor also known as "CC". During the course of this interview, both Ms. Castor and CC claims the defendant, Michael Brown, was not involved with this armed robbery as he was at their residence at the time of the robbery. Both individuals claim the subject was at their residence when they arrived home at 6:30 that evening tending to his dogs which were housed at Ms. Castro's residence. According to Ms. Castro, the subject fed and played with his dogs daily without ever missing a day. On this particular day, the subject was remembered watching a movie with Ms. Castro's daughter CC. Ms. Castro further states, that when she arrived home at 2:00 am from her own date, she awoken Mr. Brown as he had fallen asleep on the couch in the living room. Ms. Castro cannot accurately state when Mr. Brown left the home that evening because she went to bed, but she awoken later that morning, Mr. Brown was gone.

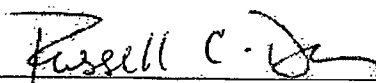
Ms. Castro and her daughter, we capable of recalling the specific events without hesitation or prompting. Ms. Castro admitted to being in a sexual relationship with Mr. Brown which ended abruptly on 28 Nov 12, the date of the USC vs. Clemson Football game. However, do to the close relationship Mr. Brown established with Ms. Castro's daughter CC, Ms. Castro allowed Mr. Brown to continue his relationship with the minor. Ms. Castro claims the downfall of their relationship was due to the subject's affinity for women. Ms. Castro admits they were able to move past their failed relationship and remained friends.

CC appears to be hurt by the current charges and describes the subject as her best friend. CC says the subject often helped her in tough situations and the time together she most enjoyed was tending to the dogs and their 'movie time'. The subject was in fact at the Castro's home during the 'movie night' with CC.

Documentation: During the course of this investigation I was able to obtain two (2) signed and notarized statements from Ms. Judi Castor and Cecilia Castor. I have attached them with this final report.

Verbal Report: No verbal report was provided. Please allow this to serve as my final report.

Case Status: Closed. Should you have any questions regarding this investigation, please contact my office at (803) 256-9411 or via facsimile at (803) 765-2592 x142.


Investigator's Signature

Statement Form



Name: Cecilia Castro DOB: 2/21/99 SSN: _____
 Address: 187 Stonebridge Drive City: Gaston State: SC
 RE: Michael O. Brown Investigator: R. Dean

I, Cecilia Castro after being duly sworn, affirm the following:

I have known Michael Brown since 2010. We became friends once Michael began dating my mother and continued our friendships after they ended their relationship. On the night of this incident Michael had been at our old residence, 217 Oaktop Court taking care of his dogs and waiting for me to return home so we could watch the movie Hunger Games. I arrived home at 6:30 pm that evening and Michael had already started the movie, but agreed to restart the movie so I would see it from the beginning. Michael remained at our house until 2:00 am then left for his residence. Mr. Dean wrote this statement based on the events as I stated to him.

I make this statement of my own free will. I have not been threatened, promised anything nor am I under the influence of any drugs and/or alcohol at the time of this writing. I understand I do not have to make this statement.

Cecilia Castro

SWORN and subscribed before me this
15th day of July, 2014

Russell C. Dean

NOTARY PUBLIC FOR SOUTH CAROLINA
 My commission expires 7/6/23

RCSD Agency Incident Report



Incident Number 003RCSD00586 Base Response # Response Date: 01/03/2013 21:44:43 Priority: 0 PO Incident Type: 2 Unit Inv, Lab & Supervisor	Method Of Call Rev YES Call Back Phone: (803) 772-0436 Caller Type: Caller Name: KADUA GREEN Caller Loc Name: 1775 BURNING TREE DR Caller Address: Caller Apt/Bldg #: Caller City,State,Zip: Caller County:	Call Revd To In-Queue: Call Revd To Call Taking Done: In-Queue To First Assign: 00:00:09 Call Revd To First Assign: 00:00:30 Assigned To First Enroute: 00:01:12 Enroute To First At Scene: 00:02:52 Call Revd To Call Closed: 01:59:04
Confirmation #: Jurisdiction: RCSD Division: Region 4 Battalion: D15	Time Phone Pick Up: 01/03/2013 21:41:22 Time 1st Call Taking Key Strok 01/03/2013 21:41:23 Time Call Entered Queue: 01/03/2013 21:44:43 Time Call Taking Completed:	Time Incident Under Control: Time Call Closed: 01/03/2013 23:40:26 Time Sent To Other CAD:
Station: Response Area: RCSD 4 15 Response Plan: Incident Type: 2 Unit Inv, Lab & Supervisor	Time First Unit Assigned: 01/03/2013 21:44:52 Time First Unit Enroute: 01/03/2013 21:46:04 Time First Unit Arrived: 01/03/2013 21:48:56	Call Taking Performed By: Eller, Cynthia Ca8Closing Performed By: Reyes, Erica Y
Problem: Confirmed Holdup Location Name: Address: 1775 Burning Tree Dr Apt/Bldg #: / City, State, Zip COLUMBIA SC 29210 County: RICHLAND Location Type: Cross Street: SAINT ANDREWS RD/26	Authorization #: Patient Name: Receiving Physician: Referring Physician: Request P/U Time: Promised P/U Time: Appointment Time:	Command Channel: Primary TAC Channel: Alternate TAC Channel:
		Call Disposition: Clear Incident Report (R51) Performed By: Reyes, Erica Y Cancel Reason: RCSD Call Completed (RC)
		ANU/ALI Address: ANU/ALI City: ANU/ALI Phone: ANU/ALI Time Revd:

RCSD Agency Incident Report

Vehicles Assigned...

Radio Name	Response Number	Unit Response Priority	Assigned	Enroute	At Scene	Staged	Patient Contact	Delay Avail	Call Cleared	Cancel Reason
K916		PO	21:46:45	21:46:45	21:56:55				23:31:56	
K918		PO	21:46:37	21:46:36	21:54:44				23:15:04	Reassigned (RR)
K921		PO	21:46:46	21:46:15					23:27:00	Reassigned (RR)
R420		PO	21:44:53	21:49:53	22:16:34				22:44:16	
R421		PO	21:44:52	21:46:24	21:48:56				21:52:24	
R424		PO	21:55:35	21:55:33	21:55:58				23:15:20	
R426		PO	21:46:01	21:46:04	22:16:29				23:20:53	

Transport Destination Information...

Radio Name	Location Name	Address,Bldg,Apt, City, State	Phone	Transport Mileage	Depart Scene	Arrive Destination	Cleared This Destination
------------	---------------	-------------------------------	-------	-------------------	--------------	--------------------	--------------------------

Special Equipment...

