

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF EDGEcombe 08-CRS-50309

STATE OF NORTH CAROLINA,
PLAINTIFF,
VS.
KNOLLY BROWN, JR.,
DEFENDANT.

T R A N S C R I P T
VOLUME I OF I
PAGES 1 - 40
HEARING

TRANSCRIPT OF PROCEEDINGS TAKEN IN THE GENERAL
COURT OF JUSTICE, SUPERIOR COURT DIVISION, EDGEcombe
COUNTY, NORTH CAROLINA, ON MAY 27TH, 2016 BEFORE THE
HONORABLE R. ALLEN BADDOUR, JR., C. WINSTON GILCHRIST,
SUSAN E. BRAY, JUDGES PRESIDING.

**JEAN M. McINERNEY, CVR-CM-M
OFFICIAL COURT REPORTER
SEVENTH JUDICIAL DISTRICT
641 SAND TRAP DRIVE
ROCKY MOUNT, NC 27804**

(252) 442-6688

A P P E A R I N G

FOR THE STATE:

TERRY S. ORNDORFF, ESQ.
ASSISTANT DISTRICT ATTORNEY
P.O. BOX 232
ROCKY MOUNT, NC 27802

FOR THE DEFENDANT:

KNOLLY BROWN, JR.
LAMONT WIGGINS, ESQ.
ATTORNEY AT LAW
P.O. BOX 2152
ROCKY MOUNT, NC 27802

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WITNESSES:

SHARON STELLATO

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1 P R O C E E D I N G S

2 THE COURT: (Mr. Baddour, Jr.) Thank you, sir, and
3 good morning, everyone. I'm Allen Baddour, Judge Gilchrist,
4 Judge Bray are with me, of course. And we appreciate the
5 opportunity to be here with you-all.

6 This is Edgecombe County, Criminal Superior Court. We
7 have a case of the State versus Knolly Brown, 08-CRS-50309.
8 And, of course, we all know this, but for the record, a special
9 session regarding the North Carolina Innocence Inquiry
10 Commission's recommendations regarding the case of State versus
11 Knolly Brown.

12 So if I could have, Counsel, please, identify themselves
13 for the record.

14 THE STATE: Terry Orndorff for the state.

15 THE COURT: (Mr. Baddour, Jr.) Thank you.

16 MR. WIGGINS: Lamont Wiggins, Attorney at Law,
17 Counsel for Knolly Brown, Jr.

18 THE COURT: (Mr. Baddour, Jr.) All right, thank you
19 both. And, Mr. Wiggins, you were appointed by Judge Fitch and
20 assigned to the case of Mr. Brown, is that correct?

21 MR. WIGGINS: Yes, sir, that is correct.

22 THE COURT: (Mr. Baddour, Jr.) Okay. You
23 previously, at some point, coincidentally or not, represented
24 Mr. Brown in the early stages of this case, correct?

25 MR. WIGGINS: Yes, sir, that is correct.

1 THE COURT: (Mr. Baddour, Jr.) Okay. And you and he
2 -- have you and he talked about your representation of him in
3 this proceeding?

4 MR. WIGGINS: Yes, sir. We have discussed that
5 particular issue with regard to representation. And for the
6 record, I previously represented Mr. Brown at the initial
7 stages of this matter.

8 I was actually asked to withdraw. There is also an
9 affidavit from me that is part of this case file. That matter
10 has been discussed with Mr. Brown. He has indicated that he
11 has no objections to me proceeding as his counsel of record for
12 purposes of this hearing.

13 We have actually had that conversation this morning and I
14 have also spoken with Mr. Brown on a prior occasion when he was
15 in and about the community with regard to my representation.
16 So we are in a position where we are both prepared to proceed
17 with regard to my status.

18 THE COURT: (Mr. Baddour, Jr.) Okay. So previously
19 he had to waive his right to attorney/client confidentiality
20 for your prior proceedings as part of the process of the
21 Innocence Inquiry Commission, correct?

22 MR. WIGGINS: That is correct, Your Honor, for
23 purposes of the affidavit that I tendered.

24 THE COURT: (Mr. Baddour, Jr.) He, I take it, does
25 not -- he's not waiving -- he's not withdrawing that waiver or

1 anything today. That continues to be in existence for the
2 prior representation on the substantive charge.

3 MR. WIGGINS Yes, sir, that is correct.

4 THE COURT: (Mr. Baddour, Jr.) Okay, all right. I
5 don't think we need anything else on the record regarding that.
6 All right, and so at this time, and, Mr. Brown, I'll just say,
7 good morning to you, sir.

8 MR. BROWN: Good morning to Your Honor.

9 THE COURT: (Mr. Baddour, Jr.) I've not spoken with
10 you yet, but good morning. Thank you for being here.

11 MR. BROWN: Thank you, Your Honor.

12 THE COURT: (Mr. Baddour, Jr.) So at this time, I
13 think what we'd like to do is ask for -- I'll also note for the
14 record that prior to today each of us has been provided with
15 the record in the case; that each of the judges have reviewed
16 that record and have that to reference and refer to as we make
17 a decision in this case. I just wanted to put that on the
18 record.

19 In addition, I believe we asked -- indicated that we would
20 like to receive some evidence here today. And so, Mr. Wiggins,
21 I believe I understand that you were going to call a witness
22 for that.

23 MR. WIGGINS: Yes, sir.

24 THE COURT: (Mr. Baddour, Jr.) All right.

25 **(DEFENDANT'S EXHIBIT NUMBERS 1 THROUGH 5)**

1 **WERE MARKED FOR IDENTIFICATION.)**

2 MR. WIGGINS: And prior to the call of the witness,
3 Your Honor, and by the prior stipulation, I would move to admit
4 what I have marked as Defendant's Exhibits 1 through 5. They
5 would be, for purposes of identification, the North Carolina
6 Innocence Inquiry Commission hearing brief which has been
7 marked as Defendant's Exhibit Number 1.

8 Defendant's Exhibit Number 2 would be the North Carolina
9 Innocence Inquiry Commission hearing, Powerpoint presentation.

10 Exhibit Number 3 would be the North Carolina Innocence
11 Inquiry Commission hearing handouts.

12 And, Exhibit Number 4 would be the North Carolina
13 Innocence Inquiry Commission opinion.

14 Exhibit Number 5 would be the North Carolina Innocence
15 Inquiry Commission hearing transcript. Based on prior
16 stipulation with the state, I would move to admit all of those
17 exhibits into evidence.

18 And upon the call of the witness, there will be subsequent
19 documents that will be used to help and refresh the
20 recollection of the witness. And they will be admitted as
21 well.

22 THE COURT: (Mr. Baddour, Jr.) Okay. Any objection
23 to Defendant's 1 through 5?

24 THE STATE; No, sir.

25 THE COURT: (Mr. Baddour, Jr.) All right, and

1 without objection, they are admitted. And I believe that would
2 correspond with the file that was submitted to the judges prior
3 to today's hearing and has already been reviewed. But I
4 appreciate you asking and us getting it into the record here
5 today.

6 MR. WIGGINS: Yes, sir, those exhibits, essentially,
7 comprise the entire public record for the North Carolina
8 Innocence Inquiry Commission.

9 THE COURT: (Mr. Baddour, Jr.) Okay. And to the
10 extent that there were redacted names and so forth, they
11 continue to be redacted in what you're submitting.

12 MR. WIGGINS: That is correct, Your Honor.

13 THE COURT: (Mr. Baddour, Jr.) Okay, very well.
14 Thank you. All right, then at this time, if you'd like to call
15 a witness.

16 MR. WIGGINS: Your Honor, the defendant would call as
17 its first witness, Ms. Sharon Stellato.

18 THE COURT: (Mr. Baddour, Jr.) All right.

19 **SHARON STELLATO**, UPON FIRST BEING DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 MR. WIGGINS: Are you ready, Ms. Stellato?

22 MS. STELLATO: I am.

23 MR. WIGGINS: Okay.

24 **(DEFENDANT'S EXHIBIT NUMBER 6 WAS MARKED**
25 **FOR IDENTIFICATION.)**

1 DIRECT EXAMINATION

2 BY MR. WIGGINS:

3 Q. And for purposes of the record, you have previously
4 been furnished what I'm going to mark as Defendant's Exhibit
5 Number 6 that has been identified as the time line that is
6 contained in the commission's brief. Do you have that in front
7 of you here with you today?

8 THE COURT: (Mr. Baddour, Jr.) If I could just
9 interrupt for a moment. For the record, if you'll tell us your
10 name and your position.

11 A. Sure, Sharon Stellato. I'm associate director of the
12 North Carolina Innocence Inquiry Commission.

13 THE COURT: (Mr. Baddour, Jr.) Thank you very much.

14 A. Uh-Huh (Yes.)

15 THE COURT: (Mr. Baddour, Jr.) All right.

16 DIRECT EXAMINATION (CONTINUED.)

17 BY MR. WIGGINS:

18 Q. And how long have you been employed in that capacity?

19 A. Seven and a half years.

20 Q. Okay. And, again, you've been furnished defendant
21 with what will be marked as Defendant's Exhibit Number 6. Are
22 you familiar with that?

23 A. Yes, I am.

24 Q. And is that the time line that was prepared and made
25 a part of the commission brief which has already been marked

1 and admitted as Defendant's Exhibit Number 1.

2 A. It is.

3 Q. Okay. And can you give us a brief background as to
4 how you became involved in this case.

5 A. Sure. If my voice is shaking, I'm a little cold. So
6 please excuse that.

7 THE COURT: (Mr. Baddour, Jr.) I don't know why you
8 would be in this room.

9 A. Mr. Brown wrote a letter to the Innocence and Crime
10 Commission on May 4th, 2010. At that time, we began reviewing
11 his claim of innocence.

12 Q. Okay. And did you take part in the actual
13 investigation of the case?

14 A. Yes, I did myself and now Executive Director, Lindsey
15 Guice Smith.

16 Q. Okay. What role did you play in the investigation in
17 compiling information with regard to the petition that Mr.
18 Brown filed and submitted to the commission?

19 A. Well, through the process, Mr. Brown submitted a
20 questionnaire. It then went through initial review, further
21 review, investigation and ultimately formal inquiry. And then,
22 of course, it was presented to the entire commission, both
23 myself and Ms. Smith were investigators on the case.

24 Q. And you also participated as a witness in the
25 Commission Inquiry Hearing, correct?

1 A. I did.

2 Q. All right. And you are familiar with the facts of
3 the case, correct?

4 A. I am. It's been a few months since I've looked at
5 it. But this morning I did review and it will come back to me.

6 Q. All right. Can you give us an overview of how Mr.
7 Brown came to be in this circumstance, the situation beginning
8 in January of 2008.

9 A. Sure. On January 25th, 2008 the victim, Brittney
10 Mercer, was walking home from school with her sister and two
11 friends. The victim was pulled into an abandoned home. She
12 was raped by an unknown black male.