Special Equipment	TV	ERG	Oxygen	Family Rider	Paramedic	Wheel Chair	Restraint	Suction
-------------------	----	-----	--------	--------------	-----------	-------------	-----------	---------

Date: 7/22/2014 Time: 16:13:02 Operator: ML Program: EditMgr.exe Incident Number: 003RCSD00586 Page: 2

RCSD Agency Incident Report

Changed Address...

Time	Location Name	Address	Apartment	Building	City	State	Postal Code	County	Performed By
------	---------------	---------	-----------	----------	------	-------	-------------	--------	--------------

Priority Changed.

Fixed Date/Time	Time	Priority	Performed By	Reason For Change
-----------------	------	----------	--------------	-------------------

Changed Transport Destination...

Time	Changed From	Changed To	Personnel Initial	Reason	Terminal
------	--------------	------------	-------------------	--------	----------

Transport Priority Changed...

Time	Changed From	Changed To	Personnel Initial	Reason	Terminal
------	--------------	------------	-------------------	--------	----------

Comments...

Date/Time	Performed By	Comment Type	Comment
01/03/2013 21:44:24	CE	Response	*** ATTEMPT ***[Shared]
01/03/2013 21:44:11	CE	Response	SUSP DID NOT GET ANYTHING # *** ATTEMPT ***[Shared]
01/03/2013 21:44:01	CE	Response	Updated SOP information is available[Shared]
01/03/2013 21:42:33	CE	Response	CHASED EMPLOYEES AROUND THE STORE[Shared]
01/03/2013 21:42:44	CE	Response	* B/M WEARING LONG BLACK WIG / BLACK JACKET WITH GUN[Shared]
01/03/2013 21:42:18	CE	Response	CHUCK H CHEESES # CALLER STS SOMEONE JUST TRIED TO ROB THEM[Shared]
01/03/2013 21:44:43	TDR	Response	Multi-Agency CPD Incident #: 003RCSD000079
01/03/2013 21:44:52	EVR	Response	Automatic Case Number(s) issued for RCSD: 1301051563. [Shared]
01/03/2013 21:44:54	ES	Response	Duplicate call appended to incident at 21:44:54 [Shared]
01/03/2013 21:45:00	CE	Response	* STS SUSP LEFT ON FOOT GOING LEFT ON BURNING TREE FROM LOC [Shared]
01/03/2013 21:45:15	TDR	Response	[CPD] has closed their incident [003RCSD000079]
01/03/2013 21:46:04	EVR	Response	Backed up incident with R426 [Shared]
01/03/2013 21:46:37	EVR	Response	Backed up incident with K918 [Shared]
01/03/2013 21:46:46	DD	Response	Backed up incident with K916, K921 [Shared]
01/03/2013 21:49:13	EVR	Response	10-3 [Shared]
01/03/2013 21:49:53	EVR	Response	Backed up incident with S420 [Shared]
01/03/2013 21:50:41	EVT	Response	NO SUBJ AROUND S POINT [Shared]
01/03/2013 21:51:53	EVR	Response	SKT 18/15 [Shared]
01/03/2013 21:51:42	EVR	Response	ONLY ONE SUBJ INVOLVED [Shared]
01/03/2013 21:52:29	EVR	Response	Backed up incident with R421 [Shared]
01/03/2013 21:55:34	EVR	Response	Backed up incident with R424 [Shared]

Date: 7/22/2014 Time: 16:13:02

Operator: MI

Program: EditMdr.exe

Incident Number: 003RCSD00586

Page: 3

RCSD Agency Incident Report

01/03/2013 21:59:57 EYR 01/03/2013 22:01:14 EYR 01/03/2013 22:01:26 EYR 01/03/2013 22:08:29 EYR 01/03/2013 22:08:37 EYR 01/03/2013 22:08:47 EYR 01/03/2013 22:11:55 EYR 01/03/2013 22:19:40 EYR 01/03/2013 22:39:37 EYR 01/03/2013 22:39:41 EYR	Response Response Response Response Response Response Response Response Response Response	10-3 K9 TRACKING [Shared] K9 ON THE BACK SIDE OF BUSINESS RUNNING UP TO THE GAS STATION [Shared] SUBJ WORE LATEN GLOVES [Shared] SUBJ IS RUNNING TOWARDS MEXCAN REST PER SURVALLIENCE CAMERA [Shared] SUBJ ALSO WEARING GLASSES [Shared] SUBJ HAD ON A BROWN WIG [Shared] K9 NEAR THE BACK GATE AREA OF EL TORREO [Shared] SUBJ HAD ON A FAKE MUSTACHE [Shared] ISG 1815 SIG 1515
--	--	--

Response Alarms...

Date/Time	Alarm Number	Performed By
-----------	--------------	--------------

User Time Stamps...

Time Stamp	Description	Time	Performed By
------------	-------------	------	--------------

Audit...

Date/Time	Reason	Request/Comment	Disposition	Requested By	Performed By
-----------	--------	-----------------	-------------	--------------	--------------

User Data...

Field Description	Field Data
MuniCode	81

Dispositions...

Disposition	Time/Set	Performed By
Clear No Report Taken (R8)	01/03/2013 21:52:24	Royce, Erica Y
Clear Incident Report (R51)	01/03/2013 23:40:26	Royce, Erica Y

RICHLAND COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTARY REPORT

AGENCY I.D.
SCORI 400000

CASE NUMBER

1301051503

NCIC

INQ ENTD

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ INVESTIGATIVE FOLLOW UP	☐ ADDITIONAL STOLEN PROPERTY	PAGE OF PAGES
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE		☐ ADDITIONAL RECOVERED PROPERTY	

K-9 WAS REQUESTED TO ATTEMPT TO TRACK A SUBJECT THAT ATTEMPTED TO ROB THE CHUCKY CHEESE. SUBJECT RAN FROM THE FRONT DOOR AND TURNED TO THE RIGHT AND RAN TO THE BACK OF THE BUILDING. K-9 WAS DEPLOYED AT THE SIDE OF THE BUSINESS AND ESTABLISHED THE TRACK. TRACKED THROUGH THE BACK PARKING LOT AND ONTO THE SIDE PARKING LOT OF EL TORO CLUB. K-9 TRACKED BEHIND THE BACK OF EL TORO CLUB AND THERE WAS A WIG AND MASK FOUND THAT R/O WAS TOLD THAT THE SUBJECT USED IN THE ATTEMPTED ROBBERY. TRACK CONTINUED BEHIND THE EL TORO CLUB AND UP TO ST. ANDREWS ROAD. K-9 TRACKED TROUGH A BOARDER/BRUSH TO A BUSINESS THAT WAS NEXT DOOR TO THE EL TORO AND INTO THE BACK PARKING LOT AND THE TRACK WAS LOST. SEVERAL ATTEMPTS TO CAST IN ALL DIRECTIONS, BUT WAS UNABLE TO REESTABLISH THE TRACK. A HEAVY SEARCH OF THE AREA WAS ALSO CONDUCTED IN THE EFFORTS TO FIND THE WEAPON USED IN THE ATTEMPTED ROBBERY. NO WEAPON WAS FOUND.