13 She subsequently went home to her house and told her
14 mother what had happened. They called the police. Items were
15 collected from the crime scene on that same day, later that
16 afternoon.

17 The victim then was shown approximately 2,600 photographs
18 of individuals who met the description she provided. That
19 description was a black male between the ages of 15 and 30.
20 The victim picked out five individuals who she believed looked
21 like the perpetrator or had something similar to the
22 perpetrator.

23 The next day the victim's family contacted police stating
24 that the victim had seen a man who she believed was the rapist.
25 That man was Knolly Brown. She was then shown a show-up with

1 the defendant, Knolly Brown, and she confirmed that Knolly
2 Brown was the man who had raped her.

3 Two search warrants were issued and they collected
4 clothing from Knolly Brown at his home and off of his person.
5 He was then arrested and charged with first-degree rape and
6 first-degree kidnapping. Several items were collected.

7 On September 5th, one of the -- some of the items that
8 were sent to the crime lab included the victim's pubic hair
9 combings. They did microscopic hair comparison of the victim's
10 pubic hair combings and they identified one of those hairs as
11 being microscopically consistent with Knolly Brown.

12 So they sent that hair to a Connecticut lab for testing.
13 The testing came back and excluded Knolly Brown and that hair
14 actually belonged to the victim. That testing report was
15 available prior to his plea. Knolly Brown took a no contest
16 plea to second-degree forcible rape on October 14th, 2009.

17 Q. Now, when you became involved in the investigation
18 there were certain comparisons that were done of certain
19 evidentiary issues. In particular, there were shoe prints
20 found and there were shoes that were actually seized from the
21 defendant, correct?

22 A. Correct. At that time of the crime when police went
23 to the vacant home where the victim was raped, in the back of
24 the home there were shoe prints belonging to the victim. And
25 next to that, there were larger shoe prints that they believe

1 were the suspects.

2 That shoe print was of a Nike Air Jordan. They collected
3 shoes from the defendant, Knolly Brown, at the time. Those
4 were Pony shoes. The commission hired an independent expert to
5 compare those shoes with the shoe prints, the shoe casts that
6 was collected. And that independent expert excluded the prints
7 belonging to the Pony shoes, excuse me, the Pony shoes excluded
8 from the print belonging to the Nike Air Jordan as the source.

9 Q. Also, during the course of the investigation, there
10 was a break in the chain of evidence that was discovered with
11 regard to certain biological evidence that was collected,
12 correct?

13 I refer you to the affidavit of Jill Tyson, which I'll
14 mark as Defendant's Exhibit Number 7 and Defendant's Exhibit
15 Number 8 will be the affidavit of Renee Walcott.

16 **(DEFENDANT'S EXHIBIT NUMBERS 7 AND 8 WERE**
17 **MARKED FOR IDENTIFICATION.)**

18 Q. Can you explain those issues that you discovered
19 during your investigation.

20 A. There was evidence missing, a file missing from the
21 Rocky Mount Police Department and it ended up being in the
22 custody of Ms. Tyson at her home in Virginia.

23 Q. And can you look at what would be the affidavit --
24 what I have marked as Defendant's Exhibit Number 7. It should
25 come to, 2, 4, 5 pages and can you identify that as an

1 affidavit of Jill Tyson?

2 A. Yes, sir.

3 Q. Okay. And there's a second subsequent affidavit
4 after that. Can you explain what Ms. Tyson's position was at
5 that point in time that you got the affidavit.

6 A. Senior police officer at the Rocky Mount Police
7 Department.

8 Q. And can you briefly go into what the substance of her
9 affidavit says. Take your time and look through it, if need
10 be.

11 A. That then she was moved into the position of property
12 and evidence manager. She currently held at this time the
13 position of property and evidence manager, that they had
14 searched for all of the evidence, that they did not have any of
15 the evidence --

16 THE COURT: (Mr. Baddour, Jr.) I'm sorry, is this
17 Jill Tyson or this is --

18 A. That's who you're asking me to look at, correct?

19 MR. WIGGINS: Yes, Jill Tyson, yes.

20 A. Okay. That the evidence had been shipped to the
21 Connecticut Lab on March 31st, 2009, that Lindsey Smith from
22 the Commission had informed her that the lab was unable to
23 locate any of the evidence.

24 That on May 25th, 2015, Jill Tyson had physically searched
25 for evidence related to the Knolly Brown case at the request of

1 the Commission and located a box of evidence related to the
2 case. That the specific items requested were a group of number
3 one, shoes and fifteen shoe casts and dental stones. That she
4 did not open the box at that time.

5 Q. Now, I believe you said in your previous testimony
6 that there was a certain piece of evidence that was discovered
7 in the effects of Jill Tyson. That was actually discovered by
8 Officer Walcott.

9 A. I'm sorry, yes, sir.

10 Q. Okay, she was the one who actually lived in Virginia,
11 correct?

12 A. I'm sorry, correct.

13 Q. And she was the one who actually was employed as the
14 lead investigator at the time that this was, that the case was
15 initially investigated and filed, correct?

16 A. That's correct.

17 Q. All right. Now, can you tell us the background about
18 what you discovered that was in her personal effects and
19 belongings.

20 A. Ms. Walcott.

21 Q. Yes, Ms. Walcott. And her affidavit has been marked
22 as State's Exhibit Number 8 and it will follow Officer Jill
23 Tyson's affidavit.

24 A. She searched a storage unit that she had. She
25 located a case file in her unit. It was in an old pamper's

1 diaper box and she provided it to the Rocky Mount Police
2 Department.