NARRATIVE

ADMINISTRATIVE	☐ ACTIVE		☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18	
	☐ UNFOUNDED				☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
	S. NO.	REPORTING OFFICER(S)	DATE	S. NO.	APPROVING OFFICER	DATE		
	1567	Pearrow, Stephen	01092013		Hoover, Kevin	01092013		
			FOLLOW UP INVESTIGATION		S. NO.	OFFICER	DATE	
			☐ YES ☐ NO			MARTIN		



He walked in the store reaching into his pockets, approached me, grabbed me while he had a gun, walked with me to the kitchen in the back let me go and ran toward Ronnie and Kadesia's way and Ronnie and Kadesia ran out the kitchen so did he, then he ran out the store entrance door. He had a wig on, with a red bandana around his neck with glasses on.

Kyle Green
11/3/13

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Michael Orlando Brown, #295408,)

C. A. No. 2016-CP-40-4677

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

RICHLAND COUNTY
FILED
2019 SEP -4 AM 11:44
JEANETTE W. MCBRIDE
C.C.P., G.S., & F.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 3, 2016, by Michael Orlando Brown (Applicant). The State (Respondent) filed a Return on June 30, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened February 19, 2019, at the Richland County Courthouse before the undersigned. Applicant was present at the hearing and represented by Leah B. Moody, Esquire. Assistant Attorney General Lindsey A. McCallister of the South Carolina Attorney General's Office represented Respondent.

At the hearing, Applicant testified on his own behalf and presented testimony from Judy and Cecilia Castro as purported alibi witnesses. Anastasia Walker, Esquire, Applicant's plea counsel, and Meghan Walker, Esquire, the assistant solicitor who prosecuted the case, testified on behalf of Respondent. This Court also had before it a copy of the records of the Richland County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Return, the trial transcript, and Applicant's appellate records. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. Applicant was indicted by the April 2014 term of the Richland County Grand Jury for attempted armed robbery (2014-GS-40-02050). Anastasia L. Walker, Esquire (Counsel), and Alicia Dyar Goode, Esquire, represented Applicant. Meghan L. Walker (Walker), Kathryn L. Campbell (Campbell), and Sandra V. Moser (Moser), Esquires, prosecuted the case on behalf of the State. On August 4-5, 2014, Applicant proceeded to trial before the Honorable James R. Barber and a jury. The jury found Applicant guilty as indicted. Judge Barber sentenced Applicant to life in prison without the possibility of parole pursuant to section 17-25-45 of the South Carolina Code of Laws.

Applicant filed a timely notice of appeal, which was perfected by Laura Baer, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division. After briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion. State v. Brown, Op. No. 2016-UP-349 (S.C. Ct. App. filed July 6, 2016). The case was remitted to the circuit court on August 1, 2016.

Applicant timely filed this PCR application on August 3, 2016.

SUMMARY OF FACTS

On the night of January 3, 2013, a small group of employees were cleaning up the Chuck E. Cheese restaurant in Columbia prior to closing when an armed gunman entered the restaurant wearing a wig and a bandana over his face. The man grabbed an employee, put a gun to the employee's back, and demanded money before fleeing on foot. Portions of the attempted armed robbery were captured on the restaurant's surveillance video. Police responded to the scene and a K9 officer tracked the man's trail away from the building. The dog led officers to a neighboring

property where they recovered 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 eventually connected to Applicant, which led to his arrest.

Robert Martin (Martin), an Investigator for the Richland County Sheriff's Department, interviewed Applicant in his office on March 14, 2013, after Applicant's arrest. Martin advised Applicant of his Miranda¹ rights both orally and in writing, which Applicant voluntarily waived. Martin asked why Applicant's DNA would be found at the scene of the crime, and Applicant could not give a valid reason. Martin testified that he asked whether Applicant would be willing to give a DNA sample but Applicant said no, because it would convict him. Applicant never denied the validity of the DNA evidence and said he was not going to challenge the DNA because he knew it would be enough to convict him. During this same interview, Applicant asked Martin about the possibility of being charged with a lesser offense and offered to plead guilty to a lesser charge because attempted armed robbery carried the possibility of a life sentence. Martin explained he could not make deals and any negotiations would be between his attorney and the Solicitor's Office. Applicant indicated he did not want to talk about the case anymore, and the interview stopped.

Applicant challenged the admissibility of his statements in a pretrial Jackson v. Denno² hearing. The trial judge ruled he would not allow any testimony regarding Martin's request for, and Applicant's refusal to give, a DNA sample, but he would allow testimony about the portion of the statement where Applicant said: "I know the DNA will convict me." Additionally, the trial judge ruled Applicant's statement offering to plead guilty to a lesser charge was admissible.

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

² 378 U.S. 368 (1964).

ALLEGATIONS RAISED

In his original application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel was ineffective for failing to preserve for appeal whether the trial court erred in admitting my alleged offer to plead guilty"
 - b. "Trial counsel was ineffective for failing to preserve for appeal whether the trial court erred in admitting my alleged statement that 'DNA will convict me.'"

At the evidentiary hearing, Counsel for Applicant informed the Court that Applicant intended to raise additional issues. Respondent agreed it had received notice of the additional allegations by way of an email on July 13, 2018. Counsel for Respondent indicated she was prepared to proceed on the following issues:

1. Counsel was ineffective for failing to preserve issues for appeal – specifically whether the trial court erred in admitting Applicant's offer to plead guilty and Applicant's statement "DNA will convict me;"
2. Counsel was ineffective for failing to call alibi witness(es);
3. Counsel was ineffective for failing to call a DNA expert;
4. Counsel was ineffective for failing challenge the admission of DNA evidence under Rule 403;
5. Counsel was ineffective for failing to adequately cross-examine the State's witnesses;
6. Counsel was ineffective for soliciting damaging testimony from witnesses;
7. Counsel was ineffective for failing to file a motion to dismiss the charges;
8. Counsel was ineffective because she lied to Applicant about witness statements; and
9. Prosecutorial misconduct in that the State engaged in the deliberate deception of the Court by presenting false evidence and testimony.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant testified he is currently incarcerated for the attempted armed robbery of a Chuck E. Cheese restaurant. Applicant explained he was represented on this charge by Counsel and Alicia Goode (Goode), and he ultimately had a jury trial, where he was prosecuted by Walker, Campbell, and Moser. Applicant testified his case was originally assigned to Luke Shealy, Esquire, but Mr.