3 Q. Okay. And she actually delivered that -- she
4 actually examined it, took a picture of it, correct?

5 A. Uh-Huh (Yes.) She did.

6 Q. Determined that that envelop had been unopened,
7 correct?

8 A. She did.

9 Q. That it contained biological testing information,
10 correct?

11 A. Correct.

12 Q. And that she went to the state line, North Carolina
13 and Virginia line and met a Rocky Mount police officer who she
14 turned it over and surrendered it to, correct?

15 A. Correct.

16 Q. Okay.

17 THE COURT: (Mr. Baddour, Jr.) And that was mailed
18 from whom?

19 A. It was returned from I believe I would have to see
20 the photograph again. But I believe it was returned from the
21 Connecticut Lab.

22 THE COURT: (Mr. Baddour, Jr.) All right.

23 A. Back to the Rocky Mount Police Department.

24 Q. Now, there was also other, other than the shoe
25 prints, there was also other forensic and biological evidence

1 that was seized and collected, correct?

2 A. Correct.

3 Q. Are you familiar with what that was?

4 A. I am.

5 Q. Okay. Can you tell the Court what that was.

6 A. There was a rape kit done on the victim. There --
7 Knolly Brown's clothing was taken. The victim's jacket, her
8 belt, pants and panties were collected. Knolly Brown's shoes,
9 I believe, all of his clothing. We've discussed that briefly.

10 Q. As well as other hair samples, correct? That were --

11 A. The hairs were included in the rape kit, correct.

12 Q. Okay, very good. All right. Now, can you tell us
13 the series of labs and examinations that that particular
14 evidence went through. Because the Innocence Commission had to
15 submit it to a series of labs, correct? Physical evidence.

16 A. I would have to refer you back to the hearing
17 transcript Exhibit. I think that you've entered, 5, page 63,
18 for the actual series of labs. I know the results of that
19 testing. But to be able to testify here today about the series
20 of labs, I wouldn't be able to do that. I would have to refer
21 back to the hearing transcripts.

22 Q. As to the results, you're familiar with that.

23 A. I am.

24 Q. Okay. There is an exhibit it is has forensic testing
25 at the top of it. I believe it's included in the notebook that

1 I have furnished to you.

2 A. The DNA testing chart of the victim's clothing.

3 Q. Yes.

4 A. Uh-Huh (Yes.) Yes, sir.

5 Q. Can you go through and explain that chart to the
6 ultimate conclusion that came from it.

7 THE COURT: (Mr. Baddour, Jr.) Are you going -- did
8 you intend to mark that as an Exhibit?

9 MR. WIGGINS: Yes, that will be marked as Defendant's
10 Exhibit -- well, actually, it is attached to and I'll go back
11 to in that --

12 Q. That information was tested, correct? All of the
13 biological evidence was tested, correct?

14 A. Correct, by the Commission, yes, sir.

15 Q. And at the Commission hearing, a forensic analysis
16 expert presented expert testimony, correct?

17 A. Yes, sir, Meghan Clement.

18 **(DEFENDANT'S EXHIBIT NUMBER 9 WAS MARKED**
19 **FOR IDENTIFICATION.)**

20 Q. Okay. I'm going to refer you to what will be marked
21 as Defendant's Exhibit Number 9. It will be the CV of Meghan
22 Clement, along with the DNA testing chart of the victim's
23 clothing.

24 A. Yes, sir.

25 Q. That should be in there. Will you go to that. Have

1 you already seen that?

2 A. Yes, sir.

3 Q. Okay. Now, attached to Exhibit Number 9, which
4 includes Meghan Clement's CV and the DNA testing chart, can you
5 explain that chart and the ultimate conclusions.

6 A. The Commission had all of the victim's clothing
7 tested for any DNA that could be located on it. We had it all
8 tested again several individuals, but specific to the
9 defendant, Knolly Brown, was excluded as the contributor to any
10 male DNA off of the victim's jacket, the victim's belt, the
11 victim's pants and the victim's panties.

12 That included sperm that was found on the victim's panties
13 and semen that was found on the victim's pants. Knolly Brown
14 was excluded from all of it. The profiles that were found, the
15 male profiles that were found on the crotch of the panties, the
16 waistband of the panties and the major profile that was
17 obtained from the stain on the inner front of the pants were
18 all consistent with one another.

19 It could have originated from a common origin. Again,
20 that's a summary of what the expert, Meghan Clement testified
21 to in the hearing transcripts. That can be found on page 63
22 through 80.

23 Q. 63 through 80 of the transcript, correct?

24 A. Yes, sir.

25 Q. Okay. Now, also, included in the Commission's brief

1 and it was denoted as Section 6 of forensic testing. Do you
2 have that in front of you as well?

3 THE COURT: (Mr. Baddour, Jr.) It's part of
4 Defendant's 1.

5 A. Yes, sir, thank you.

6 MR. WIGGINS: Yes, and I will mark that as
7 Defendant's Number 10.

8 **(DEFENDANT'S EXHIBIT NUMBER 10 WAS MARKED**
9 **FOR IDENTIFICATION.)**

10 Q. Just tell what you've already explained the
11 conclusions of the forensic testing. Can you just explain what
12 Section 6 is. I believe it has all of the forensic testing
13 reports, correct?

14 A. So this was what was known at the Commission brief is
15 meant to provide the commissioners with the summary of the case
16 up to the time that we get the case. So it provides all of the
17 information to commissioners prior to a Commission hearing
18 which is to tell them about our investigation.

19 So this was a summary of what had happened. It just tells
20 that Rocky Mount Police Department submitted the victim's
21 sexual assault kit and suspect evidence kit to the crime lab on
22 May 8th, 2008.

23 On August 15th, 2008, the crime lab report indicates that
24 the victim's panties, vaginal swabs, vaginal smears were
25 subject into blood and semen analysis. Examination of the

1 panties gave chemical indications for presence of blood.

2 Examination of the vaginal swabs and panties failed to review
3 the presence of semen.

4 Microscopic examination of the vaginal smears and slide
5 prepared from the panties failed to review the presence of
6 spermatozoa. Again, this testing was in 2008. The testing
7 that I went over immediately before that was testing that was
8 done in 2015. It was also done at private labs with more
9 advanced testing than what the crime lab was able to offer.

10 Q. So, essentially, Number 10 is what you had at the
11 time of the hearing up to the point of the hearing, correct?

12 A. Correct.

13 Q. And then Number 9, Defendant's Exhibit Number 9, is
14 the ultimate conclusion that was reached based on advanced
15 testing, correct?

16 A. It's the evidence that the Commission presented,
17 correct, based on current testing.

18 THE COURT: (Mr. Baddour, Jr.) May I, 10 would have
19 been the evidence available at the time of the plea.

20 A. It wouldn't necessarily be the evidence available,
21 but it would have been the evidence that the prosecutor and the
22 defense attorney had available without using a private lab or
23 getting funds or something.

24 I can't say that that would have been the only testing
25 available at a private lab at the time, but it would have been

1 what they had available known to them.

2 THE COURT: (Mr. Baddour, Jr.) It was what was in
3 their file.

4 A. Correct, yes, sir. Uh-Huh (Yes.)

5 THE COURT: Versus 9 which is additional findings
6 based on the work of the Commission.

7 A. Yes, sir.

8 THE COURT: Thank you.

9 Q. You, also, during the course and scope of your
10 investigation, obtained affidavits from all prior counsel,
11 correct?

12 A. Correct. When the Commission -- when a case is in
13 formal inquiry, the defendant's waive, essentially, all rights,
14 but certainly attorney/client privilege rights. So we go back
15 to the defense counsel and try to obtain their files, interview
16 them, talk to them about whether a defendant admitted guilt or
17 claimed innocence. And that was what we did in this
18 investigation.

19 **(DEFENDANT'S EXHIBIT NUMBERS 11 AND 12 WERE**
20 **MARKED FOR IDENTIFICATION.)**

21 Q. All right, now, you have two affidavits that have
22 been made a part of the information that you used to refresh
23 your recollection. One, I will mark as Defendant's Exhibit
24 Number 11, which will be my affidavit, affidavit of Lamont
25 Wiggins and Number 12 will be the affidavit of Matthew Sperati.

1 Now, both of those affidavits are from prior counsel,
2 correct?

3 A. Correct.

4 Q. And those affidavits confirm or assert that there was
5 never any admissions of responsibility by the defendant,
6 correct?

7 A. Correct.

8 Q. And during the actual hearing before the Innocence
9 Inquiry Commission, Mr. Brown actually testified, correct?

10 A. He did testify.

11 Q. All right. Can you give us an overview of the
12 substance of his testimony as to what he said about what he did
13 and why he entered his plea.

14 A. Well, in addition to him testifying, we had also
15 interviewed Mr. Brown two times prior to that. He always
16 indicated innocence. Certainly, if a claimant indicates guilt,
17 the case would close with the Commission.

18 He provided information as to where he was. The
19 Commission was never able to confirm that, given his location.
20 He had been at a house. It was at a drug dealer's home on that
21 day. We were never able to confirm that because we couldn't
22 find the people or locate the people that he had been with.

23 But his alibi was consistent from the time that we began
24 interviewing him until the time that he testified at the
25 hearing.

1 He stated that he had been there their afternoon. He had
2 seen police drive by. The area where this occurred, we've been
3 there several times now. It's extremely small. It's in, you
4 know, a few block radius.

5 He had seen the police drive by. He recalled that
6 afternoon. He did not know the victim, but he believed that he
7 had seen her in the area before. For any other recollection, I
8 would have to refer you back to the hearing transcripts.

9 Q. But during the course of that in his testimony, he
10 never acknowledged any type of guilt or responsibility,
11 correct?

12 A. No, sir.

13 Q. Okay. And he has consistently never done so.

14 A. No, sir.

15 Q. All right. I think that part of the reason, if you
16 recall, was that he was told that he was going to get thirty
17 years.

18 A. As to why he took a plea.

19 Q. Yes.

20 A. That is what Mr. Brown has indicated that he was
21 afraid that he believed, yes, that he was going to go to prison
22 for a long time and that he didn't understand.

23 Q. And that he didn't want to be separated from his
24 mother. Did he indicate that --

25 A. Again, I would have -- I apologize. I would have to

1 refer you back. I just don't recall that. If it says that,
2 that's certainly correct, but I can't testify to it.

3 Q. But, again, there were never any admissions, correct?

4 A. No, sir.

5 Q. Okay. Now, what I'm going to mark as Defendant's --
6 there were a number of -- during the course of the
7 investigation, do you recall that there were a number of
8 possible suspects that were developed.

9 A. There were. The victim in the twenty-six hundred
10 photos that she examined shortly after the rape, she identified
11 five individuals as either having similar characteristics, who
12 looked like the perpetrator or something similar, that reminded
13 her of the perpetrator.