Shealy was transitioning to private practice, so his case was reassigned to Counsel sometime in August 2013. Applicant testified he first met with Counsel in December 2013 while he was in jail in Lexington County on unrelated charges.

Applicant testified Counsel was still waiting for discovery at the time of their first meeting, but they spoke and she introduced herself. According to Applicant, he was looking for the chain of custody documentation, and he told Counsel he did not commit the crime, nor had he made any statements to the investigator. Applicant stated he also told Counsel he wanted a trial. Applicant further testified he met with Counsel again three or four times, she reviewed the discovery with him, and they talked about his potential sentencing exposure at trial. Applicant stated he and Counsel talked about a plea, but the State gave notice of its intent to seek life without parole (LWOP). Applicant testified he told Counsel about his potential alibi witnesses at their first meeting. Applicant stated that Counsel showed him the video from the restaurant on her laptop during one of her visits at the jail. Applicant explained there was a second video mentioned in the incident report which they did not have. Applicant testified, however, he still wished to go to trial. Applicant further testified he wrote Counsel a letter explaining what he wanted her to do to prepare for the trial. Applicant explained he was particularly concerned with the chain-of-custody documentation, retesting the DNA from the bandana, securing a DNA expert to testify in his defense, and ensuring his alibi witnesses were present.

Applicant testified that, during pretrial motions, Counsel brought up statements Applicant had allegedly made to the investigator along the lines of, "I'm not going to give you DNA" and "I want to plead guilty." According to Applicant, he told Counsel he never made those statements. Applicant stated the investigator read his Miranda rights, but he only asked the officer for a phone call, and "it never got past that." Applicant testified Counsel nonetheless agreed with the trial court

that he had made the statements and did not object to them at trial. Applicant asserted Counsel "lied" when she agreed Applicant had made the statements because Applicant told her he had not. Applicant explained Counsel made a motion *in limine* to exclude the statements, but then did not object when the testimony was presented to the jury, rendering the issue unpreserved for appeal.

Applicant next testified he wanted Counsel to call Judy and Cecilia Castro as alibi witnesses. Applicant stated he told Counsel he was at the Castro home all night and had no time to have committed the crime. Applicant explained he was already at the Castro home when Judy and Cecilia arrived home that evening, and he stayed until approximately 2 a.m. or 3 a.m. According to Applicant, Walker and an investigator spoke to the Castros and confirmed the alibi, but neither Judy nor Cecilia Castro testified at trial. Applicant testified Counsel never told him she was not going to call them to testify, and they were present for the first day of trial, but not the second day. Applicant stated he and Counsel had agreed to an alibi defense, and it was the only defense they discussed. Applicant explained he did not testify on his own behalf because of his prior record. Applicant further testified he did not ask Counsel where the Castros were the second day of trial because he thought they were coming, even though, according to Applicant, Counsel told him the witnesses would not be there until after the trial was over. On cross-examination, however, Applicant testified Counsel told him she was not going to call the Castros because "the State had not put up a good case and she didn't need them."

Applicant testified Counsel retained a DNA expert who was present for trial, but Counsel did not call him to testify. Applicant explained he and Counsel discussed the DNA evidence, and he asked Counsel to have the items retested because he did not believe his DNA was on the bandana. Applicant stated Counsel never told him anything further about the DNA testing, and he was not aware the expert would not be called to testify until the trial was over. Applicant further

testified he wanted Counsel to challenge the DNA under Rule 403, SCRPC, because it was "more prejudicial than anything." Applicant stated he could not answer any of the questions the jury would need to have answered, and thought that was what the defense DNA expert was supposed to do.

Applicant further testified there was only one video provided by the State at trial, but he believed the Chuck E. Cheese restaurant originally had more videos because they were mentioned in the investigative reports. According to Applicant, the investigating officer said he saw the videos, and the videos showed the robbery. When Counsel asked the officer how many videos he saw, the officer answered there were two, but the restaurant manager said there were thirty-two different cameras. Applicant testified only one video was presented at trial, and the State never turned over any additional videos. Applicant explained the video was used to make the bandana and wig relevant, and he wanted Counsel to have any testimony about it suppressed. According to Applicant, Counsel told him she wondered where the other video was, and she filed a subpoena to obtain it, but "it was too late." On cross-examination, Applicant agreed Counsel made a motion specifically asking for the State to turn over any additional videos, and the State told the trial court there were no others. Applicant admitted that as of the date of the evidentiary hearing he still did not have the videos. Additionally, on cross-examination, Applicant testified he wanted the videos so he could dispute where the officers claimed to have found the wig and bandana. Applicant stated he believed the eyewitness testimony offered by the State was not good enough.

Regarding Counsel's examination of witnesses, Applicant next testified the K9 officer testified differently than what was contained in his report. According to Applicant, the report said the dog went around in different directions, but at trial the officer claimed the dog made a track, which is how the officer discovered the wig and bandana. Applicant stated Counsel should have

impeached the officer with the discrepancy. Applicant further asserted Counsel elicited testimony from the officer who obtained the warrant after the DNA match that was damaging to Applicant's case. Applicant stated Counsel brought out that the DNA was not the only factor in obtaining the warrant and opened the door to the State asking about Applicant's other pending charges. However, Applicant conceded the State was not allowed to go into detail about the charges, just that there were additional factors other than the DNA in obtaining the warrant.

Additionally, Applicant testified Counsel should have cross-examined officers regarding discrepancies in the dispatch reports, which at one point says the suspect ran left out the door of the restaurant and later says the suspect ran to the right. Applicant stated he did not receive the reports until he got a new copy of discovery from appellate counsel and PCR counsel. Applicant also testified Counsel should have filed a motion to dismiss the charges at the end of the State's case, instead of making a motion for a directed verdict, because the investigator who obtained the warrant did not know who the victims were and did not do any pretrial investigation. Applicant conceded on cross-examination that the trial court's denial of the directed verdict motion was raised on appeal and denied.