14 They did investigate them. They also investigated people
15 in the area at the time of the rape.

16 Q. Do you recall an individual by the name of Antonio --
17 Keith Antonio Presley being developed as a suspect?

18 A. That's the victim's stepfather.

19 Q. Okay.

20 A. Or, yes.

21 Q. Do you recall if that particular individual had any
22 type of convictions or sex-related crimes or reportable
23 offenses? And I'll refer you to the criminal record of Keith
24 Antonio Presley which is included in your information used to
25 refresh your recollection. And I'm marking it as Defendant's

1 Exhibit Number 13.

2 **(DEFENDANT'S EXHIBIT NUMBER 13 WAS MARKED**
3 **FOR IDENTIFICATION.)**

4 A. Did you say convictions.

5 Q. Convictions, yes.

6 A. A misdemeanor, sexual battery, crime against nature.

7 Q. Those would just be the sex offenses, correct?

8 A. Yes, sir. I'm sorry, if I'm not answering your
9 question. I thought --

10 Q. Oh, you're fine. You're fine.

11 A. Okay.

12 Q. But he has a number of other offenses that are shown
13 as convictions, correct? I just asked you about reportable
14 offenses.

15 A. He has a criminal record, yes.

16 Q. Okay. Now, I refer you to the criminal history of
17 Knolly Brown, Jr., which I'll mark as Defendant's Exhibit
18 Number 14.

19 **(DEFENDANT'S EXHIBIT NUMBER 14 WAS MARKED**
20 **FOR IDENTIFICATION.)**

21 Q. Do you have that in front of you?

22 A. I do.

23 Q. Okay. Now, prior to the particular offense that is
24 before the Court today, it's a safe assertion that he had no
25 crimes against persons or anything involved in violence where

1 he had been convicted of, correct?

2 A. I can tell you what his crimes are.

3 Q. You can do that.

4 A. Okay. Prior to that, he has possession of drug
5 paraphernalia, a misdemeanor, injury to real property, a
6 misdemeanor and second-degree trespass, a misdemeanor,
7 possession of beer and wine in a public street, a misdemeanor,
8 resisting public officer, a misdemeanor.

9 Q. No felony convictions, correct?

10 A. No, sir.

11 Q. Nothing involving, at least on its face, violence,
12 correct?

13 A. No, sir.

14 Q. No sex offenses or reportable offenses, correct?

15 A. No, sir.

16 Q. Okay. And do you know how old the defendant is?

17 A. At the time, he was in his late thirties. At the
18 time of the crime, I don't remember now. I want to say he was
19 39 -- I don't -- Huh-Uh (No.) No, sir.

20 Q. All right, that's fine. And I'm going to mark
21 Defendant's Exhibit Number 5. At the conclusion of the
22 hearing, there was, ultimately, an opinion that was issued by
23 the Innocence Inquiry Commission, correct?

24 A. Correct.

25 Q. Do you have that in front of you, correct?

1 A. I do.

2 Q. The information has been furnished to you --

3 THE COURT: (Mr. Baddour, Jr.) Sorry to interrupt
4 you. You just called out Exhibit 5.

5 MR. WIGGINS: Number 15, excuse me.

6 THE COURT: Okay. Is that the same as Number 4?

7 MR. WIGGINS: That's correct.

8 Q. I'll just refer to you to what's been previously
9 admitted as Defendant's Exhibit Number 4. Can you identify
10 that.

11 A. That is the Commission opinion from December 10th,
12 2015 at the conclusion of the two day hearing.

13 Q. Okay. And that opinion ultimately concluded that
14 there was a unanimous conclusion that there was sufficient
15 evidence of a factual basis of innocence to merit judicial
16 review, correct?

17 A. Correct.

18 Q. Okay. Is there anything that you think the panel
19 needs to be aware of that I have not asked or inquired about?

20 A. No, sir, I'll be happy to answer any questions.

21 MR. WIGGINS: Nothing further.

22 THE COURT: (Mr. Baddour, Jr.) All right, thank you.
23 Any cross-examination?

24 THE STATE: Just briefly.

25 CROSS-EXAMINATION

1 BY THE STATE:

2 Q. Did you speak with the victim during your
3 investigation?

4 A. Yes, I did.

5 Q. Now, originally she said -- did she say she was a
6 hundred percent sure it was the defendant was the person who
7 had raped her?

8 A. Yes, sir, she did.

9 Q. And what did she tell you during your interview with
10 her during this investigation?

11 A. She stated that she had never had sex prior to this
12 incident, prior to the rape with anyone consensual or
13 otherwise. That she did not know the man who raped her. She
14 was a hundred percent certain of that. It was an unknown black
15 male. And that she had never been sexually abused.

16 She was possibly going to attend the hearing, that ended
17 up that she decided not to. And, of course, that is her right.
18 She did indicate that if it was not Mr. Brown she would
19 certainly want to know who it was.

20 Q. Did she ever indicate that she had changed her mind
21 about whether it was Mr. Brown or not?

22 A. She stated that she had not changed her mind. We did
23 previously discuss the DNA. And, again, she stated, you know,
24 if it were not him, she would want to know who it was, but that
25 she believed it was him.

1 THE STATE: Nothing further.

2 THE COURT: (Mr. Baddour, Jr.) Any redirect?

3 MR. WIGGINS: Yes.

4 REDIRECT EXAMINATION

5 BY MR. WIGGINS:

6 Q. But all the physical and the forensic evidence
7 contradicts her identification, correct?

8 A. The DNA testing that we conducted does not match Mr.
9 Brown.

10 MR. WIGGINS Nothing further.

11 THE COURT: (Mr. Baddour, Jr.) Any recross. Before
12 she steps down, were you intending to introduce State's 6
13 through 14, Defendant's 6 through 14?