Applicant also testified he wrote Counsel a letter explaining the trial strategy he wanted to use. Applicant explained Counsel informed him the letter went to Megan Walker, in the Solicitor's Office, instead of Counsel, and when Counsel eventually received the letter, it was already open. Applicant stated Counsel did not inform the trial court the State had a letter from him to his attorney, and he only learned what happened right before trial began. Applicant testified he believed different solicitors should have been assigned to his case because Walker had received information about his trial strategy.

Finally, Applicant testified he believed Walker engaged in prosecutorial misconduct because she talked about a "mask" in opening and closing, but the State only ever introduced evidence of a bandana. Applicant explained the only evidence he knew about leading up to trial was the wig and the bandana. Applicant testified Walker also made statements during her closing argument about issues never mentioned during trial. Applicant further testified he alerted Counsel after trial and wrote down "what mask?" on his note pad to show her, but she did not object or correct the statement. On cross-examination, Applicant conceded he understood Walker was using "mask" and "bandana" interchangeably throughout the trial.

Judy Castro testified on Applicant's behalf. She explained Applicant was her neighbor, and they previously dated but remained friends afterwards. Ms. Castro testified Applicant was at her house the day of the robbery, and she gave a statement to Applicant's attorney and investigator. Ms. Castro recalled she was asked to testify, so she showed up to court and spoke with Counsel. Ms. Castro stated she spoke with Counsel by phone after the first day of trial, and she was not present for the second day. Ms. Castro testified Counsel did not give a reason for why she did not call Ms. Castro to testify. Ms. Castro explained if she had been called to testify, she would have explained she brought her daughter home after work and left Applicant and her daughter there together. According to Ms. Castro, she left the house around 7:30 or 8:00 p.m. and woke Applicant up when she returned around 2:30 a.m. Ms. Castro agreed she did not see Applicant from the time she left the house at approximately 7:30 p.m. until she returned around 2:30 a.m.

Cecilia Castro also testified she recalled Applicant being at their home on the night of the incident. Cecilia explained she and her mother were close with Applicant, and she saw him every day. Cecilia testified, on the night in question, she and Applicant watched movies, ate dinner, and then fell asleep around 10:00 or 11:00 p.m. Cecilia testified she slept through the night and woke

up on the couch. She testified Applicant was gone when she woke up, and she did not know what time Applicant left her house. Cecilia further stated she spoke with Applicant's attorney and planned to testify on Applicant's behalf, but her mother told her they did not need to go back to court after the first day of trial.

Counsel testified she currently works for South Carolina Legal Services, but she was a public defender in Richland County from 2007 until 2017. Counsel explained she did not have a file because it could not be located, but she did have a computer printout of her notes from the case, and she recalled some of her representation of Applicant. Counsel explained the main evidence against Applicant in this case was the DNA evidence from the recovered wig and bandana, plus the statements Applicant made to investigating officers. Counsel stated none of the eyewitnesses were able to identify a suspect because the robber had been disguised. Counsel further testified she met with Applicant seven times prior to trial and discussed the evidence, including the DNA evidence, and asked Applicant for potential witnesses to investigate.

Counsel testified Applicant's statements were an issue pretrial, and she made a motion to suppress the content of the statements. Counsel explained the trial judge ruled a portion of Applicant's statement – that he would not give his DNA – was inadmissible, but other portions of the statement were deemed admissible and were in fact admitted at trial. Counsel agreed she did not contemporaneously object when the officer testified about Applicant's statements, rendering the issue unpreserved. Counsel further stated she did not recall Applicant ever denying he made the statements, and she had nothing in her notes to reflect Applicant told her that.

Counsel explained there were several issues with the alibi witnesses which contributed to her decision not to call them at trial. Counsel testified she did not know who the alibi witnesses were until very close to trial, so she spoke to them personally and immediately filed notice of their

intent to present an alibi defense. Counsel reviewed her notes and testified she was not notified of who the alibi witnesses were until July 2014, at either the fourth or fifth meeting with Applicant, although Applicant had previously claimed to have an alibi. Counsel testified the late notice regarding the alibi witnesses concerned her. Additionally, before trial started, Counsel became aware of some jail phone calls between Applicant and the witnesses in which Applicant appeared to be coaching them about what to say.

Counsel testified the Castros told her substantially the same information they testified to at the evidentiary hearing, except, at that time, Cecilia could not recall what time she fell asleep. Counsel testified she felt the alibi was not specific enough to present because Cecilia had fallen asleep and could not account for the whole timeframe of the robbery. Counsel stated Judy Castro was not part of the alibi defense, and if she had called a witness, she would have called Cecilia. Additionally, Counsel testified she listened to the jail phone calls, which involved both Judy and Cecilia Castro, and her assessment was that the phone calls were damaging to Applicant's case. Counsel testified the State notified her it intended to introduce the phone calls as evidence of coaching to rebut the alibi defense, and she discussed her concern about the calls with Applicant. Counsel stated she discussed the problematic nature of the alibi testimony with Applicant prior to trial, and they disagreed over whether she should call the witness. Counsel explained, in her professional opinion at the time of trial, the alibi testimony was overall more harmful than helpful to Applicant's case, and she made the choice not to call Cecilia against Applicant's wishes.

Counsel testified she retained a DNA expert who was not present for the whole trial, but who sat with her during the State's DNA expert's testimony. Counsel explained the expert helped her prepare for direct and cross-examination of the State's expert witness and sat with her in case she had additional questions during that testimony. Counsel stated the DNA expert reviewed the

State's analysis, and she did not call him to testify because he did not disagree with the results. Counsel testified she used the expert to highlight flaws in the DNA identification and to argue it showed a mixture of contributors. Counsel testified she did not recall Applicant offering any explanation for why his DNA was on the bandana. Counsel also testified she did not recall any issues with chain of custody, nor did Applicant tell her he wanted her to challenge it. Finally, Counsel testified she did not believe a Rule 403 objection to the DNA evidence would have been appropriate.

Counsel testified she made a motion pursuant to Riddle v. Ozmint³ trying to ascertain whether there were additional videos. Counsel did not recall the State saying the video played at trial was the only video, but agreed the transcript would reflect the State's response. Counsel also agreed the victims, who were eyewitnesses to the attempted robbery, testified at trial. Counsel explained the wig and bandana described by the witnesses were found outside of another business by a tracking dog. Counsel could not recall her cross-examination of the K9 officer, but stated the issue with the bandana was the DNA on it, not where it was found. Counsel also testified she did not feel a motion to dismiss was appropriate, and she did not recall Applicant ever asking her to make that motion. Counsel stated she cross-examined the officer who obtained the warrant about the issues Applicant raised. Finally, Counsel testified she did not recall any issue with Walker referring to the robber wearing a mask as she thought Walker was using the terms interchangeably, and she did not believe the references to a mask were problematic.

Finally, Counsel testified she thought this was a good case for trial, and her strategy was to poke holes in the State's case by pointing out the bandana contained a mixture of DNA and none of the eyewitnesses could identify Applicant as the robber. However, Counsel testified

³ 369 S.C. 39, 631 S.E.2d 70 (2006).

Applicant was offered a plea deal to resolve the Richland County charges in exchange for a fifteen-year sentence, along with a fifteen-to-thirty-year sentence on his Lexington County charges. Counsel testified there were enough "negatives" in the case that she advised Applicant to accept the plea agreement, but Applicant was not interested in doing so.

Meghan Walker, who prosecuted the case for the State, also testified. Walker testified the armed robber used a bandana as a mask to cover his face and when she used the word "mask" during trial, she was referring to the bandana. Walker explained her wording was not meant to mislead the jury, and she felt it was appropriate as the bandana and wig were used as a disguise.

Walker also testified she obtained the phone call recordings from Lexington County, where Applicant was being held prior to trial. Walker explained she turned over all of the calls to the defense, but she specifically alerted Counsel about Applicant's coaching of the alibi witnesses and told Counsel the specific calls the State would introduce to argue coaching. Walker testified she wanted the Castros to testify for the defense so she could impeach them with the phone calls, and if the defense presented a case, it would give her the last closing argument. Walker stated the jail phone calls were only relevant if the Castros testified to an alibi, and she had no way to introduce them if Counsel did not call them as witnesses.

Walker also testified the State only ever had one video, though the video probably showed more than one camera angle. Walker testified this video was all the State received from Chuck E. Cheese, and it was turned over to the defense. Walker stated you could see the wig and bandana on the robber in the video. Finally, Walker testified she did not recall ever receiving a letter from Applicant or having any conversation with Counsel about it.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the evidence presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's appellate records, and the legal arguments made by the attorneys. This Court finds the combined record of the trial transcript and the testimony from the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different."

Id. at 117-18, 300 S.C. 115.

1. Failure to preserve issues for appeal

Applicant alleges Counsel was constitutionally ineffective because she failed to preserve issues for appeal – specifically whether the trial court erred in admitting Applicant's offer to plead guilty and Applicant's statement "the DNA will convict me." These issues were raised on appeal, and the Court of Appeals found they were not preserved. State v. Brown, Op. No. 2016-UP-349 (S.C. Ct. App. filed July 6, 2016). Additionally, Counsel acknowledged on direct examination she failed to properly object during the officer's trial testimony, despite making a motion *in limine* to exclude the statements, and she agreed her failure to do so rendered the issues unpreserved for appeal. Accordingly, this Court finds Counsel's performance was deficient for failing to preserve these issues for appeal.

However, this Court finds Applicant failed to meet his burden as to the prejudice prong because Applicant would not have prevailed on these issues on appeal had they been preserved. 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).

At trial, the State argued for the admission of the two statements because they were inculpatory admissions of guilt. The testimony presented at trial showed Applicant was Mirandized orally and in writing prior to being asked if he would give a DNA sample. This Court finds Applicant's response – that he would not submit to DNA testing because he knew the DNA evidence would convict him – clearly evinces consciousness of guilt, which is the same rationale relied upon by the trial court, and the statement was properly admitted at trial. Tr. pp. 74-75, 100. Additionally, this Court finds Applicant's statement offering to plead guilty to a lesser charge was properly admitted for the same reason – it is an acknowledgment of guilt. The State argued, and the trial court agreed, Rule 410(4), SCRE, only applies to keep out a statement made to a prosecuting attorney during plea negotiations, and was inapplicable in this situation.⁴ Here, the statement was made to a police officer, not the solicitor, nor was it made during a plea negotiation. The testimony at trial showed the statement was made unprompted by law enforcement, after Miranda warnings had been given to Applicant. Tr. pp. 63-64. Therefore, this Court finds the statement was not made as part of a plea negotiation with a solicitor, and the plain language of Rule 410(4), SCRE, renders it inapplicable to Applicant's situation. Cf. State v. Compton, 366 S.C. 671 (Ct. App. 2005) (finding statements defendant made to police were not barred by Rule 410, SCRE, in prosecution for murder, burglary, and armed robbery where discussions between defendant, solicitor, and investigators were not in furtherance of defendant making a plea on charges). Because this Court agrees the trial court's decision to admit the statement was proper, it finds Applicant was not reasonably likely to prevail on appeal even if the issues had been

⁴ A 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" is inadmissible. Rule 410(4), SCRE (emphasis added).

preserved. Accordingly, the Court denies relief on this ground because Applicant has failed to prove Counsel's deficiency prejudiced him.

2. Failure to call alibi witness(es)

Applicant alleges Counsel was ineffective for failing to call two alibi witnesses – Judy and Cecilia Castro. In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Although Applicant produced the witnesses at the evidentiary hearing, and Cecilia Castro testified to an alibi for Applicant, this Court finds Counsel's decision not to call the witnesses at trial was not constitutionally ineffective because Counsel articulated several valid strategic reasons for declining to do so.

First, this Court finds Judy Castro's testimony insufficient to establish an alibi as she was not present in the home with Applicant during the time the crime was committed, and therefore, Counsel cannot be deficient for failing to call her as a witness. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012), overruled on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014) ("To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime.").

Counsel testified that if she had presented the alibi defense, she would have only called Cecilia Castro as her witness. After talking to Cecilia, however, Counsel decided not to proceed with the alibi defense for several reasons. Counsel explained she was concerned with the defense because Applicant did not notify her of the witnesses until a few weeks before trial. Counsel also testified that the testimony given by Cecilia Castro at the evidentiary hearing, though generally similar to what Cecilia told her when she interviewed the Castros prior to trial, was more specific

on the crucial point of when Cecilia went to bed on the night of robbery. Most importantly, however, Counsel testified she decided not to call Cecilia or proceed with an alibi defense after the State informed Counsel it had rebuttal evidence, in the form of recordings of Applicant's phone calls from jail, arguably showing Applicant had coached the Castros about what their testimony should be. Counsel explained she listened to the calls and was concerned with what she heard, ultimately concluding the alibi defense would do more harm than good to Applicant's case.