14 MR. WIGGINS: Yes, indeed, Your Honor. I was
15 actually going through and marking them on mine. But
16 Defendant's 6 through 14 will be identified. Defendant's
17 Number 6 will be the time line --

18 THE COURT: That's all right. I think it's in the
19 record what they all are. They've been identified.

20 MR. WIGGINS: Yes, it is. They are all on the
21 record. Defendant's Number 7 is --

22 THE COURT: That's fine, sir. We got them on the
23 record as to what they are.

24 MR. WIGGINS Got you.

25 THE COURT: I just wanted to know if you were trying

1 to move them into evidence.

2 MR. WIGGINS Yes, I would move to admit all of those
3 exhibits that have been used for the purposes of refreshing the
4 witness's recollection.

5 THE COURT: Okay, and is there any objection to those
6 by the --

7 THE STATE: No, sir.

8 THE COURT: All right, so then Defendant's 6 through
9 14 are also admitted. Thank you, ma'am, you can step down.

10 THE COURT: (Ms. Bray.) I had a question.

11 THE COURT: (Mr. Baddour, Jr.) Oh, I'm sorry. I'm
12 so sorry.

13 THE COURT: (Ms. Bray.) Were your conversation or
14 conversations with the victim by telephone?

15 A. We attempted to -- so by statute, we have to notify
16 the victim. That's what we're required to do. So we sent her
17 letters letting her know that the case had entered into formal
18 inquiry and asked if she would like to speak to us. She did
19 not contact us. So then we went to her home. It was confirmed
20 to be her home by some other individuals who lived there.

21 We left our card and asked that she call us. We then sent
22 follow-up letters.

23 THE COURT: (Ms. Bray.) I understand that. But your
24 only conversation with her was over the phone, is that correct?

25 A. Correct.

1 THE COURT: There was no face to face statement.

2 A. We asked if she would like to meet with us and she
3 did not. And so that is her choice.

4 THE COURT: (Mr. Baddour, Jr.) I apologize. Any
5 questions?

6 THE COURT: (Mr. Gilchrist.) No questions. Thank
7 you.

8 THE COURT: (Mr. Baddour, Jr.) Does that lead to
9 follow-ups by either attorney?

10 THE STATE No, sir.

11 MR. WIGGINS: No, sir.

12 THE COURT: Okay, thank you, ma'am.

13 A. Uh-Huh (Yes.)

14 THE COURT: You can step down. Will there be any
15 additional evidence on behalf of the defendant?

16 MR. WIGGINS: No, sir, that will be all for the
17 defendant.

18 THE COURT: Okay. Will there any evidence on behalf
19 of the state?

20 THE STATE: No, Your Honor.

21 THE COURT: All right. At this time, then, I think
22 it would be appropriate to hear from each side. Mr. Wiggins, I
23 think we'll start with you, sir.

24 MR. WIGGINS: Your Honor, the Court has had the
25 opportunity to review all of the evidence that has been

1 presented in Defendant's Exhibits 1 through 14.

2 I believe that here what we have is a scenario where the
3 physical evidence, along with the other forensic evidence and
4 the testing that was conducted is uncontrovertible as excluding
5 the defendant as the contributor of that particular sample.

6 They're also other inconsistencies that has been pointed
7 out with regard to the shoe prints and what was found by and on
8 the defendant at a very early stage and there being no physical
9 match with regard to those issues, even placing him there.

10 He's been consistent about his alibi. He has been
11 consistent about not having any type of culpability or
12 responsibility with regard to this particular offense. I'd ask
13 the Court to enter an order of exoneration for him.

14 THE COURT: (Mr. Baddour, Jr.) All right. Thank
15 you. Any questions?

16 THE COURT: (Mr. Gilchrist.) No.

17 THE COURT: (Mr. Baddour, Jr.) And for the state,
18 Mr. Orndorff.

19 THE STATE: Yes, sir, thank you, Your Honor. As the
20 Court is aware, Judge, our duty as the prosecution is to see
21 that justice is done, not just to convict.

22 And with this new evidence from the more advanced testing,
23 the DNA that we did not have previously from the Innocence
24 Inquiry Commission, we believe that justice requires us to join
25 in the defendant's motion.

1 If the state had had this DNA evidence back in 2008, 2009,
2 I have no doubt that the case would have been -- the case
3 against Mr. Brown would have been dismissed. Especially, in
4 light of the victim's statement that she had sex with nobody
5 else either consensually or consensually or not consensually
6 other than that assailant no one else has had sex with her.

7 With this new evidence, we have to join in his motion,
8 based on our duty to see justice done.

9 THE COURT: Thank you.

10 THE COURT: (Mr. Gilchrist.) No questions.

11 THE COURT: (Mr. Baddour, Jr.) All right, thank you.
12 And I think it would be appropriate that we get those exhibits
13 1 through 14 into the file and make sure we have it.

14 MR. WIGGINS: And, Your Honor, just for the record, I
15 have here Exhibits 1 through 14. They are marked and I am
16 tendering them to the Clerk.

17 THE COURT: (Mr. Baddour, Jr.) Okay. Thank you very
18 much. All right, we'll take a recess at this time and we'll be
19 back in session shortly. We'll just take a recess, though,
20 please.

21 **(A RECESS WAS TAKEN.)**

22 THE COURT: (Mr. Baddour, Jr.) All right, we'll go
23 back on the record. Thank you all. For the record, Mr. Brown
24 is present as our Mr. Wiggins and Mr. Orndorff. Again, thank
25 you all for your presence and your time and attention to this.

1 Also want to thank the Innocence Inquiry Commission for their
2 work and help in marshalling the efforts to see that justice is
3 done in this case.

4 We have, the judges have met and we have determined that
5 it is appropriate in this case to issue an order exonerating
6 Mr. Brown, declaring his innocence in this case. So that is
7 the order that we will prepare and have filed later today.

8 It is our further order that Mr. Brown be released
9 immediately. We understand that he is presently in custody,
10 has come from Craven Correctional on an allegation of a post-
11 release supervision violation.

12 But because the Court has determined that he is innocent
13 and exonerated and no longer convicted, there is no reason for
14 him to be on post-release supervision. The Court further will
15 declare because there is no conviction that he is not subject
16 to registration or satellite-based monitoring.

17 Those are both ordered removed. In other words, he's
18 ordered off the registry. And if he is presently subject to
19 satellite-based monitoring, that is ordered removed as well.
20 That will all be put in writing later today. We will put a
21 short order in writing today for purposes of the Department of
22 Adult Corrections ordering them to release Mr. Brown here today
23 from the courtroom.

24 And so, Mr. Brown, if you have items that the jail -- at
25 the prison you can go get those whenever you feel like it.

1 MR. BROWN: That's all right.

2 THE COURT: (Mr. Baddour, Jr.) And you can leave
3 them. We'll understand that. So I know this is a good day for
4 you. Congratulations.

5 MR. BROWN: Thank you, Your Honor.

6 THE COURT: (Mr. Baddour, Jr.) I will offer on
7 behalf of the state and the court system our apology to you for
8 this conviction.

9 There's a lot of reasons why things got to where they got
10 to. And there's no need in rehashing all of that. But it is
11 important to acknowledge the work of the Commission and the
12 process that's been developed to allow for situations like this
13 to occur. This is a good day. It's not been a good day every
14 day since 2010. But it's certainly a good day today. So
15 congratulations to you.

16 MR. BROWN: Thank you.

17 THE COURT: (Mr. Baddour, Jr.) I don't know if my
18 colleagues on the bench have anything they would like to add,
19 but I'll certainly offer that.

20 THE COURT: (Ms. Bray.) I would just like to say
21 also, Mr. Brown, congratulations today.

22 MR. BROWN: Thank you, Your Honor.

23 THE COURT: (Ms. Bray.) And just on a personal note,
24 again, I thank the Commission for what it has done in this case
25 and all your work identifying cases that need to be examined

1 again.

2 And I just want to say personally it's very sobering and
3 it's also really an honor to be here or assigned to this type
4 of assignment as a judge because our job is to do justice too,
5 just like the district attorney said. This is a day I won't
6 forgot. I wish all the best for you.

7 MR. BROWN: I wish the same to Your Honor, as well.

8 THE COURT: (Mr. Gilchrist.) Thank you. Mr. Brown,
9 I'm sorry that this happened. I wish you the best of luck in
10 the future.

11 MR. BROWN: Thank you, sir.

12 THE COURT: (Mr. Baddour, Jr.) Where's your mom?

13 MR. BROWN: Right there.

14 THE COURT: You want to hug her.

15 MR. BROWN: Yeah, I want to hug everybody.

16 THE COURT: Well, start with her. All right, is
17 there anything else we need to do on the record.

18 MR. WIGGINS: And, Your Honor, just for purposes of
19 clarity, I know that the Court just entered on the record an
20 order removing him from the registry and from the satellite-
21 based monitoring.

22 I actually prepared a petition and an order that is based
23 on -- it comes from the AOC website. I didn't know if you
24 wanted to enter that order now or if you just want to draft one
25 order that included all of those recitals to include

1 exoneration and then removal from the registry.

2 So I just want to be clear on how you want to do it just
3 to make sure that it is in the record at some point in time.

4 THE COURT: (Mr. Baddour, Jr.) Yes, sir, thank you.
5 We'll prepare that. I think that standard petition has
6 extraneous allegations and findings. For example, a period of
7 ten years on the registry before seeking removal, which is not
8 accurate in this case, but also not relevant given there is no
9 longer a conviction.

10 So I think the amount of work it would take to make that
11 form fit our needs probably just -- we discussed that and we
12 believe it will be simpler to draft a single order with all of
13 that.

14 If we get into the actual drafting and determine that or
15 learn from the registry that having a form order which
16 sometimes is helpful, we'll craft that. But thank you for your
17 offer. All right, so then, again, I think there's nothing else
18 -- was there anything else that you were looking for?

19 MR. WIGGINS: No, sir.

20 THE COURT: All right, with nothing else on the
21 record, we'll get with the clerk for just a minute to draft a
22 very short judgment or other sort of quick order for DAC
23 purposes. Mr. Brown, have a great weekend.

24 MR. BROWN: Thank you, Your Honor.

25 THE COURT: And court will be adjourned.

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END OF TRANSCRIPT

STATE OF NORTH CAROLINA
COUNTY OF NASH

C E R T I F I C A T E

I, JEAN M. McINERNEY, A CERTIFIED VERBATIM REPORTER AND OFFICER BEFORE WHOM THE FOREGOING PROCEEDING WAS TAKEN, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS TAKEN BY ME AND TRANSCRIBED BY ME PERSONALLY.

I DO FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, RELATED TO, NOR IN THE EMPLOYMENT OF EITHER OF THE PARTIES TO THIS ACTION, NOR AM I INTERESTED IN THE RESULTS OF SAID ACTION.

JEAN M. McINERNEY, CVR-CM-M
OFFICIAL COURT REPORTER
7TH DISTRICT