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis – and the analysis by the appellate court – is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018) (citing Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64-65 (2011) (deferring to trial counsel's strategic considerations); Jackson v. State, 329 S.C. 345, 350, 495 S.E.2d 768, 770-71 (1998) (same); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (same)). This Court's "analysis of [C]ounsel's strategic decisions must be 'highly deferential' to counsel's judgment, and 'a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.'" Id. at 320-21, 815 S.E.2d at 440 (quoting Strickland, 466 U.S. at 689).

"[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include which jurors to accept or strike, *which witnesses should be called on the defendant's behalf*, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined." Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (internal citations and quotations omitted) (emphasis added). This Court finds credible Counsel's testimony as to her strategy and

reasoning in declining to present the alibi witnesses. This Court finds the credibility of Celia and Applicant as well as Counsel's concern with opening the door to damaging impeachment evidence were reasonable strategic reasons for deciding not to proceed with the alibi defense. "A witness's credibility and demeanor is crucial to an attorney's trial strategy, and an attorney cannot be said to be deficient if there is evidence to support his decision to not call a witness with serious credibility questions. . . ." Edwards, 392 S.C. at 458, 710 S.E.2d at 65. Because Counsel had valid strategic reasons to support her decision not to call Judy or Cecilia Castro as alibi witnesses, her performance was not deficient. Therefore, Applicant's request for relief as to this allegation is denied.

3. Failure to call a DNA expert

Applicant alleges Counsel was ineffective for failing to call a DNA expert to refute the State's expert witness testimony. As an initial matter, this Court finds Applicant failed to meet his burden of proof as to this allegation because he did not present the testimony of an expert at the evidentiary hearing, and therefore, he has not established he was prejudiced by Counsel's allegedly deficient representation. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

In any event, this Court finds Counsel offered a reasonable strategic explanation for her decision not to call a DNA expert. Counsel testified she retained a DNA expert who reviewed the DNA testing and analysis done by the State and helped her prepare for cross-examination of the

State's expert witness. Counsel further testified she chose not to call the defense expert as a witness because he did not disagree with the analysis done by the State's expert. The record reflects Counsel strongly cross-examined the State's expert and clearly established the defense's best argument regarding the DNA – the fact that it was a mixture of three different contributors. “Strickland does not enact Newton’s third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense.” Harrington v. Richter, 562 U.S. 86, 11 (2011). Further, “[c]ounsel’s failure to procure expert witnesses does not render their representation deficient when counsel vigorously cross-examines the State’s witnesses and attacked the accuracy of the evidence.” Lorenzen v. State, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008). Indeed, in this case, Counsel retained an expert to help her fully understand the DNA evidence and prepare a vigorous cross-examination of the State’s expert witness.

This Court therefore finds Counsel was not deficient in declining to call the expert as a witness, nor was Applicant prejudiced by Counsel’s decision. This Court denies relief as to this allegation.

4. Failure challenge the admission of DNA evidence under Rule 403

Applicant alleges Counsel was ineffective for failing to object to the admission of the DNA evidence under Rule 403, SCRE, because that evidence was “more prejudicial than anything.” While this may be true, Rule 403, SCRE, does not prohibit the admission of evidence merely because it is prejudicial to the defendant. Indeed, all of the State’s evidence is arguably prejudicial to the defendant. Rule 403, SCRE, only prohibits the admission of evidence when its probative value is substantially outweighed by unfair prejudice. Rule 403, SCRE (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice”). Here, the DNA evidence on the bandana was highly probative in establishing

Applicant's identity as the armed robber. In this particular case, the evidence's prejudicial effect, is low when balanced against its probative value because the DNA sample contained a mixture of three contributors, indicating Applicant was not the only contributor.

Counsel ably argued this point through cross-examination of the State's witnesses and in her closing argument to the jury. Tr. pp. 318-23, 362-64. Further, Counsel testified she did not see any issues with the chain of custody of the evidence, and she did not feel a Rule 403 argument was appropriate under the circumstances of this case. For the foregoing reasons this Court agrees and finds Counsel's performance was not deficient. Therefore, Applicant's request for relief as to this allegation is denied.

5. Failure to adequately cross-examine the State's witnesses

Applicant alleges Counsel was constitutionally ineffective because she failed to adequately cross-examine the State's witnesses. Specifically, Applicant argues Counsel failed to impeach the K9 handler who located the wig and the bandana with discrepancies between his written report and trial testimony, and Counsel failed to point out discrepancies with the dispatch logs from the incident. Applicant testified he disputed the location where the wig and bandana were found, and in his opinion, the discrepancy in the K9 handler's testimony at trial – stating the dog made a track to the items – and in the written report – stating the dog moved in different directions before locating the items – was significant such that Counsel should have impeached the officer. Instead, Counsel declined to cross-examine the witness. Additionally, Applicant testified the dispatch logs from the incident say on page 3 that the robber fled to the right and on page 5 that the robber fled to the left. Counsel testified the issue with the bandana was not the location where it was found, but the DNA obtained from it, which linked Applicant to the crime.

This Court agrees with Counsel's assessment and finds Counsel was not deficient nor was Applicant prejudiced by the lack of cross-examination on these issues. See Abney, 408 S.C. at 48, 757 S.E.2d at 547 ("[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, *[and] whether and how a witness should be cross-examined.*") (emphasis added). The bandana was tied to the robbery by the surveillance video and the eyewitness testimony of three victims. This Court finds Counsel correctly recognized the problematic issue in the case for Applicant was the fact Applicant's DNA was found on the bandana, not disputing the location of the bandana making the discrepancies in the dispatch log inconsequential.

6. Soliciting damaging testimony from witnesses

Applicant alleges Counsel was constitutionally ineffective because she elicited damaging testimony from the officer who obtained the warrant in this case. According to Applicant, Counsel "opened the door" for Walker to ask the officer about his Lexington County charges and other factors, aside from the DNA, the officer relied upon in obtaining the warrant.

After a review of the transcript, this Court finds this allegation to be without merit. The transcript reflects the officer merely testified there were factors other than the DNA match which law enforcement relied upon in seeking the warrant against Applicant. Tr. p. 268. Walker was not permitted to ask what those factors were, and the jury did not hear testimony about Applicant's Lexington County charges. Applicant alleges this testimony left the jury confused, but this Court finds the testimony was proper and calculated to safeguard Applicant's rights as he would surely have been prejudiced if Walker had been permitted to elicit details about the Lexington County

charges (i.e. the "other factors" referred to in the officer's testimony). The Court therefore finds Counsel was not deficient in this respect, and the Applicant's request for relief is denied as to this allegation.

7. Failure to file a motion to dismiss the charges

Applicant asserts Counsel was constitutionally ineffective for failing to file a motion to dismiss the charges at the close of the State's case instead of making a motion for a directed verdict. This Court disagrees.

"Decisions primarily involving trial strategy and tactics may be made by trial counsel. . . . *What motions to file* and whether to put on evidence so as to preserve the final word in closing argument are. . . strategic and tactical decisions to be made by trial counsel." Abney, 408 S.C. at 48, 757 S.E.2d at 547 (emphasis added). Counsel's motion for a directed verdict was a proper motion to make, and if successful, would have afforded Applicant the same result as a motion to dismiss. Further, Applicant's appellate counsel raised the denial of that motion on appeal, which affirmed the trial court's denial of relief.

Because this Court finds no deficiency in Counsel's decision to move for a directed verdict rather than file a motion to dismiss the charges, Applicant's request for relief on this ground is denied.

8. Lying to Applicant about witness statements

In the additional allegations enumerated by counsel for Applicant prior to the start of testimony, Applicant alleged Counsel was ineffective for lying to Applicant about witness statements. However, Applicant's only testimony during the evidentiary hearing was that Counsel lied to *the trial court* when she stated the defense was not contesting the fact Applicant made statements or the content of the statements, but that the defense was only contesting the timing and

whether the statements should be admitted. Either way, this Court finds the allegation is without merit.

According to Applicant, he never made the statement to the effect that DNA would convict him. Counsel, however, testified she did not recall Applicant ever denying he had made that statement. Applicant was present for the lengthy pretrial hearing on the issue, and he never objected to Counsel's argument, her statement to the trial court that he was not denying a statement was made, nor informed the trial court he believed Counsel was misrepresenting any facts to the court. Tr. pp. 53-79, 93-100. This Court finds Counsel's testimony on this issue to be credible, while also finding Applicant's testimony to be not credible. Therefore, this Court finds Counsel was not deficient, and Applicant's request for relief as to this allegation is denied.

9. Prosecutorial misconduct

Applicant alleges the assistant solicitor who prosecuted his case, Megan Walker, engaged in the deliberate deception of the Court by presenting false evidence and testimony, amounting to prosecutorial misconduct. Through his testimony, Applicant also alleged the existence of additional video evidence not turned over to the defense. It is not clear to this Court whether Applicant intends this allegation to be a claim of prosecutorial misconduct akin to a Brady violation of which issue he intended to raise or a claim of ineffective assistance by Counsel for failure to obtain the evidence. Regardless, because Applicant offered no proof additional video exists or the content of that video, his application for relief as to this issue is denied. See Brady v. Maryland, 373 U.S. 83, 87 (1996) ("[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.").

In support of his allegation Walker engaged in prosecutorial misconduct by presenting false evidence and testimony to the trial court, Applicant argues Walker mislead the jury and the trial

court by repeatedly referring to a "mask" and stating the robber wore a mask. However, Walker testified she was using the term "mask" interchangeably with "bandana," which both Counsel and Applicant indicated they understood at the time. Walker explained she did so because there was testimony at trial that the robber wore the bandana and the wig in order to cover his face and conceal his identity. Counsel testified she did not believe this characterization of the bandana as a "mask" was objectionable, and based on its review of the transcript, this Court agrees.

This Court finds credible Walker's testimony she was using the term "mask" to mean the bandana because the bandana was used to help disguise the robbers identity, and her testimony is supported by the transcript. See, e.g., Tr. pp. 172-73, 187, 277. This Court further finds Walker's characterization of the bandana as a "mask" did not deprive Applicant of his right to a fair trial. See, e.g., State v. Barwick, 280 S.C. 45, 47, 310 S.E.2d 428, 429 (1983) (upholding trial court's refusal to dismiss charges due to alleged prosecutorial misconduct where "[n]othing in the record indicate[d], and appellant [did] not argue, that appellate could not receive a fair trial. . ."). Accordingly, this Court finds Walker did not engage in prosecutorial misconduct, and Applicant has failed to meet his burden of proof on this issue. Applicant's request for relief is therefore denied.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453,

409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30th day of August, 2019.



KRISTI F. CURTIS
Presiding Judge
Fifth Judicial Circuit

WITNESSES

(S) R Martin
- Richland County Sheriff

ARREST WARRANT NUMBER

2013A4010600189

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 09 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-40-02050

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

42

**THE STATE
vs.**

Michael Orlando Brown

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330(B)
CDR Code: 0026

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

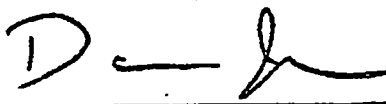
INDICTMENT

At a Court of General Sessions, convened on April 9, 2014, the
 Grand Jurors of Richland County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Michael Orlando Brown did, in Richland County on or about January 3, 2013, commit robbery by attempting to feloniously take from the person or presence of Kyre Green by means of force or intimidation goods or monies of Kyre Green and/or Chuck-e-Cheese and/or an employee(s) of Chuck-e-Cheese, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

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



 DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS.

AKA: Black Sex: Male Age: 32
 DOB: [REDACTED] SSN: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: [REDACTED]
 DL# [REDACTED] * SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes from the Defendant who was
 TO: Attempted Armed Robbery

In violation of § 17-25-45 of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Meagan Walker 718494 M.O.D. [Signature] 74925
 Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of Life without parole days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
 of \$; plus costs and assessments as applicable; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
 of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$

 days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning
 Substance Abuse Counseling ☐

*Fine: \$
 §14-1-206 (Assessments 107.5%) \$
 §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$
 §14-1-211 (A)(2)(DUI Surcharge) \$100 \$
 §56-5-2995 (DUI Assessment) \$12 \$
 §56-1-286 (DUI Breath Test) \$25 \$
 §47.12 (Public Def/Prob) \$500 \$
 §14-1-212 (Law Enforce. Funding) \$25 \$
 §14-1-213 (Drug Court Surcharge) \$100 \$
 §50-21-114 (BUI Breath Test Fee) \$50 \$
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 §90.7(SCCJA Surcharge) \$5 \$
 3% to County (if paid in installments) \$
 TOTAL \$

Clerk of Court/Deputy Clerk [Signature]
 Court Reporter: McCurdy

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 Random Drug Alcohol Testing ☐
 Fine may be pd. in equal consecutive weekly/monthly
 pmts. of \$
 \$ Paid to Public Defender Fund
 C.C.C.P. & G.S.
 Other:
RICHLAND COUNTY
SOUTH CAROLINA

☐ Appointed PD or appointed other counsel,
 §47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge [Signature]
 Judge Code: 2110
 Sentence Date 8/27/14

ORIGINAL